



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

ADMINISTRATION AND OPERATION
OF
EXPLORATION LICENCES,
PROSPECTING LICENCES,
MINING LEASES,
GENERAL PURPOSE LEASES AND
MISCELLANEOUS LICENCES
IN
WESTERN AUSTRALIA

SEPTEMBER 2013

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WESTERN AUSTRALIA MINING ACT 1978 AND MINING REGULATIONS 1981

ADMINISTRATION

1. INTRODUCTION

This chapter outlines the legislative provisions relating to mineral exploration and development in Western Australia and the relevant administrative processes involved

1.1 Background

Management of mineral exploration and development in Western Australia is primarily the responsibility of the Department of Mines, Industry Regulation and Safety (DMIRS). Other government organisations play an active role in various aspects of the industry. In particular, the Department of Jobs, Tourism, Science and Innovation plays a key role in promoting and facilitating the development of major projects and DMIRS also interacts with the Department of Planning, Lands and Heritage, Department of Primary Industries and Regional Development, and many other agencies when assessing tenement applications.

Ownership of all materials, other than those defined as basic raw materials in s.8 of the *Mining Act 1978*, is vested in the crown and individuals or companies must obtain a mining title to carry out exploration activities or mining operations within the State. The title system that operates within the State is designed to assist developers, but to also take into account other land tenure issues, such as environmental conservation areas, or native title areas, in order to provide long term benefits to the community. The title issued defines the rights and obligations of the government and the tenement holder, and provides the security of access to resources essential for the large capital investments that assist state development. It also ensures that the tenement holder complies with the conditions of the land that their tenement is based on and rehabilitates the land after mining has finished. The rights and obligations of mining tenement holders are embodied in the *Mining Act 1978* and in some cases, Commonwealth legislation.

1.2 The Nature of Mining Titles

Exploration involves searching a large area with minimal ground disturbance. Exploration titles are therefore generally granted over large areas which are reduced in size over time as the exploration process progresses and the more prospective ground has been identified.

Mineral exploration titles can be lodged online, or at any Mining Registrar's office and are granted for an area based on the first in time principle, that is the first individual or company who correctly lodges the required forms. Once

a mining title is granted, the tenement holders are required to meet expenditure or work commitments and comply with the conditions of approval to retain their rights to explore.

The *Mining Act 1978* gives the holder of an exploration tenement the right to apply for, and have granted, a mining lease within the area of their exploration licence. It is intended that the holder of an exploration licence will apply for a mining lease if the exploration phase has matured and a commercially viable resource has been discovered. An application for a mining lease must be accompanied by a mining proposal under s.74(1)(ca)(i) or statement and mineralisation report prepared by a qualified person under s.74(1)(ca)(ii), or a statement in accordance with s. 74(1a) and a resource report under s.74(1)(ca)(iii), of the *Mining Act 1978*. These documents should outline the nature of a proposed development, the method of mining, its environmental impact, rehabilitation proposal and all building plans.

Titles issued for the actual extraction of minerals are much smaller in area than exploration licences and are issued with stringent environmental and rehabilitation conditions to ensure that the tenement holder conducts mining in a safe and sustainable manner. Once mining has commenced, the mining proposal title is imposed as a condition on the lease and therefore becomes a legally binding document to which the tenement holder must adhere.

1.3 Land Tenure Considerations

The conditions upon which mineral exploration or mining may occur vary depending on the nature of land tenure.

In general, mineral exploration and development titles may be granted on vacant crown land, pastoral land and private land, although in respect of certain categories of private land the written consent of the land owner or occupier is required prior to the grant of the tenement to a depth of 30m. Standard conditions have been developed to cover mineral exploration in a range of Conservation Reserves, Nature Reserves, proposed Conservation Reserves, State Forests and other environmentally sensitive areas.

Under s.24, 24A & 25 of the *Mining Act 1978*, varying degrees of access are available in regards to reserved land. For example, the concurrence of the Minister for Environment is required for exploration in Class A Conservation Reserves, National Parks and State Forests in the South West. Under these sections of the Act, some classes of reserved land require the consent of both houses of State Parliament, whilst otherwise only require the recommendation of the relevant Minister before the grant of mining approvals.

2. ADMINISTRATION OF MINING

For the purposes of the *Mining Act 1978*, the State is divided into various mineral fields and some of these are further divided into districts. These mineral

fields, which are allocated to regional mining registrars, are shown in appendix 1.

