



PROSPECTING, EXPLORATION, MINING ON PASTORAL LEASES

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Introduction

The aim of this pamphlet is to provide a commonsense approach to prospecting, exploring and mining on pastoral leases whilst still conforming with the requirements of the *Mining Act 1978* in order to create a positive working relationship between the pastoral and mining industry.

It should be read in conjunction with a booklet titled "Code of Conduct for Mineral Exploration on Pastoral Leases" which was jointly developed by the Pastoralists and Graziers' Association of WA (Inc), the Chamber of Minerals and Energy of WA Inc; and the Association of Mining and Exploration Companies Inc.

For ease of reference the term pastoralist has been used throughout this pamphlet. In appropriate instances eg. where contact must be made with the pastoralist, the term includes the Station Manager or person in actual occupation of the land.

Note: A copy of the Pastoral Telephone Book is held at each Mining Registrars' Office.

1. Crown Land includes Pastoral Leases

Under Section 8(1) of the *Mining Act 1978*, pastoral leases are held to be Crown land upon which a person may:

- undertake activities authorised under a Miner's Right, Section 20;
- mark out and/or apply for a mining tenement; and
- carry out exploration or mining activities when a mining tenement has been granted.

2. Notification to Pastoralist

- a. Prior to entry – Any person entering upon a pastoral lease for the purpose of carrying out the above activities should take all reasonable practicable steps to give the pastoralist prior notification in order to ascertain whether that person’s presence will interfere with the pastoralist’s activities.

It is important that a mutual understanding or “good neighbour policy” be adopted in order to satisfy concerns arising from the location and type of the proposed prospecting/exploration activity that may impinge upon any pastoral improvements or disturb pastoral programs in respect to rangeland regeneration or livestock, etc.

- b. Upon application for a mining tenement – The applicant is required to notify the pastoralist by sending him/her a copy of the application and plan by registered post within 14 days of lodging the application. Section 118, Regulation 64B.
- c. Upon grant/transfer of a mining tenement – The registered holder must within 30 days of being advised of the grant of a mining tenement (or any subsequent transfer of title) notify the pastoralist and provide him/her with details of such grant or transfer.
- d. Prior to commencing exploration activities – The registered holder must notify the pastoralist by telephone or in person; or by registered post if contact can not be made. An outline of any proposed ground disturbing exploration activities, in particular any type of drilling or water requirements should be provided. The use of mechanical equipment for purposes such as clearing, gridding or costeaning is not permitted without the prior approval of the Environmental Officer, Department of Mines and Petroleum. Any such approval is normally subject to an agreed rehabilitation program and the imposition of specific conditions as deemed necessary.

It is also important that the “Code of Conduct for Mineral Exploration on Pastoral Leases” be adhered to when undertaking these activities.

- e. Prior to passing and repassing over certain types of Crown land – Where it is necessary for a person to pass or repass over land (in order to gain access to other Crown land, Section 20(5), (5A)) within:-
- i. 100m of land for the time being under crop;
 - ii. 100m of land used as a yard, stockyard, garden, cultivated field, orchard, vineyard, plantation, airstrip or airfield;
 - iii. 100m of land in actual occupation and on which a house or other substantial building is erected;
 - iv. 100m of land the site of any cemetery or burial ground; or
 - v. 400m of land that is the site of any water works, race, dam, well or bore;

then that person must take all reasonable and practicable steps to notify the pastoralist of his/her intentions and when passing and repassing shall:

- take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise;
- cause as little inconvenience as possible to the pastoralist;
- comply with any reasonable request made by the pastoralist in relation to the passing and repassing;
- restrict the number of passes and repasses to the minimum necessary for the purpose of mining on or marking out that other land; and
- make good any damage caused by that passing and repassing to any improvements including station roads or livestock on the land.

3. Commencement of Mining Activities on a Pastoral Lease

When a Mining Proposal is lodged with the Department (preferably earlier), the pastoralist is to be provided with proposed site plans for mining operations, plant and tailings disposals and given 30 days to comment. Consultation with the pastoralist in the planning stage, i.e. before preparation of the Mining Proposal is strongly recommended.

The requirement to obtain the pastoralist's comments does not apply in the case of small scale operations that do not involve road construction or significant infrastructure however prior notification must be given by the prospector of the mining activities proposed.

