Exploration

Minerals

EXPLORATION & PROSPECTING — GENERAL

[70.010] Introductory Comments

This guide card deals with exploration rights for minerals in Australia. Section 2 of this guide card deals with exploration licences and exploration permits which permit exploration over large areas of land. Section 3 of this guide card deals with other forms of exploration titles which provide for prospecting and exploring for minerals on a lesser scale.

Ownership of Minerals

In Australia, the Crown in right of the state owns all minerals on and under the surface of the land. Previous common law presumptions of ownership rights to minerals on or under the surface of the land (other than gold and silver, which have historically always been reserved to the Crown in Australia through the operation of common law principles which have been received into Australia) have been removed by the operation of the various state and territory statutory regimes in Australia.

The grant of all new freehold land title within Australia contains a specific reservation of ownership of minerals to the Crown. Minerals which are on or under the surface of land which is either owned or otherwise held by Aboriginal groups also contain a specific reservation of ownership to the Crown under various state, territory and Commonwealth legislation. Legislative appropriation of mineral rights in respect of titles granted prior to the enactment of mining legislation in Australia has occurred in many instances.

As a consequence, Australian governments have the specific responsibility for regulating the framework through which minerals may be explored for and mined.

Land Available for Exploration

In most states and Territories of Australia, most land is available for mineral exploration. However most state and territory legislation contain restrictions on the grant of exploration rights over certain types of land or the conduct of activities which may affect certain types of land or the things on it.10

Notes

1 See Commonwealth v New South Wales (1923) 33 CLR 1 at 23; 29 ALR 401; BC2300028.
5 There is a limited exception which applies in New South Wales, in the situation of certain minerals contained in lands transferred to, vested in or purchased by an Aboriginal Land Council: See Aboriginal Land Rights Act 1983 (NSW) s 45.
10 QLD: The Mineral Resources Act 1989 (Qld) definition of “land” includes land within the beds and banks of streams, watercourses and inundated land, land beneath internal waters of Qld, waters in, upon and above land, and subterranean land, but specifically excludes a “protected area”. A “protected area” includes national parks and conservation areas. NSW: The Mining Act 1992 (NSW) definition of “land” includes land covered by water but does not otherwise contain any specific exclusions in relation to the
grant of an exploration licence, although s 237 sets out the requirement for the Minister to take account of the need to conserve and protect the environment and features of Aboriginal cultural heritage in deciding whether or not to grant an authority under that Act. VIC: The Mineral Resources (Sustainable Development) Act 1990 s 6 sets out land not available for exploration. Such areas include land that is a “reference area” under the Reference Areas Act 1978, land that is a National Park, Wilderness Park, State Park, Marine National Park or a Marine Sanctuary under the National Parks Act 1975 (Vic), land in respect of which an ongoing protection declaration is in force under the Aboriginal Heritage Act 2006 (Vic) or land which is (under s 7 of the Act) exempted from mining or from being subject to another licence or authority under the Act. WA: Part III of the Mining Act 1978 (WA) sets out exhaustively the land which is open for mining in Western Australia. This includes Crown land, public reserves and private land. SA: The Mining Act 1971 (SA) specifies in s 7 that the Act only applies to “mineral land”. Section 8 of that Act specifies that the Governor may by proclamation declare any land in the state to be “mineral land”. Certain lands are categorised as exempt land under s 9 of the Act including yards, gardens, cultivated fields, orchards, vineyards, airfields, tramways, churches, chapels, schools, hospitals, institutions, parks or recreation grounds under the control of a council, forest reserves under the Forestry Act 1950 (Vic), land within 400m of a structure used as a place of residence, except where the person who holds the benefit of the exemption otherwise agrees. NT: “Land” is defined under the Mining Act 1980 (NT) as being land within the jurisdictional limits of the territory and includes waters within those limits. There are no specific exclusions from land which may be granted as part of an exploration licence, however s 24 of the Act sets out the conditions of the licence upon grant and those conditions require that the licensee must conduct its activities in a manner which does not interfere with roads, railways, telephone lines, power lines and cables, water pipeline dams and reservoirs, gas and oil slurry and tailings pipelines, or storage containers situated on the licence area. The licensee must also not interfere with any historical site or any Aboriginal sacred site or object. TAS: Mineral Resources Development Act 1995 (Tas) provides that explorers can apply for a Prospecting Licence, Exploration Licence or Retention Licence.

Categories of Permits

Most state and territory mining legislation provides for different categories of exploration titles. Each type of title has attached to it a different set of rights and entitlements.

In Queensland, explorers can apply for a Prospecting Permit, and Exploration Permit or a Mineral Development Licence.

In New South Wales, explorers can apply for an Exploration Licence, Assessment Lease or an Opal Prospecting Licence.