Wardens are appointed as per s.13 of the *Mining Act 1978* to hear applications and disputes as such times as the warden appoints. The operation of these courts is dealt with in greater detail in Section 5 of this document.

3. LEGISLATION

3.1 Legislative Framework

Mineral exploration and development in Western Australia (other than that governed by State Agreement Acts) is regulated and administered under the *Mining Act 1978* for onshore areas, and offshore areas to a limit of three nautical miles seaward of the base line are governed by the State Offshore Minerals Act 2003. Areas outside of this are governed by Commonwealth legislation, namely the Commonwealth Offshore Minerals Act 1994.

3.2 Crown Ownership in Minerals

Except in the case of land alienated in fee simple before 1st January 1899 (in which case minerals other than gold, silver and precious metals are the property of the owner), all minerals are property of the crown (s.9). The following materials are not classified as minerals when they occur on private land - limestone, rock, gravel, shale (other than oil shale), sand (other than mineral sands, silica sand or garnet sand) and clay (other than kaolin, bentonite, attapulgitite or montmorillonite) (s.8). On private land, these minerals are extracted under local government licences. Where minerals are the property of the Crown a mining title must be obtained under the *Mining Act 1978* before any mining operation may be undertaken. It is an offence to carry on mining operations on any land without authorisation.

3.3 Miner's Rights

The basic authority under the Act that allows the holder to fossick and prospect on Crown land and to take and keep samples and specimens of any ore or material up to 20 kg's is a Miners Right (s.40A-D). It does not authorise the holder to carry out mining operations.

4. MINING TENEMENTS

The mining tenements available under the *Mining Act 1978* are:

- Prospecting Licence (s.40-56)
- Special Gold Prospecting Licence (s. 56A, 70 and 85B)
- Exploration Licence (s.56C-70)
- Retention Licence (s.70A-70N)

- Mining Lease (s.70O-85B)
- General Purpose Lease (s.86-90)
- Miscellaneous Licence (s.91-94B)

Some of the basic features of these tenements are outlined in the following paragraphs.

4.1 Prospecting Licence

- A prospecting licence has a four year term and may be extended for a further term of 4 years
- The maximum area for a prospecting licence is 200 hectares
- Prospecting licences must be marked out unless otherwise specified
- There is no limit on the number of licences that may be held, but a security in the amount of \$5,000 is required in respect of each licence.
- The holder of a granted prospecting licence may, in accordance with the licence conditions, excavate, extract or remove up to 500 tonnes of material from the ground. The Minister may then approve excavation or extraction of a larger tonnage

4.2 Special Gold Prospecting Licence

- A special prospecting licence for gold may be granted for a period of three months or for any period which is a multiple of three months but which does not exceed four years. A special prospecting licence is not subject to extension.
- A special prospecting licence for gold is limited in area to a maximum of ten hectares
- A person may hold up to ten special prospecting licences
- A special prospecting licence for gold may be marked out in respect of land within an existing prospecting licence, exploration licence and with the written consent of the holder of a mining lease (viz 'the primary tenement) providing the primary tenement has been in force for one year.
- A special prospecting licence for gold may be granted if it is considered that prospecting could be carried out without affecting the prospecting/exploration/mining activities of the 'primary tenement' holder.
- The following restrictions apply in respect of a special prospecting licence
 - Mining may not be carried out 50 metres or more below the lowest part of the natural surface of the land
 - It cannot be transferred without the prior consent of the holder of the primary tenement

4.3 Exploration Licence

- For licences applied for prior to 10th of February 2006, the term is 5 years plus a possible extension of 2+2 years and further periods of 1 year thereafter. At the end of both the third and fourth year of its term, the licensee is required to surrender 50% of the licence
- For licences applied for after 10th February 2006, the term is 5 years plus a possible extension of 5 years and a further period or periods of 2 years thereafter. 40% of the ground is to be surrendered at the end of the 6th year that the licence is held, unless the size of the licence is 10 blocks or less.
- The minimum size of an exploration licence is one block (i.e. one minute of latitude by one minute of longitude), and the maximum size is 70 blocks in mineralised zones. If the application is made in the designated non mineralised zones the maximum size is 200 blocks
- An exploration licence is not marked out
- There is no limit to the number of licences that may be held, but a security in the amount of \$5,000 is required in respect of each licence. The holder of a granted exploration licence may, in accordance with the licence conditions, excavate, extract or remove up to 1,000 tonnes of material from the ground. On application, the Minister may approve the excavation or extraction of larger tonnages

4.4 Retention Licence

- A retention licence is used to retain ground containing a mineral resource which has been identified as a result of exploration activity which for economic reasons is not able to be further explored or mined
- A retention licence may be granted in respect of the whole or any part of the land within the boundaries of a primary tenement (i.e. a prospecting licence, exploration licence or mining lease)
- A retention licence remains in force for five years and is renewable for further periods of five years
- A retention licence will be granted for an area sufficient to cover an identified mineral resource and future mining operations, however there is no maximum area
- A retention licence is not marked out
- The holder of a retention licence may apply to convert all or part of the licence to a mining or general purpose lease

- A security in the amount of \$5,000 is required to be lodged on a retention licence.

