



Legislation Onshore.

08 EXPLORATION AND MINING LEGISLATION – ONSHORE A GUIDE FOR INVESTORS

Onshore mineral exploration and mining in Australia’s States and the Northern Territory are administered by an agency of the State or Territory Government in the jurisdiction. While all States and the Northern Territory have their own laws governing mineral activities, they are very similar in content and administration.

The legislation governing exploration and mining in each jurisdiction can be accessed via the internet.

In addition, each jurisdiction publishes information leaflets and brochures that summarise key aspects of its mining law and administration. Information regarding the reporting requirements attached to exploration licences is also available online. In most States/ Northern Territory information and data from past exploration in an area is also accessible online.

A feature of the administration of exploration and mining titles in Australia is that current tenement information is readily accessible via the internet. A quick reference to tenement distribution and status is available through the [geoscience portal](http://www.ga.gov.au) www.ga.gov.au and more detailed and timely information may be obtained from the relevant State/Northern Territory agency’s internet site. Online submission of applications for new titles is also available.

The following is an overview of the requirements for mining and mineral exploration in Australian States/Northern Territory. It is extremely important that interested persons consult the relevant State/ Northern Territory laws, regulations and guidelines to ensure they understand the current requirements of the jurisdiction(s) in which they are interested.

The mining approval process

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

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

In addition, there are requirements relating to the closure and rehabilitation of a mine on completion of mining.

Initial Exploration

The exploration licence or permit generally provides the holder with a conditional right of access to land to carry out exploration activities and sampling for a specified range of minerals. This tenure also provides conditional access to land for supporting activities such as cultural, heritage and environmental surveys. The holder of exploration tenure also has the sole right to apply for higher forms of tenure, such as mining leases and retention tenure.

In most States and the Northern Territory, an application for an exploration licence or permit 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 who may also impose title specific conditions.

These applications may also be required to meet a number of conditions under other

environmental, cultural and/or heritage legislation. In addition, public notification of the application may be required, often by notification in the government gazette or in a local newspaper.

In five jurisdictions (not New South Wales and Queensland) there is provision for public comment on the granting of an exploration licence and the terms under which these comments are considered are specific to each jurisdiction. Queensland and New South Wales have no provision for comment on the grant of the application. Queensland has provision for notification of the owner of the land before entry and such entry on to land is subject to various access conditions including compliance with a code of conduct. In New South Wales, 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 mining warden) before the licence holder can commence exploration.

All jurisdictions levy application fees and there are additional fees specific to each jurisdiction.

Application for Exploration Licences – Summary of Requirements

JURISDICTION	PUBLIC NOTIFICATION	PUBLIC COMMENT PROVISION	OBJECTIONS CONSIDERED IN WARDEN'S COURT	CONSIDERED BY MINISTER OR MINISTER'S DELEGATE
New South Wales	✓	Licencee to enter access arrangement with land owner.	–	–
Northern Territory	✓	✓	–	✓
Queensland	Only required where the permit is being processed in accordance with the native title expedited procedures	Required to notify the owner, or if the owner cannot be contacted, the occupier of the land before entry	–	✓
South Australia	✓	✓	–	✓
Tasmania	✓	✓	✓	–
Victoria	✓	✓	–	✓
Western Australia	✓	✓	✓	–

All jurisdictions have provision for compensation to the landowner/occupier and the details are available in the relevant legislation for the jurisdiction. A broad summary is outlined in the following table.

Exploration Licences - Compensation Conditions by Jurisdiction

JURISDICTION	COMPENSATION INCLUDES DEPRIVAL OF USE OF LAND, LOSS OF EARNINGS & SOCIAL DISRUPTION	SECURITY DEPOSITS OR PRIVATE PROPERTY BONDS; MAY ALSO INCLUDE PROVISION FOR ENVIRONMENTAL HARM
New South Wales	✓	✓
Northern Territory	–	✓
Queensland	–	✓
South Australia	✓	–
Tasmania	–	✓
Victoria	✓	✓
Western Australia	✓	–

Exploration tenures are generally granted for periods of one to six years with renewals being subject to reductions in area, but Ministers can vary conditions where special circumstances exist. Tenure holders are required to report, in a digital format, at least annually on their exploration activities and when tenure is relinquished those reports will generally be made available, usually online, for other explorers to access. Conditions under which these 'open file reports' are released are available from each jurisdiction.