In Victoria, explorers can apply for a Miner’s Right, an Exploration Licence or a Consent to Search for Stone on Crown Land.

In South Australia, there are additional categories of exploration title which add to the complexity of that jurisdiction. In South Australia, explorers can apply for a Miners’ Right, a Mineral Claim, a Precious Stones Prospecting Permit, an Exploration Licence or a Retention Lease.

In Western Australia, explorers can apply for a Prospecting Licence or an Exploration Licence.

In the Northern Territory, explorers can apply for up to 4 different types of exploration titles. These are an Exploration Licence, and Exploration Retention Licence, a Fossicking Area and a Miners’ Right.

In Tasmania, the Mineral Resources development Act 1995 (Tas) provides that explorers can apply for a Prospecting Licence, Exploration Licence or Retention Licence.

Entitlements and Rights Conferred

Exploration titles will generally authorise entry onto areas of land which are specified in the relevant title for the purposes stated in the relevant title. Notice of intention to enter
an area of land is generally required prior to entry. Each state and territory jurisdiction have different requirements regarding the basis of access and requirements for terms of access to be agreed with landholders. These matters are addressed in more detail in this guide card.

EXPLORATION PERMIT AND LICENCES

[70,610] Process for Application

[70,630] Rights conferred

New South Wales (Exploration Licence)

The holder of an exploration licence may carry out works on, or remove samples from, land for the purpose of testing the mineral-bearing qualities on the land for the group of minerals specified in the licence. The licensee will be conferred other rights of way, access to water, and use of water, timber and pasturage. The holder of an exploration licence may not, except with the consent of the Minister, exercise any of the rights conferred by the licence within land in an exempted area. Further, the holder of an exploration licence may not exercise any of the rights conferred by the licence over the surface of the land on which or within the prescribed distance of which, is situated a dwelling house that is a principal place of residence, a garden or any significant improvement (other than an improvement constructed for mining purposes only) without the written consent of the owner.

Low impact exploration licence

A special class of low-impact exploration licences exist for prospecting operations that will have a low impact on the land. The provisions in relation to exploration licences apply to low impact exploration licences. If the landholders are native title holders, the prospecting operations must only be carried out in accordance with the access arrangements for prospecting titles.

Victoria (Exploration Licence)

The holder of an exploration licence may carry out the following activities on the land subject to the licence:

(a) conducting geological, geophysical and geochemical surveys;
(b) drilling;
(c) taking samples for the purposes of chemical analysis;
(d) extracting minerals from land (except extracting minerals from land for the purpose of producing them commercially and includes processing and treating ore).

Queensland (Exploration Permit)

The holder of an exploration permit may carry out any activity authorised by the exploration permit using any vehicles, vessels, machinery and equipment necessary or expedient for the purpose of exploring for the minerals that the permit applies. The exploration permit authorises entry to the land specified in the exploration permit.

The holder of the exploration permit may:

(a) for the purposes of facilitating the exploration:
(i) enter any part of the land (that is not the surface area of a reserve); and
(ii) enter any part of the surface area of a reserve with the consent of the owner or the Governor in Council,

(b) may enter any part of the land to carry out any activities necessary to comply with the Act to apply for a mining lease or mineral development licence.\textsuperscript{60}

**Western Australia (Exploration Permit)**

The holder of an exploration permit may enter and re-enter the land with such agents, employees, vehicles, machinery and equipment necessary or expedient for the purpose of exploring for the minerals.\textsuperscript{65}

The holder may:

(a) explore for minerals and carry on operations and works necessary for that purpose including digging pits, trenches, holes, sinking bores and digging tunnels;\textsuperscript{70}

(b) excavate, extract or remove earth, soil, rock, stone, fluid or mineral bearing substances (not exceeding the prescribed limit unless the Minister approves a greater amount);\textsuperscript{75}

(c) take and divert water or sink a well or bore for any purpose in connection with exploring for minerals on the land.\textsuperscript{80}

**South Australia (Exploration Licence)**

An exploration licence authorises the licensee to carry out operations of any kind in the course of exploring for minerals or to establish the extent of a mineral deposit (and includes prospecting on the licence area).\textsuperscript{85} However, an exploration licence does not authorise the licensee to carry out exploratory operations for precious stones on land within a precious stones field that is outside an opal development area, or on land within an exclusion zone under the Opal Mining Act 1995.\textsuperscript{90} Further, an exploration licence can not be granted in respect of extractive minerals.