4.5 Mining Lease

- A mining lease has a term of 21 years and may be renewed for further terms of 21 years
- The maximum area for a mining lease applied for before February 2006 is 1,000 hectares. Thereafter the area applied for is to relate to an identified ore body as well as an area for infrastructure requirements
- Mining leases must be marked out
- There is no limit to the number of mining leases that may be held
- The lessee of a granted mining lease may work and mine the land, take and remove minerals and do all things necessary to effectively carry out mining operations in, on, or under that land
- Under s.74 (1)(ca) of the *Mining Act 1978* a mining lease application shall be accompanied by a mining proposal OR a statement in accordance with s.74(1)(a) and a mineralisation report or resource report that has been prepared by a qualified person (as defined and explained in s.74(7)).
- The statement under 74(1)(ca) must contain certain information regarding the proposed mining operation including
 - When the mining is likely to commence
 - The most likely method of mining
 - The location and the area of the land that is likely to be required for the operation of the plant, machinery and equipment for the other activities associated with those mining operations
- A security in the amount of \$5,000 is required to be lodged on a mining lease.

4.6 General Purpose Lease

- A general purpose lease has a term of 21 years and may be renewed for further terms of 21 years
- The maximum area is ten hectares or such greater area the Minister approves
- A general purpose lease must be marked out and is limited to a depth of 15 metres or such other depth that may be specified
- A general purpose lease is for purposes such as operating machinery, depositing or treating tailings etc.
- Under s.87 & 90 the *Mining Act 1978* a statement must accompany the application to include either a development and construction proposal or a statement setting out the specific intentions for the lease

- There is no limit to the number of general purpose leases that may be held
- A security in the amount of \$5,000 is required to be lodged on a general purpose lease.

4.7 Miscellaneous Licence

- A miscellaneous licence has a term of 21 years and it may be renewed for further terms
- There is no maximum area for a miscellaneous licence
- Miscellaneous licences do not need to be marked out, the application shall be accompanied by a reference to a written description and a map of the area of land applied for
- A miscellaneous licence is for purposes such as road, pipeline, power line, to extract water, or any purpose which is directly connected with mining, as set out in the Act and Regulations
- A miscellaneous licence may be granted over all other mining tenements (underlying holders may object if the proposed purpose is likely to interfere with their mining activities)
- There is no limit to the number of licences that may be held
- A security in the amount of \$5,000 is required to be lodged on a miscellaneous licence.

5. APPLICATION AND GRANT PROCESSES

5.1 Requirement to mark out

Under s.105 of the *Mining Act 1978*, before an application for a mining tenement (other than an exploration, retention, miscellaneous or prescribed land prospecting licence) is made, the ground must be marked out or “pegged”

The standard marking out requirement as per r. 59 & 60 is to:

- a) Fix as close as practicable to each corner or angle of the land a post projecting at least one metre above the ground
- b) Cut two clearly identifiable trenches, or placing two rows of stones, at least one metre long from each post in the general direction of the boundary lines
- c) Attach to one of the posts, nominated as the datum post, a notice of marking out in the form of Form 20

If the ground applied for is identical to any surveyed land it is necessary only to place a datum post in one of the corners of the surveyed land and attach the notice of marking out in the form of Form 20 to that post (r.61)

For tenements other than miscellaneous licences the tenement shall where practicable be rectangular in shape. Miscellaneous licences and tenements

where it is not practicable to be rectangular, may be of any shape but the boundaries must, where practicable, be straight lines and where possible at right angles to adjacent sides and parallel to an opposite side (r.38, 92).