In the event of a dispute arising between the parties on site layout resulting from a new mining proposal either party can call on the Mine Site Dispute Committee to resolve the matter.

The Committee will comprise one representative each from the following:-

Pastoralists and Graziers' Association, Tel (08) 9479 4599
 Association of Mining and Exploration Companies, Tel 1300 738 184
 Chamber of Minerals and Energy, Tel (08) 9325 2955
 Department of Mines and Petroleum, Tel (08) 9222 3333
 Department of Agriculture and Food, Tel (08) 9368 3333

Initial contact should be made through the relevant industry association.

The role of the Committee is to:-

- limit the impact of the siting of mine plant, waste/tailings dumps, haul roads or other infrastructure on pastoral activities;
- consider written submissions from both parties;
- carry out a site inspection;
- determine site layout; and it;
- may indicate where compensation issues might arise from proposed activities.

4. **Written Consent of Pastoralist Required with Respect to:**

a. Certain categories of land and improvements – A person is not entitled to prospect, explore, mine or interfere with any land the subject of or situated within:

- 100 metres of those categories of land described in paragraph 2(e); i.e. 100m from homestead/ building; or
- 400 metres of land which is the site of or situated from the outer edge of any water works, race, dam, well or bore (not being an excavation previously made and used for mining purposes by a person other than the pastoralist) without the written consent of the pastoralist.

The Warden may make an order in respect to any land other than where a house in occupation is affected. However before doing so he/she must be satisfied that the land is bona fide required for mining purposes and that compensation for all loss or damage suffered or likely to be suffered by the affected pastoralist has been agreed upon or otherwise determined, or is to be assessed and settled by him/her in accordance with the *Mining Act*.

b. Fossicking – A person may fossick on a pastoral lease provided the prior written consent of the pastoralist has been obtained. Where the land is also held as a mining tenement the consent of the mining tenement holder is also required. Section 20(2)(f)

5. **General Rights to Prospect Under a Miner's Right**

The holder of a Miner's Right is authorised to:

- prospect on Crown land which is open for mining and mark out mining tenements;
- carry out activities with employees and agents and use any vehicles that are necessary, but with the least possible damage being done to the surface of the land;
- take and keep samples or specimens of up to 20 kilograms of rock, ore or minerals for testing; and
- take water, remove timber and erect buildings on land lawfully occupied for prospecting purposes. However these rights are subject to the provisions of other statutes and do not extend to certain types of Crown land.

6. Statutory Obligations of Mining Tenement Holder

A licensee/lessee is required to:

- take all necessary steps to prevent, fire, damage to trees or other property and to prevent damage to any property or livestock by the presence of dogs, the discharge of firearms, the use of vehicles or by other means;
- comply with the standard conditions imposed upon grant of a mining tenement on pastoral leases (see paragraph 7);
- notify the pastoralist prior to passing and repassing over certain types of land (see paragraph 2[e]);
- not obstruct any public thoroughfare or undermine any road, railway, dam or building so as to endanger public safety;
- not remove any fencing, timber, etc. previously erected around or placed on an abandoned shaft, pit, etc. in such a manner as to render the area unsafe; and
- fill in or otherwise make safe all disturbances made during exploration/mining which are likely to endanger the safety of any person or animal.

7. Schedule of Conditions Imposed Upon Grant of Mining Tenements on Pastoral Leases

- All surface holes drilled for the purpose of exploration are to be capped, filled or otherwise made safe after completion.
- All disturbances to the surface of the land made as a result of exploration, including costeans, drill pads, grid lines and access tracks, being backfilled and rehabilitated to the satisfaction of the Environmental Officer, Department of Mines and Petroleum. Backfilling and rehabilitation being required no later than 6 months after excavation unless otherwise approved in writing by the Environmental Officer, Department of Mines and Petroleum.
- All waste materials, rubbish, plastic sample bags, abandoned equipment and temporary buildings being removed from the mining tenement prior to or at the termination of exploration programme.
- Unless the written approval of the Environmental Officer, Department of Mines and Petroleum is first obtained, the use of drilling rigs, scrapers, graders, bulldozers, backhoes or other mechanised equipment for surface disturbance or the excavation of costeans is prohibited. Following approval, all topsoil being removed ahead of mining operations and separately stockpiled for replacement after backfilling and/or completion of operations.
- The lessee/licensee notifying the holder of any underlying pastoral lease or grazing lease by telephone or in person, or by registered post if contact can not be made, prior to undertaking airborne geophysical surveys or any ground disturbing activities utilising equipment such as scrapers, graders, bulldozers, backhoes, drilling rigs; water carting equipment or other mechanised equipment.
- The lessee/licensee or transferee, as the case may be, shall within thirty (30) days of receiving written notification of:-

