

**Minerals-related activities in the six States and the Northern Territory (NT) are normally administered by the Department of Mines, Minerals and Energy, or equivalent, in each jurisdiction. While all States and the NT have their own laws governing mineral activities, in content and administration, they are very similar.**

Each jurisdiction publishes “how to” information that summarises key aspects of its mining law and administration.

A feature of the administration of exploration and mining titles in Australia is the ready access in the States and the NT to current tenement information, commonly through on-line information systems. This enables quick identification of tenement status and title-holders, improved identification of available prospective ground and immediate registration of applications for new titles. Information is also readily available on previous exploration activity and data availability.

The following summarises the mining approval process across all jurisdictions in Australia.

## The Mining Approval Process

In Australian mining legislation, there are three basic stages of development of a mine:

- initial exploration;
- further detailed exploration and assessment (possibly under a retention licence); and
- mining.

### Initial Exploration Licence

In most States and the NT, an application for an exploration licence (a permit in Queensland) must include a work program, setting out details of proposed exploration methods and expected expenditure. This work program has to satisfy the relevant Minister who grants the licence and may impose title specific conditions.

Public notification of the application is required in all jurisdictions, usually by notification in the government gazette or in a local newspaper. Public notification for an exploration permit in Queensland (QLD) is only required where the permit is being processed in accordance with the native title expedited procedures.

In five jurisdictions (not in New South Wales and QLD) there is provision for public comment on the granting of an exploration licence. In WA and Tasmania, these comments are heard in public hearings in a warden’s court which make recommendations to the Minister, but in Tasmania

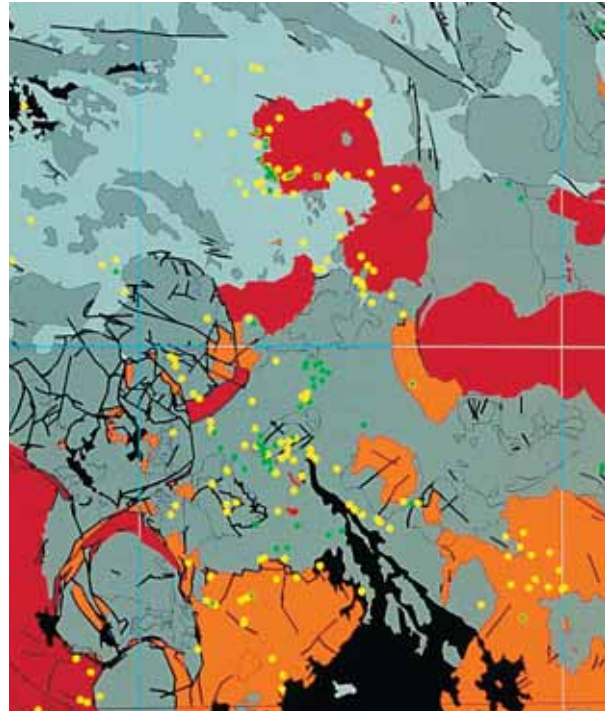


Photo courtesy of Geoscience Australia

the objector must also have an estate or interest in the land concerned. In Tasmania, objections against exploration licences are sustainable on technical grounds only, while objections based on other grounds will be taken into account by the Minister. Tasmania has developed a system where the Director of Mines is obliged to attempt to resolve disputes before referral to the Mining Tribunal. In effect this consists of informal mediation between the parties, conducted by the Registrar of Mines. Objectors do not have to prove standing and the success rate is extremely high. In the other three jurisdictions (the NT, South Australia and Victoria), comments are taken into account by the Minister when considering the application.

QLD and NSW have no provision for comment on the grant of the application. QLD has provision for notification of the owner of the land before entry, and in NSW, the exploration licence holder is required to enter into an access arrangement with the land owner (with arbitration if needed, or determination of an access arrangement by the warden) before the licence holder can commence exploration.

### Retention Licence

Six jurisdictions have some form of retention licence. This allows the permittee who has discovered the resource to postpone the development if necessary until it becomes economically viable. In Victoria, QLD and Tasmania, a direct transition from exploration licence to mining lease is possible. However, in Victoria retention licences as such do not exist. It is possible in Tasmania to move from a current lease to a retention licence.

An application for a retention licence must include a work program and evidence of the presence of potential economic mineralisation.