5.2 Application Lodgement Procedure

An application for a mining tenement must be made on the prescribed form (Form 21 – Application for a Mining Tenement) and can be lodged at any Mining Registrar's Office, or lodged electronically via the DMIRS' website using "Mineral Titles Online (MTOL)", within ten days of marking out. The application must be accompanied by a map which clearly shows the boundaries of the land applied for and under r.66 the boundaries of a mining tenement, other than an exploration licence, shall be described from either an existing survey mark, a prominent ground feature shown on the public plans of DMIRS, latitude and longitude, or Map Grid of Australia 1994 coordinates

Other specific application requirements are:

- A security (Form No. 32) in the amount of \$5,000 must be lodged within 28 days of application for all applications
- For exploration licences: a statement to be lodged with the application which specifies (s. 58):
 - a) The proposed method of exploration
 - b) The details of the proposed work program
 - c) Estimate of proposed expenditure on the licence
 - d) Applicants technical and financial resources, unless the applicant is a natural person, and the application is in respect of not more than 4 blocks, and the applicant intends to utilise his or her own labour to carry out the work program, in which case financial resource information is not required.
- For miscellaneous licences: Information to be lodged on the details of any works to be constructed, the manner of construction and any operations to be carried out on the licence, within 35 days of the date of application (r.37(3))
- For general purpose leases: the application must show the purpose for which the lease is being sought (s.86(5))

5.3 Applicant Action

When the application has been processed by the Mining Registrar, the applicant is required to take the following action:

1. Attach a notice of marking out (Form 20) to the datum post of the mining tenement for all tenements except for exploration licences, retention licences and prescribed mining leases

2. If the application relates to land held under pastoral lease, a copy of the application must be sent to the pastoral lessee by registered post or certified mail together with a copy of the map (s.118)
3. If the application relates to private land, copies of the application must be served on the
 - i. Clerk of the council of the municipality
 And additionally for surface rights
 - ii. The owner and occupier of the land
 - iii. Each registered mortgagee
4. If the application related to a miscellaneous licence, a copy of the application sent to:
 - i. Each applicant for or holder of any mining tenement affected (s. 91 (9)r.37(2), 64C)
 - ii. The clerk of the council of the municipality (s.91 (9), r.64C)
 - iii. The Native Title Claimants/Holders S24MD(6B) NTA

5.4 Objections may be lodged

Any person may lodge an objection to the granting of an application for a mining tenement by lodging the Form No. 16 within 35 days of the application, or such further period as the Warden may allow. The objector is required to serve a copy of the objection on the applicant as soon as practicable after the objection is made.

5.5 Grant of Tenement Applications

A Warden's Court operates to determine objections lodged against tenement applications, to adjudicate over disputes between competing applicants and to hear any other actions claimed in relation to any mining tenement or purported mining tenement, or any other matters that fall under the jurisdiction of *the Mining Act 1978*

The Mining Registrar or Warden determines applications for prospecting licences and miscellaneous licences (s.91(1), 40(1)) Applications for exploration licences, retention licences, mining leases and general purpose leases are determined by the Minister responsible for the *Mining Act 1978* upon the recommendation of the Mining Registrar or the Warden (s.57(1), s70B(1), s.71, s.86(1)).

The Mining Registrar is authorised to grant applications for prospecting licences and miscellaneous licences on Crown land where no objection has been lodged, and the applicant has complied with the Act (s.42(2), s.92)

Where an application for a prospecting licence or miscellaneous licence is refused or granted with conditions deemed by the applicant to be unreasonable, the applicant may appeal to the Minister responsible for the *Mining Act 1978*. The Minister may uphold the appeal and grant the licence or amend the conditions as they consider reasonable (s.56, s.94(3))

5.6 Warden's Court Hearings

The *Mining Act 1978* confers both judicial and administrative functions on the Warden

The grant or recommendation of mining tenements and the determination of disputes has always been regarded as the primary administrative function of the Warden

Most objections against tenement applications are raised by existing holders or other applicants for competing mining tenement applications or by land holders or occupiers. Objections are heard by the Warden in open court.

5.7 Summary of Grant Process

A flow chart summarising the procedure for granting a mining tenement is shown in Appendix 2

5.8 Conversion/Renewal/Extension of Title

Whilst the *Mining Act 1978* sets terms for each of the mining tenements it also provides a number of mechanisms whereby a title holder can maintain an interest in the title or in the land contained in that title

The holder of a prospecting, exploration or retention licence is able to 'convert' all or part of that licence to mining or general purpose leases (s.49, 67, 70L). The purpose of 'conversion' is to allow the holder of any of these titles to easily obtain a secure long term mining title by giving them priority for grant. To 'convert' a prospecting or exploration licence the holder must mark out and apply prior to the expiry of the licence.