- i. the grant of the lease/licence; or
- ii. registration of a transfer introducing a new lessee/licensee;

advise, by registered post, the holder of any underlying pastoral or grazing lease details of the grant or transfer.

- The lessee submitting a plan of proposed operations and measures to safeguard the environment to the Director, Environment, Department of Mines and Petroleum for his/her assessment and written approval prior to commencing any developmental or productive mining or construction activity. (Mining leases only)

8. Compensation

- i. Payable for certain defined losses:

The *Mining Act* was amended in 1985 to more effectively provide for a pastoralist and/or the occupier to be compensated for any (Sections 123-124):

- damage to improvements on the land constructed and maintained by the pastoralist including station roads; pipelines; yards; fences and gates; buildings, watering facilities – tanks, troughs, windmills; and pastoralists' airstrips.

- substantial loss of earnings resulting or arising from any exploration or mining activities, including the passing and repassing over any land referred to in paragraph 2(e).

Depending on the circumstances, a pastoralist may also be entitled to be compensated for:

- social disruption;
- any reasonable expense properly arising from the need to reduce or control damage resulting or arising from exploration/mining activities; and
- damage arising from the use for mining purposes (conducting exploration) of aircraft, such damage being deemed to have been occasioned by an entry on the land.

ii. Limitations on compensation:

Except where, and then only to the extent agreed upon by the parties concerned or authorised by the Warden's Court, compensation is not payable:

- for deprivation of the possession of any part of the surface of the land;
- for damage to the surface of the land;
- where the pastoralist is deprived of the possession of the surface of any land; for severance of the land from any other land of the pastoralist; and
- for loss or restriction of a surface right of way or easement.

No compensation is payable in any circumstances:

- for permitting entry on to land for mining purposes;
- in respect of the value of any mineral which is or may be discovered on the land;
- by reference to any rent, royalty etc assessed in respect of the mining of the mineral;
- for any loss or damage for which compensation cannot be assessed according to common law principles in monetary terms.

iii. Warden's role in absence of agreement on compensation:

It is preferable wherever possible (in cases where compensation is payable) for the amount of compensation to be determined by agreement between the pastoralist and licensee/lessee, but in default of agreement:

- if the parties so consent, the amount payable may be determined by the Warden without requiring any formal proceedings to be taken. A request for such a determination should be made in writing by the affected parties to the appropriate Mining Registrar; and
- in any other case, the matter shall be determined by the Warden's Court in formal proceedings, upon the application of either the pastoralist or the miner.

9. Unauthorised Mining

It is an offence under the *Mining Act* to carry out exploration/mining operations on any land without proper authorisation, and wherever possible offenders will be prosecuted.

The holder of a Miner's Right is not permitted to carry out activities such as "strip mining" (ie. the using of front-end loaders and bulldozers or similar machinery to strip the surface of soil or vegetation).

These types of mining operations may only be carried out in respect of mining tenements granted subject to conditions requiring compliance with rehabilitation procedures authorised by the Environmental Officer, Department of Mines and Petroleum.

10. Role of Department of Mines and Petroleum

Through the continuing development of exploration guidelines and mining tenement conditions the Department of Mines and Petroleum is working with pastoralists and the Mining Industry to prevent problems occurring as a result of mining activities on pastoral leases.

Where breaches of the *Mining Act* are brought to the Department's attention all possible action is taken in order that any damage is rectified.

The Department would be pleased to assist anyone wanting more detailed information concerning mining on pastoral leases and enquiries should be directed to the Department's Head Office at 100 Plain Street, East Perth (Telephone: [08] 9222 3333). There is a series of Information Pamphlets available from the Department on various aspects of the *Mining Act*.

This pamphlet is issued by the
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N.B. The information contained in 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 there under.