**Other exploration licences**

Other exploration authorities are required for mining of extractive minerals (such as sand, gravel, stone, shale or clay) and precious stones outside an opal development area.\textsuperscript{95}

**Tasmania (Exploration Licence)**

An exploration licence authorises a holder to:\textsuperscript{100}

(a) explore for minerals specified in the licence;

(b) to determine the existence, quality and quantity of minerals for the purposes of commercial exploitation;

(c) conducting various surveys, drilling and the use of appropriate instruments, equipment and techniques;

(d) to take samples and extract and remove from land material, mineral or other substances for sampling and testing;

(e) to enter on, and pass over, Crown land for that purpose;

(f) enter on and pass over private land for that purpose (by giving written notice to the owner).\textsuperscript{105}

**Northern Territory (Exploration Licence)**

An exploration licence authorises the holder to (in accordance with the conditions to which the licence is subject):

(a) enter and re-enter the land with such agents, employees, vehicles, vessels, machinery and equipment as may be necessary or expedient for the purpose of exploring for minerals in the licensed area.\textsuperscript{110}
(b) explore for minerals and carry out such operations and works as are necessary (including digging pits, trenches and holes, and sinking bores and tunnels);\textsuperscript{115}
(c) extract and remove for sampling and testing ore, material or other substance reasonably necessary to determine its mineral bearing quality;\textsuperscript{120}
(d) in relation to water:\textsuperscript{130}
   (i) to take or divert water from any natural spring, lake, pool, or stream situated on or flowing through the licence area;
   (ii) to sink a well or bore;
   (iii) to take water from the well or bore;
   (iv) to use the water taken for domestic use and any purpose in connection with exploring for minerals.

[70,650] Form of application

All jurisdictions
The requirements for the form of application are detailed in the mining legislation of each state and territory.\textsuperscript{135} In most jurisdictions, a proposed program of work must accompany the application together with statements of the applicant’s financial and technical resources available in order to carry out the proposed exploration operations and relevant environmental considerations as a result of the exploration operations.\textsuperscript{140}

[70,670] Notice requirements

New South Wales
The applicant must publish a notice of the application for an exploration licence, within 45 days after receipt of confirmation from the Director-General that the application has been lodged, in the following:
   (a) a newspaper which circulates generally in New South Wales; and
   (b) a minimum of one local newspaper in the locality of the proposed exploration area.\textsuperscript{145}
The notice must be in the form\textsuperscript{150} required by the Director-General and contain:
   (a) a statement that the application has been lodged;
   (b) a plan of the proposed exploration area; and
   (c) any other information required by the Director-General.\textsuperscript{155}

Victoria
The applicant must publish notice of the application for an exploration licence, within 14 days of being notified by the Minister that the application has priority, in a Wednesday edition of:
   (a) a newspaper circulating generally in Victoria; and
   (b) one or more local newspapers.\textsuperscript{160}
The notice must contain the following:
   (a) name and address of applicant;
   (b) contact phone number of applicant for map requests;
   (c) details of the application (application number and date, locality and approximate area of the land and nature of the proposed exploration program);
   (d) a statement that any person may object within 21 days to the grant of the exploration licence, including details of how the person may object; and
   (e) a map identifying the land to which the application relates (in the local newspaper only).\textsuperscript{165}
Queensland

There are no express provisions in Queensland for notice to be given of an application for an exploration permit.

Western Australia

Notice to land owner and occupier

Notice of the application must be served by the applicant on both the owner and occupier of the land within 14 days of lodging the application for an exploration licence.\(^{170}\)

The Minister or warden may extend the period for notice if a request for extension is made within the 14 day period following lodgment.\(^{175}\) Notice must be given in the form of Form 21.\(^{180}\)

Notice to holder of pastoral lease

Where any land identified in an application for an exploration licence is held subject to a pastoral lease or a lease granted for grazing purposes, the applicant must post a copy of the application to the holder of that lease within 14 days of lodging the application.\(^{185}\)

The notice must be sent by registered post or certified mail and must include a map clearly identifying the boundaries of the land to which the exploration licence relates.\(^{190}\)

Publication of notice

An applicant must publish the details of the application required by the Director General of Mines in the newspaper(s) nominated by the Director General of Mines within 14 days of the date of the application.\(^{195}\)

The period within which the advertisement must appear may be extended by the warden or Minister if application for extension is made within the 14 day period following lodgment.\(^{200}\)

South Australia

At least 28 days prior to granting an exploration licence, the Minister is required to publish a notice in the Gazette, state newspaper and local newspaper.\(^{205}\)

The notice published by the Minister will describe the land the subject of the licence and any relevant stratum.\(^{210}\)

There is no express provision for the giving of notice by an applicant in respect of an application which has been lodged.

Tasmania

Where the Director of Mines intends to recommend to the Minister that an application for an exploration licence application be granted, the Director must:\(^{215}\)

(a) notify the applicant;
(b) give notice under the Native Title Act 1993 (Cth) s 29; and
(c) publish a notice to this effect in the local newspaper of the relevant locality.

There is no express provision for the giving of notice by an applicant in respect of an application which has been lodged.