The *Mining Act 1978* provides that where such an application is made in respect to all or any of the land contained in that licence, the licence or that portion of the licence covered by the lease will continue in force until the lease application is determined.

If a licensee exercises these rights and converts all or part of the licence, the Minister for Mines & Petroleum is bound to grant the leases (s.75(7)) providing that the application complies with the Act and Regulations. The 'right' to be granted does not apply when certain types of reserved land are involved (s.75(9)).

The *Mining Act 1978* also provides for the renewal of mining leases and requires the application to be made in the final year of the term of the lease. Lodgement of the application continues the lease in force until the renewal is determined (S.78)

The holder of a miscellaneous licence can, prior to the expiry of the licence, apply for the licence to be renewed for a further 21 year period. As with

mining leases, the renewal application will ensure that the licence will be kept in force pending determination of the renewal (s.91B (4))

The holder of an exploration licence can apply to have the licence extended (s.61). For licences applied for after February 2006, prior to the expiry of the licence, the licensee may apply for a further period of five years and a further period or periods of two years. For licences applied for prior to February 2006, the licence may be renewed for a further period of five years, then for two periods of two years and then further periods of 1 year. An application for extension must be supported by a summary of work already carried out and a detailed work program of proposed work.

The holder of a prospecting licence can apply to have the licence extended for a further period of four years, and if the licence has retention status, by a further period or periods of four years (s.45)

6. MINING ACTIVITIES ON CROWN LAND, RESERVED LAND, PRIVATE LAND AND PASTORAL LEASE

6.1 Land open for Mining

All land is open for mining. However different approval mechanisms operate for the three categories of land

- Crown Land (s.18-22)
- Public Reserves, etc., and Commonwealth Land (s. 23-26A)
- Private Land (s.27-39)

6.2 Crown Land

As defined in s.8 of the *Mining Act 1978*, Crown land includes (but is not limited to) reserves for commons and public utility, leases of Crown land for the benefit and use of the Aboriginal inhabitants and leases for timber or pastoral/grazing purposes. It does not include private land or other reserved land.

In respect of Crown land:

- The holder of a miners right may, amongst other things, prospect and mark out a mining tenement (s.40D)
- The holder of a mining tenement may carry out exploration or mining activities as per the conditions of their lease.

The Minister for Mines may from time to time exempt Crown land from mining or from any specific mining purpose. These exempted areas shall be published in the Government Gazette as soon as practicable after the decision (s.19).

If a mining tenement is granted, the holder must obtain the approval of an environment officer of DMIRS under a Program of Work for exploration activities or a Mining Proposal for mining operations before mechanical equipment is used for the purposes of surface disturbance.

An application for an approval to use mechanical equipment should include the proposed methods of rehabilitation, and any approval given may be subject to specific conditions, including the lodgement of a bond by the tenement holder. Information on these conditions can be obtained from the environmental division of DMIRS

6.3 Public Reserves

Mining (by which definition includes prospecting and exploration) may not be carried out on reserved land without the written consent of the Minister for Mines (s.23).

Reserved land includes, but is not limited to:

- National Parks, Class 'A' Nature Reserves, and any Class 'A' Reserves within the South West Land Division, Esperance and Ravensthorpe Municipal Districts (s.24(1(a,b)))
- Land reserved under part 4 of the Land Administration Act 1997 (s.124(c))
- Land that is a state forest or timber reserve under the *Conservation and Land Management Act 1984* (s.124(d,da))
- Land that is classified as a water reserve or catchment area (s.124(e))
- Land to which Part III of the Aboriginal Affairs Planning Authority Act 1972 applies (s.124(f))
- Land dedicated under s.21 of the *Western Australian Land Authority Act 1972* (s.124(fa))
- Land that is reserved under any Act other than those listed above. (s.124(g))

Restrictions also apply in respect to entry onto some categories of reserved land, and specific permissions may be needed to enter and/or mark out this land.

The act provides that Ministerial consent is required prior to prospecting or marking out, or mining in respect of reserved land (s.24 (3A, 5A, 6A, 7A)). The Minister for Mines must obtain a recommendation from the responsible Minister before granting permission to carry out mining activities (s.24 (3B, 5B, 6B, 7B)).

In instances where part of a mining tenement involves reserved land, title may be granted with a "no mining condition" in respect of the Reserve. This restrictive condition applies to all exploration, ore development and mining activities. Where such activities are required to be undertaken within the reserved land the prior written consent of the Minister for Mines & Petroleum is necessary.