In most jurisdictions the application retention licence process is similar to that for exploration licences with requirements to notify the public, land owners and occupiers. In WA and Tasmania, there is provision for objection to the granting of an application and also provision for public hearing of objections. But in Tasmania, the objector must have an estate or interest in the land concerned. Pre-hearing mediation is encouraged under Tasmanian legislation.

Tenure is generally granted for five years with provision for renewal and includes a priority of right to apply for a mining tenure. In WA, for other than reserved land, there is a right to be granted a mining lease. Tenure includes conditions and allows the holder to carry out further exploration activities.

As with exploration licences, under a retention licence compensation is also payable for land surface damage, severance from other land, restrictions of right of way, damage to improvements and reasonable expenses to control damage. In WA, SA and NSW, compensation is also payable for deprivation of use of the land, loss of earnings and social disruption. Where compensation cannot be agreed between the parties, the amount is usually determined by a warden's court (the Land

and Resources Tribunal in QLD). In Tasmania, where a retention licence includes private land a private property bond will be required.

The first year charges relating to a 100 hectare retention licence (including application fee and rental) vary from \$1331 in Tasmania to \$1,800 in NSW. Dealings fees vary as for exploration licences.

### Mining Lease

In most jurisdictions anyone can lodge an application for a mining lease but holders of exploration or retention licences have a priority right. In QLD, an applicant must be the holder of an appropriate pre-requisite tenure. Applicants must provide outlines or particulars of the mining development proposals. In QLD, details can be provided subsequently but are still a prerequisite for mine development.

Public notification of the application to mine is required in all jurisdictions except Tasmania, usually by publication in the Government gazette or in a newspaper circulated in the area.

On lodging an application to mine, the applicant is also required to notify the public, including land owners and occupiers:

- there is provision for objection to the granting of a mining lease. In NSW, WA, Queensland, Tasmania and the NT there is also provision for the public hearing of objections. In Tasmania, an objector must have an interest or estate in the land concerned, to have status before the court.

In SA, the applicant must serve a 21 days Notice of Entry on the landowner prior to entering the property for the purpose of pegging. Some land tenures have a right to object to entry in the Warden's Court. Upon receipt of the mining lease application, the Department forwards copies to the landowners, local councils and native title claimants for comment.

### Application for a mining lease

STATE	PUBLIC NOTIFICATION	PUBLIC HEARING OF OBJECTIONS	CONSENT BY OWNER/ OCCUPIER OF PRIVATE LAND REQUIRED PRIOR TO MINING	ANNUAL RENT	REQUIRED TO LODGE PRODUCTION REPORTS
WA	•	•	•	•	•
NSW	•	•	•	•	•
SA	•	For objections to Notice of Entry	• (only when within 400 metres of residences etc)	•	•
QLD	•	•	•	•	•
TAS	•	•	•	•	•
NT	•	•	•	•	•
VIC	•	•	•	•	•



In most jurisdictions consent of the owner or occupier of private land is required before mining operations can take place within 100-200 metres (in SA, 400 metres) of residences and other improvements on private land. In some States there are also some activity specific veto rights on freehold land.

Compensation generally is payable for mining activity on a similar basis to that for retention licences. Where compensation cannot be agreed between parties, the amount is usually determined in a warden's court (the Land and Resources Tribunal in Queensland). In Queensland and Tasmania, a compensation agreement must be lodged before a mining lease is granted.

Where open cut or surface mining is planned, it is common practice (except in the NT and SA) for the miner to purchase the property on which the mine is to be located, although the scope and type of compensation is usually a matter of negotiation between landowner and the licensee.

Mining proposals are subject to environmental assessment, and details of mining proposals must be provided before mining activities can commence:

- › a bond or security for compliance with environmental and rehabilitation conditions must also be lodged;
- › in SA, an approved Mining and Rehabilitation Program is required; and
- › in some cases, further environmental and rehabilitation conditions can be added after grant of the mining lease.

Except in QLD where the term is determined by the Governor-in-Council, and in Tasmania and the NT, where the term is determined by the Minister, WA the term is 21 years renewable, mining leases are granted for a maximum of twenty-five years (20 years in Victoria) and have provisions for renewal (21 years in NSW). In SA, mining leases may be granted for up to 21 years and are renewable, but practice is to grant for an initial 7 years.

The miner is required to pay annual rent (except in NSW) and lodge production reports, and is also required to lodge periodic environmental reports.

In the NT a maximum area for a mining tenement applies. In Victoria mining licences over 260 hectares are subject to consent by the relevant Minister. (there is no size limitation for a mining lease in WA or SA)

The first year charges relating to a 100 hectare mining lease (including application fee and rental) vary from about \$1,716 including GST in WA to about \$4,340 in QLD. Dealings fees vary as for exploration licences. In NSW, the fee for transfer and registration of part of a lease is \$1,260.

