



Mining Law in WA

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This factsheet outlines the law which regulates mining activities in Western Australia, and provides information on:

1. the regulatory framework for exploration and mining tenements;
2. landholder rights in relation to exploration and mining activities; and
3. how you can have your say on future mining proposals.

Regulatory Framework

The Mining Act

The *Mining Act 1978* (WA) (**Mining Act**), accompanied by the *Mining Regulations 1981* (WA) (**Mining Regulations**), is the principal legislation governing mining in Western Australia. The operation of the Mining Act is regulated by the Department of Energy, Mines, Industry Regulation and Safety (**DEMIRS**) and administered by the Minister for Mines and Petroleum (**Minister**).

The Mining Act applies to both mineral exploration activities and mining operations. There are three main types of mining tenements¹ used for mineral exploration and mining:

1. prospecting licences;
2. exploration licences; and
3. mining leases.

A table comparing the mining tenements is provided as **Attachment A** to this factsheet.

Exploration Activities

Prospecting and exploration licences both allow the holder to enter land for the purpose of prospecting or exploring for minerals and to undertake activities necessary for that

¹ A license, permit or lease providing rights to explore for and/or extract minerals under the surface of an area of land.

purpose, such as drilling boreholes, digging trenches or pits, collecting samples for testing and taking water.²

The main difference between a prospecting licence and an exploration licence is that prospecting licences are intended for small-scale operations, while an exploration licence is suitable for larger scale operations because they can apply over large areas of land.

Mining Activities

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 the purpose of mining production.³

Unless a mining lease is being applied for under a State Agreement (see below), a mining lease application must either be accompanied by:

- a mining proposal; or
- a statement outlining mining intentions and either a mineralisation report or a resources report.⁴

Mineralisation reports must be made available for public inspection.⁵ Mineralisation Resource reports can be searched for using the DEMIRS website's [Search functionality](#).⁶

Mining under State Agreements

State Agreements are essentially contracts between the Government of Western Australia and proponents of major resource projects that are ratified by Parliament. Existing use rights apply to mining projects ratified under a State Agreement prior to the commencement of the Mining Act.⁷

State Agreements can override inconsistent provisions in the Mining Act (but not environmental protection or native title legislation). Once a State Agreement has been passed, it generally cannot be challenged by third parties unless the statute is legally invalid.

The Environmental Protection Act

Under the *Environmental Protection Act 1986 (WA)* (**EP Act**), a proposal may be referred to the Environmental Protection Authority (**EPA**) for assessment if the proposal is likely to have a significant impact on the environment.

² *Mining Act 1978 (WA)* (**Mining Act**) ss 48 and 66, respectively.

³ *Mining Act*, s 85.

⁴ *Mining Act*, s 74.

⁵ *Mining Act*, s 74A(5).

⁶ Filter search results by entering mining lease number which needs to be prefixed by an uppercase "T" and a colon ("T:"). As an example, to filter for Mineralisation Reports or Resource reports associated with mining lease number "MXX/XXXX", enter "T:MXX/XXXX", followed by Search button.

⁷ *Mining Act*, s 5.

Exploration Activities

In practice, mining activities carried out under prospecting licences or exploration licences are generally not regarded as having sufficient impacts to warrant referral to the EPA, and the EPA will not usually accept referrals for exploration activities. The environmental impacts of these activities are instead regulated under the conditions of the mining tenement.

Mining Proposals

A mining proposal is submitted to DEMIRS for the purpose of assessing the environmental impacts of a proposal. DEMIRS will also consult with other departments, such as the Department of Water and Environmental Regulation (**DWER**) regarding the impacts of the proposal.

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 any other pollutant to cause harm to the environment, become an inconvenience to the public, or to obstruct any public or rural thoroughfare other than in accordance with environmental approvals.

Larger scale mines which are prescribed premises under the EP Act must obtain a works approval and/or pollution licence to authorise any discharge of pollutants into the environment.

Read: Our factsheet on [Enforcement of Environmental Offences in WA](#) has more information about environmental offences, including pollution.

Clearing Native Vegetation

Approval may be required to clear native vegetation for mining activities. Certain kinds of exploration activities deemed to be 'low impact' may be exempt from the requirement for a permit to clear native vegetation.