S.25A of the *Mining Act 1978* provides that mining activities may only be carried out on Commonwealth land, which can be defined as land in respect of which the Commonwealth holds a freehold or leasehold interest, or land that is otherwise vested in the Commonwealth (or an officer or person on behalf of the Commonwealth), with the written consent of the Minister for Mines. The Minister is first required to consult with the Minister of the Commonwealth responsible for the control and management of the land.

6.4 Private Land

6.4.1 Definition of Private Land

Private land is defined as any land that has been or may be alienated from the crown for any estate of freehold, or any conditional purchase lease (s.8).

6.4.2 Permit to Enter System

No person (except the owner in occupation of the land) may enter or remain upon the surface of any private land to search for minerals (s.28) without a permit to enter which is issued by a warden (s.30). Permits are issued for 30 days and authorise the holder (or his agent) to enter on private land, search for minerals, take samples and mark out a mining tenement (s.32(1)).

6.4.3 Consent of Owner and Occupier to Surface Grant (s.29)

As per s.29(2) a mining tenement in respect of the natural surface and to a depth of 30 metres thereof shall not be granted in respect of private land which is:

- In bona fide regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation
- The site of a cemetery, burial ground or reservoir (i.e. dam, bore, well or spring)
- On which there is erected a substantial improvement
- Which is situated within 100m of any private land referred to above
- Which is a separate parcel of land with an area of 2000m² or less

Unless the owner and/or occupier of that land gives their written consent. Where the owner and occupier of the private land do not consent; a mining tenement may only be granted in respect to land that is below a depth of 30 metres from the natural surface (s.29).

For a mining tenement granted in respect to private land below a depth of 30 metres from the natural surface, the holder may, should the owner and occupier of the land subsequently consent, apply to have the remaining portion of the land (from the surface to a depth of 30 metres) included in the mining tenement. Whilst the right to so apply exists, the land from the surface to a depth of 30 metres is not open for mining to any other person (s.29 (5))

6.4.4 Compensation for Private Landholder (s.35)

Mining may not be commenced on the surface (or to a depth of 30 metres) unless the compensation required under the Act has been paid or tendered, or an agreement as to the amount, times and mode of compensation has been made (s.35)

As per s.123 (4), the amount payable may include compensation for:

- Being deprived of the possession of the surface of the private land
- For damage to the surface of the land, and loss or damage to any improvements
- For the severance of the land from other land of the owner and occupier,
- For social disruption
- For any loss or restriction of a right of way or other easement or right
- For consequential damages.

Compensation is not payable in respect to the value of any mineral in, on or under the surface of the land (s.123 (1))

Compensation is determined by agreement between the holder of the mining tenement and the owner and occupier, or in default of agreement, by the Wardens Court. The parties may consent to informal determination by the Warden; otherwise the amount may be determined in formal proceedings (s.123 (3)).

Compensation is also payable in respect to adjoining or nearby land injured or depreciated in value by mining operations on a mining tenement (s.123 (5))

6.5 Pastoral Leases

6.5.1 Activities Authorised

Pastoral leases are defined in the *Mining Act 1978* as Crown land upon which an authorised person may:

- Undertake activities authorised under a Miners Right (s.20); and
- Undertake exploration or mining activities on a granted mining tenement

The tenement applicant/holder is required to notify the pastoral lessee prior to accessing the pastoral lease and compensation is payable for damage caused to any improvements on the pastoral lease.

When a mining tenement is applied for, the applicant must send to the pastoralist by registered post or certified mail a copy of the application and a plan within the prescribed period (s.118)

If the mining tenement is granted, the holder must obtain the approval of an environmental officer of DMIRS under a Program of Work for exploration activities or a Mining Proposal for mining activities before mechanical equipment may be used for the purpose of surface disturbance

An application for an approval to use equipment should include the proposed methods of rehabilitation, and any approval given may be subject to specific conditions. More information about these conditions can be obtained from the environmental division of DMIRS.