### Application for Exploration Licences – Summary of State Requirements

STATE	PUBLIC NOTIFICATION	PUBLIC COMMENT PROVISION	OBJECTIONS CONSIDERED IN WARDEN'S COURT	CONSIDERED BY MINISTER	LEVIES
WA	•	•	•		•
NSW	•	Licencee to enter access arrangement with land owner.			
SA	•	•		•	•
QLD	Only required where the permit is being processed in accordance with the native title expedited procedures	Required to notify the owner of the land before entry			•
TAS	•	•	•		•
NT	•	•		•	•
VIC	•	•		•	

The applicant is required to pay compensation to the land owner/occupier for land surface damage, severance from other land, restrictions of right of way, damage to improvements and reasonable expense to control damage. It is not related to the value of minerals. In WA, Victoria, SA and NSW compensation is also payable for deprivation of use of the land, loss of earnings and social disruption. In NSW, Queensland, Victoria, Tasmania and the NT, a security deposit or private property bond is held to ensure there is no default on the requirement to make good any damage arising out of exploration activities.

Where compensation cannot be agreed between the parties, the amount can be settled by arbitration or by a determination in a Warden's court (in QLD the Land and Resources Tribunal).

#### Exploration Licences - Compensation Conditions by State

STATE	COMPENSATION INCLUDES DEPRIVAL OF USE OF LAND, LOSS OF EARNINGS & SOCIAL DISRUPTION	SECURITY DEPOSITS OR PRIVATE PROPERTY BONDS
WA	•	
NSW	•	•
SA	•	
QLD		•
TAS		•
NT		•
VIC	•	•

All applications are also assessed on the basis of environmental acceptability, and grants of tenure may allow for further environmental and rehabilitation conditions to be added after the exploration licence has been issued. In QLD the environmental assessment process is carried out by the (State) Environmental Protection Agency rather than the Department of Mines and Energy.

All jurisdictions, except SA and Tasmania, base their exploration licence system on graticular blocks (one minute of latitude by one minute of longitude). The maximum area for an exploration title varies from 1 up to 200 graticular blocks in WA, depending on the case made by the applicant. Other jurisdictions grant much larger areas (NT up to 500 blocks).

In Tasmania exploration licences are granted on even 1000 metre grid lines up to a maximum area of 250 km<sup>2</sup>.

Exploration tenures are generally granted for periods of from two to six years, with renewals being subject to reductions in area ("relinquishments"), but Ministers can vary conditions where special circumstances exist. In Victoria exploration licences are required to relinquish after the second and fourth anniversaries from the grant of the licence.

All jurisdictions levy application fees and all except NSW and Victoria, levy annual rental fees on exploration tenure. The first year charges relating to a 50 graticular block exploration licence (including application fee, rental and GST) and vary from about \$200 in Victoria to about \$6237.50 in WA. Dealings fees imposed (on transfers and caveats) range widely up to about \$350 per transaction for each licence. In NSW, the fee for transfer and registration of a licence is \$360. Victoria does not impose dealings fees.

## Case Study

### ADMINISTRATION OF MINING LAW IN WESTERN AUSTRALIA

**This case study outlines the operation of the WA mining administration system. It is indicative of procedures generally followed by the other States but is not a guide to actual details.**

#### Relevant Legislative Aspects

- › Mining Act 1978 - to obtain onshore exploration and mining titles;
- › Environment Protection Act 1986 - to obtain development approval;
- › Land Administration Act 1997 - to obtain the release of Crown land; and
- › Native Title Act 1993 - to obtain necessary approvals.

Under the Mining Act 1978, all minerals (except non-precious metals in freehold land alienated before 1899) belong to the Crown. Where the minerals are the property of the Crown, a mining title must be obtained before any exploration or mining operations may be undertaken. The WA Government has the sole right to allocate prospecting/exploration and mining titles for minerals.

The Mining Act 1978 also provides for:

- › transfers and mortgages of mining tenements;
- › environmental conditions to be imposed on mining tenements;
- › an obligation for mining tenement holders to spend money on exploration or mining each year;
- › forfeiture of mining tenements for non-compliance with terms and conditions; and
- › a warden's court where disputes and compensation matters may be settled.