The Mining Rehabilitation Fund

The Mining Rehabilitation Fund (**MRF**) was established under the *Mining Rehabilitation Fund Act 2012* (WA) on 1 July 2013. The MRF, administered by DEMIRS, imposes a mining rehabilitation levy on mining tenement holders equal to 1% of the estimated rehabilitation liability for each tenement. The estimated rehabilitation liability is calculated according to the nature and disturbance area of operations. The tenement holder is responsible for the provision of assessment information to DEMIRS prior to 30 June each year. DEMIRS publishes MRF data on its website annually, and the [Rehabilitation Liability Estimate Calculator](#) tool provides tenement holders and the public to estimate the rehabilitation liability and the associated MRF levy under a variety of scenarios.

Mine Closure Plans

DEMIRS requires all new mining applications (and existing mines) to submit a Mine Closure Plan, prepared in accordance with the current Statutory Guidelines. Mine Closure Plans are approved by DEMIRS and must be reviewed every 3 years.⁸

Visit: [Statutory Guidelines for Mine Closure Plans \(March 2020\)](#)

Landholder Rights

Generally, all private land in Western Australia is open for mineral exploration and mining;⁹ however, there are limitations on granting mining tenements on the surface of private land.¹⁰

Permits

No person (except the owner in occupation of the land) may search for minerals on private land without a permit to enter which is issued by a Mining Warden.¹¹ A permit can be granted to a person without the consent of the owner or occupier of land.

A permit allows its holder to enter onto private land to search for any mineral, conduct marking out and remove mineral samples for assaying or testing; this does not permit carrying out any other mining activities or otherwise disturbing the surface of the land.¹²

The permit holder must serve the permit on the owner of the land on the first occasion they enter the property. If the owner is not present on the land at that time, the permit holder must place a copy of the permit in a prominent position on the dwelling or main entrance of the land, and post the permit to the owner within 48 hours.¹³

In granting a permit, the Mining Warden may require the applicant to pay an amount that would provide reasonable compensation to the owner/occupier for any damage caused during the permit.¹⁴ The owner/occupier can then apply to the Warden's Court within **30 days** for payment of the sum if damage is suffered.¹⁵

Mining tenements

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):¹⁶

- land which is in authentic and regular use as a yard, garden, orchard or vineyard;
- land which is the site of a cemetery or burial ground or a dam, bore, well or spring
- an allotment of less than 2000 square metres; or

⁸ Mining Act s 84AA.

⁹ Mining Act s 27(1).

¹⁰ Mining Act s 29.

¹¹ Mining Act s 28.

¹² *Mining Act 1978 (WA)* s 32(1).

¹³ Mining Act s 31(1).

¹⁴ Mining Act s 30(5).

¹⁵ Mining Act s 30(6), (6a).

¹⁶ Mining Act s 29(2).

- land within 100m of a house, farm buildings, garden, nursery, plantation, stockyard or land under cultivation.

If the owner and occupier do not consent; a mining tenement may only be granted in respect of land below a depth of 30 metres from the natural surface.¹⁷

Where an applicant makes an application for a mining tenement that relates to private land, notice of the application must be given to the landholder and occupier within 14 days of lodgement,¹⁸ unless the mining tenement application only relates to land that is more than 30m below the surface.¹⁹ The owner/occupier of the land is entitled to be heard in relation to an application.²⁰

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.²¹

Having Your Say

Notification of Mining Tenements

While notices of mining tenement applications must be provided to affected landholders (as outlined above), the application will also be posted on DEMIRS' website.

Visit: [Mining Notices \(Mining Tenement Application Advertising\)](#)

If there is no objection to the grant of a prospecting licence, the Mining Registrar can grant the licence.²²

If there is no objection to the grant of an exploration licence or mining lease, the Mining Registrar will make a recommendation in relation to the grant of the exploration licence or mining lease to the Minister, who will make the final decision.²³

Objecting to the grant of a Mining Tenement

Any person can lodge an objection to the grant of a mining tenement, including prospecting and exploration licences, by lodging a notice of objection.²⁴

N.B: Objections must be lodged within:²⁵

- **35 days** of the date of the application; or

¹⁷ Mining Act s 29.

¹⁸ Mining Regulations r 7.

¹⁹ Mining Act s 33(1a).

²⁰ Mining Act s 33(2).

²¹ Mining Act s 29(7)(b).

²² Mining Act s 42(2).

²³ Mining Act ss 59(2) and 75(2).

²⁴ Mining Act ss 42(1) and 59(1).

²⁵ Mining Regulations r 146(3).