6.5.2 Obligations of Tenement Holder

On a pastoral lease the tenement holder is required to:

- Cause as little inconvenience as possible to the occupier
- Minimise damage to property and livestock
- Comply with conditions imposed on the mining tenement when carrying out mining activities and with any reasonable request made by the pastoralist
- Avoid obstructing roads and access routes

6.6 Compensation for Pastoralist

The *Mining Act 1978* provides for a pastoralist to be compensated for any

- Damage to improvements on the land, and for any loss suffered by the lessee as a result of that damage (s.123(7)(c))
- Substantial loss of earnings resulting or arising from any exploration or mining activities by the tenement holder(s.123(7(d))

7. MINING OPERATIONS

7.1 Exploration Activities

The activities carried out on an exploration title (i.e. an exploration or prospecting licence) usually involve minor ground disturbance. An applicant for an exploration licence must provide DMIRS with a statement as per s.58 (1) specifying:

- The proposed method of exploration
- The details of the programme of work proposed to be carried out
- The estimated amount of money proposed to be spent on the exploration
- The technical and financial resources available to the applicant (note: specifications of financial resources are not required if the applicant is a natural person, and the application is in respect of 4 blocks or less, and the applicant intends to utilise their own labour to carry out the program of work.

Typical activities carried out under an exploration licence include:

- Literature searches
- Aeromagnetic surveying and mapping
- Regional geological mapping
- Electrical geophysical programs
- Rock chip sampling and assaying
- Drilling of specific targets if a programme of work has been approved in writing by the Minister and the prescribed assessment fee has been paid.

7.2 Mining Activities

Developmental or productive mining activity can only occur on a mining lease and is subject to strict environmental controls by DMIRS and/or other government agencies such as the Department of Biodiversity, Conservation and Attractions. Prior to the commencement of a mining operation, the lessee must submit a Mining Proposal for assessment and approval from the Executive Director, Resource and Environmental Compliance, DMIRS. This document outlines the environmental management of the proposed mining operation, including the nature and scale of the proposed operations, strategies for minimising the impact of the operations on the environment and a proposed rehabilitation program. If approved, the Mining Proposal is used to determine the environmental conditions for approval and the title of the document becomes a condition of the lease and therefore all commitments made within are legally binding.

As part of the approval of the mining operation a security is requested from the lessee which is only discharged once the ground has been rehabilitated in accordance with the agreed program.

A Memorandum of Understanding (MoU) is in place between DMIRS and the Environmental Protection Authority (EPA) whereby DMIRS will refer those proposals it considers likely to have a significant effect on the environment if implemented, as per the guidelines set out in the MoU.

7.3 Conditions Imposed on Mining Titles

Standard conditions and endorsements are placed on mining tenements following grant to regulate the activities that may be carried out by the holders. The conditions give direction to the holder to adequately rehabilitate the land after mining and assist the holder to complete the activities in a safe manner.

The main conditions/endorsements placed on all tenements include (but are not limited to):

- An endorsement drawing the lessee's attention to the provisions of the *Aboriginal Heritage Act, 1972*
- A requirement that all surface holes drilled for the purpose of exploration are to be capped, filled, or otherwise made safe after completion
- A condition that all costeans and other disturbances to the surface of the land made as a result of exploration, including drill pads, grid lines and access tracks, be backfilled and rehabilitated to the satisfaction of an environmental officer of DMIRS. Backfilling and rehabilitation is required no later than six months after excavation unless otherwise approved in writing
- A condition that all waste materials, rubbish, plastic sample bags, abandoned equipment and temporary buildings be removed from the mining tenement prior to or at the termination of the exploration program
- A condition prohibiting the use of scrapers, graders, bulldozers, backhoes or other mechanised equipment for surface disturbance or the excavation of costeans unless the written approval of the environmental officers of DMIRS is first obtained.

7.4 Work and Reporting Requirements

Prospecting licences, exploration licences and mining leases are subject to a prescribed minimum annual expenditure commitment. This requirement applies to granted tenements only and the labour cost of the tenement holders own work on the tenement (as if he/she was working for wages) may be treated as expenditure. (s.50, s.62, s.82 (1)(c)).

There is no prescribed annual expenditure for a retention licence, the Minister determines the level of expenditure on grant as per the approved exploration programme.

If a licensee/lessee cannot fulfil the expenditure obligations, they may apply for exemption from all or part of the commitment.

The holder of prospecting licences, exploration licences, retention licences and mining leases must lodge a Form 5 (Report on Operations on Mining Tenement) with DMIRS each year with details of expenditure on the tenement.

When any minerals are produced or obtained from a mining tenement, a quarterly production report must be lodged and a royalty is payable on minerals other than gold. R.86 sets out the rates of royalty payable for all minerals except gold, which falls under r.86AA.