The Mining Act 1978 is administered by the Minister for Resources assisting the Minister for State Development through the Department of Industry and Resources (DoIR). For administrative purposes, WA is divided into mineral fields over which mining wardens and mining registrars preside.

The Mining Act 1978 deals with three basic types of land, which together include all the land within the State. The categories are Crown land, public reserves and private land. A mining tenure (mineral property right) may include all three categories of land open for mining. Seven types of tenement are currently available:

- › permits;
- › prospecting licence - small, short-term title for general prospecting;
- › exploration licence - large, short to medium term title for detailed exploration operations;

- › retention licence - title to an area where a mineral resource has been located, to enable assessment and retention of interest in land;
- › mining lease - long-term title for mining operations;
- › general purpose lease – ancillary title for purposes such as operating machinery, depositing or treating mining tailings; and
- › miscellaneous licence – ancillary title for purposes such as a road, water pipeline etc.

#### Mineral Exploration - Steps in the Process to Approval

The following is the procedure applying to obtaining approval for a mineral exploration title:

1. a company (the proponent) applies to the DoIR for an exploration title;
2. where applicable, DoIR seeks comment from Government agencies and local government;
3. the public, including landowners (or native title holders or claimants), are notified;
4. an environment impact report may be required where a sensitive area may be affected;
5. the Warden's Court considers any objections and makes a recommendation to the Minister for Resources assisting the Minister for State Development;
6. after recommendation and when all the necessary clearances have been obtained from other Government agencies, the Native Title Act 1993 process is implemented (the use of standard Heritage Agreements with Native Title Representative Bodies is widespread in the State and minimises objections to licence applications);
7. the Minister for Resources assisting the Minister for State Development makes a decision and the company is informed about conditions; and
8. written approval of the Environmental Officer is required for exploration programs involving the use of mechanised equipment for ground disturbing activities.

Additional approval may be required from the Environmental Officer in consultation with the Department of Conservation and Land Management (CALM) and other authorities, for exploration proposals in areas of environmental or social significance.

In WA, major projects may be facilitated under project specific legislation.



Drilling at one of Sipa Resources Ltd's exploration projects

### Agreement Acts

Agreement Acts are an instrument for facilitating major resource development projects in WA. An Agreement Act provides the framework for an ongoing relationship between the proponent and the State. Benefits to proponents include:

- > the clear “packaging” of the rights and obligations for all parties;
- > provisions can override other State legislation if this is necessary to enable the project to proceed;
- > the project, through the proposals mechanism, is clearly defined and agreed by government within specific time frames, and subsequent approvals, under other legislation, are facilitated;
- > protecting proponents against movement of “goal posts” by State or local government during construction or operation, eg. concerning resumption, adverse local zoning amendments or royalty reviews;
- > the ability to handle all phases of project progression (ie. from “cradle to grave”); and

- > companies work with the WA Government through the Minister for Resources assisting the Minister for State Development, with DoIR acting as facilitator, coordinator and Agreement administrator to ensure efficient project progression.

Agreements are not mandatory but are available as a mechanism when both parties believe there is benefit in devoting the considerable resources required to negotiate an Agreement. From the State’s perspective, the project should have the commitment of the proponent and their financial supporters from an early and defined start to construction.

### Allocation of Mineral Tenures

Mineral tenures are granted on the basis of “first come first served”. Exploration rights over a given area are allocated to the first applicant, with simultaneous applications being resolved by ballot. The applicant is required to lodge a statement of the technical and financial resources available to meet the minimum annual expenditure commitment for the licence.

The basic steps in the title application process for the applicant are:

1. properly mark out the ground applied for (for prospecting licences and mining leases);
2. lodge an application form with the appropriate Mining Registrar and pay the prescribed fees;
3. advertise a copy of the application in a newspaper; and
4. serve a copy of the application on relevant land occupiers or owners, and, in respect of private land, on the local municipality and any mortgagee.

An exploration or retention title holder has priority before any other applicant for the award of a mining lease over the area concerned, unless the title holder has failed to comply with the exploration tenement conditions.

There is no limit to the number of exploration licences a person or company may hold. The term of an exploration licence is five years. Extensions of term can be obtained if satisfactory exploration has been undertaken and further exploration is needed.

Further information can be found at [www.doir.wa.gov.au](http://www.doir.wa.gov.au)



Australian Government  
Department of Industry,  
Tourism and Resources  
Invest Australia  
Geoscience Australia



For more information visit: [www.industry.gov.au/investorsguide](http://www.industry.gov.au/investorsguide)