- **21 days** of the date the person was served with notice of the application (if the person is an affected landholder).

The objection form (Form 16 – Objection) is listed in sch 1 of the Mining Regulations and can be downloaded [here](#).

The objection must set out the reasons for objecting to the mining tenement application. Notably, a claim that there is no significant mineralisation in the area is not considered a reasonable ground for objecting to an application for a mining lease.²⁶ Concern that the grant of a prospecting licence, exploration licence, or mining lease will affect an offsets project is also not a valid reason to lodge an objection.²⁷

An objector can write directly to the Minister in relation to their objection before the Mining Warden has made a determination in relation to the objection. The Minister can refuse an application for a mining tenement if the Minister is satisfied on reasonable grounds in the public interest that the land should not be disturbed or the application should not be granted. In some circumstances, the Minister’s decision to grant or refuse a tenement application may be judicially reviewed.

Hearings before the Warden

When a party lodges an objection to a tenement application, the matter is ‘heard’ by the Warden.

Where an objection is made to a prospecting, exploration or retention licence or a mining lease, the Warden decides whether to give the objector an ‘opportunity to be heard’.²⁸ This means that an objector does not have an automatic right to put their case before the Warden. It is sometimes possible to challenge a Warden’s decision to not give an objector an opportunity to be heard through judicial review.

Although the Mining Warden may hear from the parties in objection proceedings, the Warden does this so they can make an administrative recommendation to the Minister, rather than a binding decision on whether the tenement should be granted or refused. While proceedings before the Warden can be quite formal, it is not a court proceeding.

This can be contrasted to other hearings before the Warden.

In addition to providing recommendations to the Minister, the Mining Warden also performs judicial functions under the Mining Act. When sitting as the ‘Warden’s Court’, the Warden makes determinations that are binding on the parties. Those determinations can be appealed. The Warden determines matters such as the boundaries of, and title to or ownership and possession of, mining tenements, and trusts relating to mining tenements or mining.²⁹

²⁶ Mining Act s 75(1A)(a).

²⁷ Mining Act ss 42(1B), 59(1B) and 75(1A)(b).

²⁸ Mining Act s 43(3), 59(4), 70D(4), 75(4).

²⁹ See Mining Act s 132(1).

Normally, each party bears its own costs of hearings before the Warden’s Court.³⁰ However, in exceptional cases, the Warden has the power to order one party to pay all or part of another party’s costs. This will usually 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.³¹

Contacts and Further Information

Department of Mines, Industry Regulation and Safety.

Website: <http://www.DEMIRS.wa.gov.au/contact>

Environmental Protection Authority Western Australia.

Website: <http://www.epa.wa.gov.au/contact-us>

Search for mining tenement applications online at:

<https://emits.dmp.wa.gov.au/emits/advert/index.xhtml>

For copies of legislation, visit:

- <http://www.legislation.wa.gov.au> (State legislation)
- <https://www.legislation.gov.au> (Commonwealth legislation)

³⁰ Mining Regulations r 165(1).

³¹ Mining Regulation r 165(4).

Attachment A

Mining Tenements Comparison Table

	Prospecting Licences	Exploration Licences	Mining Leases
Size	Max = 200Ha No minimum size	Min = 1 block Max = 70 or 200 blocks If area is designated by the Minister as 'exploration area': Max size = 200 blocks Otherwise: Max size = 70 blocks	No maximum size
Duration	4 years Can apply for 4yr extension or retention licence.	5 years Can apply for 5yr extension or retention licence.	21 years initially Renewable for further 21yr period
Approving Authority	If no objections: Mining Registrar If objections: Mining Warden	Minister On Mining Registrar or Warden's recommendation	Minister On Mining Registrar or Warden's recommendation
Is notification required?	Yes Affected landholders notified where application is for <30m below their land Published on DEMIRS website	Yes Affected landholders notified where application is for <30m below their land Published on DEMIRS website	Yes Affected landholders notified where application is for <30m below their land Published on DEMIRS website
Objection rights?	Yes Same rights as Mining Lease objection.	Yes Same rights as Mining Lease objection.	Yes Any person can object Objections to be lodged within 35 days of application (Warden can extend) Hearing in Wardens Court
Appeal rights?	Judicial review of Mining Registrar or Mining Warden decision	Judicial review of Mining Warden or Minister's decision	Judicial review of Mining Warden or Minister's decision

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