8. OTHER STATE LEGISLATION

In administering the minerals legislation, there is a need to comply with various other state legislations

The main statutes involved are listed hereunder:

- Environmental Protection Act 1986
- Conservation and Land Management Act 1984
- Fish Resources Management Act 1994
- Aboriginal Heritage Act 1972
- Aboriginal Affairs Planning Authority Act 1972
- Land Administration Act 1997
- Public Works Act 1902
- Planning and Development Act 2005
- Commonwealth Native Title Act 1993

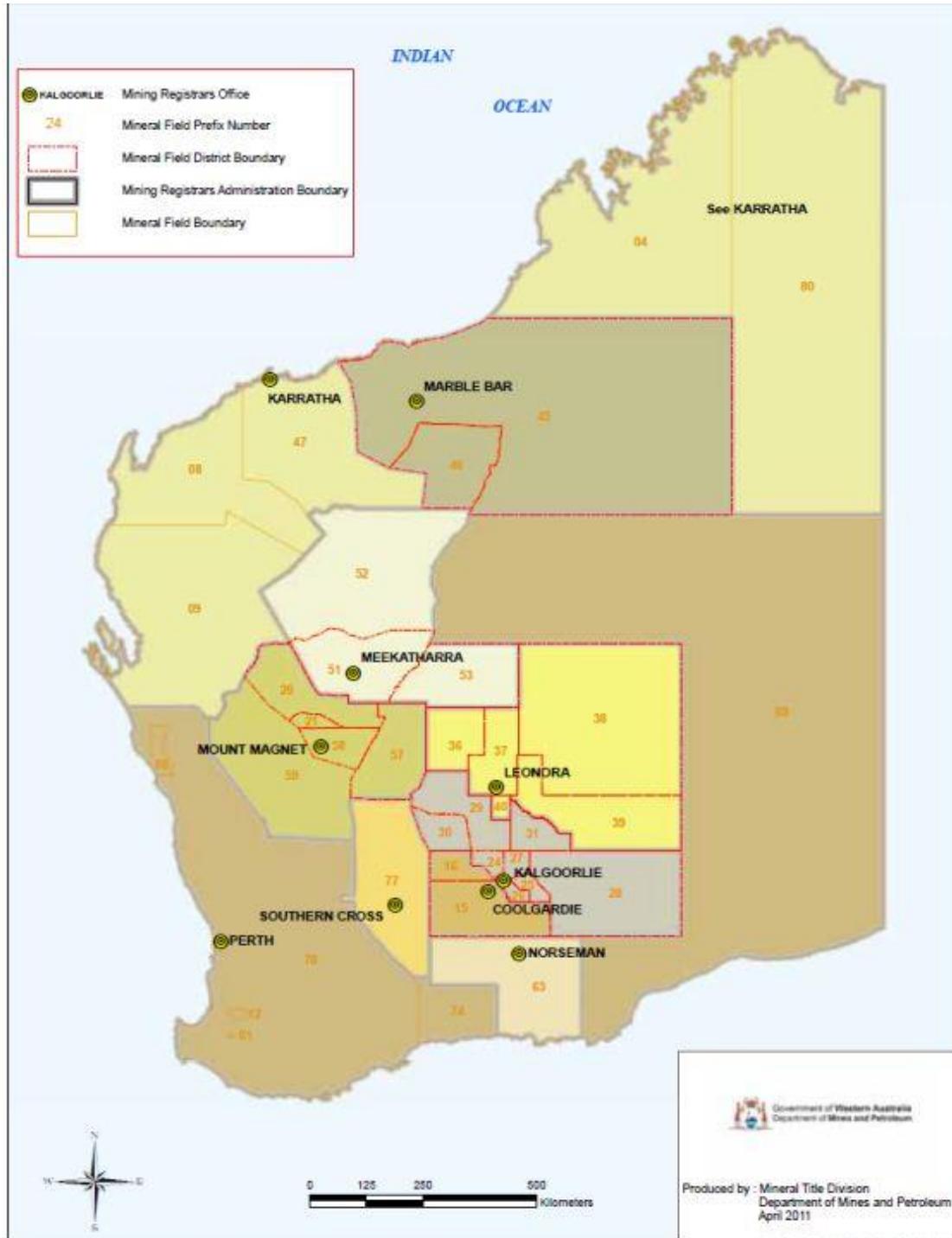
This information is issued by the Resource Tenure Division of the Department of Mines, Industry Regulation and Safety (DMIRS)

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The information contained within this pamphlet is designed to assist in gaining a general awareness of the requirements of the *Mining Act 1978* and is not intended to be a substitute for understanding the statutory requirements of the Act and Regulations thereunder

Appendix 1.

REGIONAL OFFICES AND MINERAL FIELDS



PROCESS FOR DETERMINING MINING TENEMENT APPLICATIONS