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Exploration Licences – Life, Reporting Conditions and Accessibility of Historical Reports

JURISDICTION	LEGISLATION	EXPLORATION TENEMENT LIFE / CONFIDENTIALITY	MAJOR REPORTING FREQUENCY AND CONTENT	OPEN FILE REPORTS (ONLINE SOURCES)
New South Wales	Mining Act 1992 No 29	Not exceeding 5 years. Reports confidential while tenement is current.	Annual (full technical reports). See reporting guidelines	Available at DIGS Database
Northern Territory	Mining Act	Not exceeding 6 years. Reports confidential while tenement is current.	Annual (full technical reports). See reporting guidelines.	Available at Mineral Exploration Reports
Queensland	Mineral Resources Act 1989	Not exceeding 5 years. Reports confidential while tenement is current.	Annual (full technical reports). See reporting guidelines.	Available at QDEX
South Australia	Mining ACT 1971	Up to 5 years. Reports are confidential for the currency of lease, subsequent licences and any mining title based on the exploration lease. Reports for surrendered areas are not confidential.	Annual (full technical reports). See reporting guidelines	Available at SARIG
Tasmania	Mineral Resources Development Act 1995	5 years for Category 1, 2 and 3 minerals (metallics, coal, atomic minerals, oil shale etc) or for a period the Minister determines for Category 4 minerals (petroleum).	Annual (full technical reports). See reporting guidelines	Available at TIGER
Victoria	Mineral Resources (Sustainable Development) Act 1990	Not exceeding 5 years. Reports may be available after the license ceases to be in force.	Annual (full technical reports). See reporting guidelines	Open File Mineral Tenement Data Packages on DVD
Western Australia	Mining Act 1978	Not exceeding 5 years. Mining exploration reports are held by the government for 5 years may be released.	Annual (full technical reports). See reporting guidelines.	Available at WAMEX

Retention Licence

Rights provided under retention tenure are generally very similar to an exploration licence except that the holder is no longer legislatively required to actively explore the tenure (although they can generally continue to do so if they choose). Six jurisdictions have some form of retention licence. This allows the permittee who discovered the resource to postpone development if necessary until it becomes commercially viable.

An application for a retention licence must include a work program and sufficient evidence of the presence of potentially commercially viable mineralisation. Tenure is generally granted for five years with provision for renewal and includes a priority of right to apply for a mining tenure.

As may occur under an exploration licence, compensation is also payable under a range of conditions under a retention licence.

Mining Lease

A mining lease generally provides the holder with the right to produce minerals (usually a specified list) and to then sell or otherwise dispose of the minerals produced. Where surface rights are granted this also gives the holder the right to disturb the surface in order to mine the minerals. Some mining leases are granted without surface rights, and these generally enable the holder to mine minerals from underground workings so long as the surface remains undisturbed.

The general conditions pertaining to a mining lease are outlined in the following table. Larger scale mining projects may also require an Environmental Impact Assessment under Commonwealth and/or State legislation. This is a consultative assessment process that also includes public notification and enables public comment and input.

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Application for a mining lease

JURISDICTION	PUBLIC NOTIFICATION	PUBLIC HEARING OF OBJECTIONS	CONSENT BY OWNER/ OCCUPIER OF PRIVATE LAND REQUIRED PRIOR TO MINING	ANNUAL RENT	REQUIRED TO LODGE PRODUCTION REPORTS
New South Wales	✓	✓	✓	–	✓
Northern Territory	✓	✓	✓	✓	✓
Queensland	✓	✓	✓	✓	✓
South Australia	✓	For objections to Notice of Entry	✓ (only when within 400 metres of residences etc)	✓	✓
Tasmania	–	✓	✓	✓	✓
Victoria	✓	–	✓	✓	✓
Western Australia	✓	✓	✓	✓	✓

Mining proposals are subject to environmental and cultural heritage assessment and approvals, and details of mining proposals must be provided before mining activities can commence. Requirements may include:

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

Generally mining leases are granted for terms of up to 21 years with provision for renewal beyond that time. The miner is required to pay annual rent (except in New South Wales) and lodge production reports, and is also required to lodge periodic environmental reports.