Northern Territory

The applicant must give written notice of the application for an exploration licence to the owners and occupiers of the land identified in the application within 14 days following lodgment of the application, or within any approved extension of that period.\(^{220}\)
The applicant must also serve notice on any other persons and within such time as required by the Secretary. Where the Mining Act 2011 (NT) Pts XIA or XIB apply, notice of the application must be given to the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies in accordance with Pt XIA or Pt XIB respectively. The applicant must provide evidence of the notice served (including method) to the Secretary within 14 days of serving the notice.

[70,690] Lodgment requirements

New South Wales
An application for an exploration licence in New South Wales must be lodged with the Director-General of the Department of Industry and Investment of New South Wales. The application must be accompanied by the prescribed application fee.

Victoria
An application for an exploration licence in Victoria must be accompanied by the prescribed fee.

Queensland
An application for an exploration permit must be lodged at the office of the mining registrar in respect of the land the subject of the application.

Western Australia
The application for an exploration licence must be lodged at the mining registrar’s office within 10 days of marking out or within any extension of that period. The application must be accompanied by the prescribed fee.

Time for lodgment may be extended by the Minister or the warden where the request for extension is made within the 10 day period from marking out.

Electronic lodgment
An applicant may lodge the application electronically on the Department’s website (subject to requirements of that website).

Where an application is lodged electronically, the mining registrar may also require lodgment of a paper version of the application.

South Australia
An application for an exploration licence must be lodged with the Director of Mines. The application must be accompanied by the prescribed application fee.

Tasmania
An application for an exploration licence must be lodged with the Registrar of Mines. The application must be accompanied by the prescribed fee.

Northern Territory
An application for an exploration licence must be lodged with the Department of Resources together with the prescribed application fee.
Notes

1 Except for activities declared under regulation pursuant to the Mining Act 1992 (NSW) s 11A (see s 4 definition of “prospecting”).
5 Mining Act 1992 (NSW) ss 164–6.
10 Mining Act 1992 (NSW) s 30.
15 Mining Act 1992 (NSW) s 30.
20 Mining Act 1992 (NSW) s 32B.
25 Mining Act 1992 (NSW) s 32C.
30 Mining Act 1992 (NSW) Pt 8 Div 2.
35 Mineral Resources (Sustainable Development) Act 1995 (Vic) s 13(1) (provided it has complied with s 43(1)); s 4 (see definition of “exploration”).
40 Mineral Resources (Sustainable Development) Act 1995 (Vic) s 4 (see definition of “mining”).
45 Mineral Resources Act 1989 (Qld) s 129.
50 Mineral Resources Act 1989 (Qld) s 127(1).
55 Mineral Resources Act 1989 (Qld) s 129(1)(a)(i).
60 Mineral Resources Act 1989 (Qld) s 129(1)(a)(ii).
65 Mining Act 1978 (WA) s 66(a).
70 Mining Act 1978 (WA) s 66(b).
75 Mining Act 1978 (WA) s 66(c).
80 Mining Act 1978 (WA) s 66(d); subject to the Rights in Water and Irrigation Act 1914 (WA).
85 Mining Act 1971 (SA) s 28(2).
90 Mining Act 1971 (SA) s 28(2a).
95 Mining Act 1971 (SA) s 28(2a); s 6 definitions of “extractive minerals”, “precious stones” and “opal development area”.
100 Mineral Resources Development Act 1995 (Tas) s 23(1).
105 Section 23(2) Mineral Resources Development Act 1995 (Tas).
110 Section 23(1)(a) Mining Act 1980 (NT).
115 Section 23(1)(b) Mining Act 1980 (NT).
120 Section 23(1)(c) Mining Act 1980 (NT).
130 Section 23(1)(d) Mining Act 1980 (NT).
135 Section 13 Mining Act (NSW); s 133 Mineral Resources Act 1989 (Qld); s 17(1) Mining Act 1980 (NT); s 11 Mineral Resources Development Act 1995 (Tas); s 15 Mineral Resources (Sustainable Development) Act 1995 (Vic); s 29 Mining Act 1971 (SA); s 58 Mining Act 1978 (WA).
140 Section 13(5) Mining Act 1992 (NSW); s 133(1) Mineral Resources Act 1989 (Qld); s 17(1) Mining Act 1980 (NT); s 11(2) Mineral Resources Development Act 1995 (Tas); s 29(2) Mining Act 1971 (SA); s 58(1)(b) Mining Act 1978 (WA); s 15(6) Mineral Resources (Sustainable Development) Act 1995 (Vic).
145 Section 13A(1) of the Mining Act 1992 no 29 (NSW); cl 15(1) of the Mining Regulation 2010 (NSW).
150 See Form EL1 “Application For An Exploration Licence” issued by the NSW Government Department of Primary Industries: http://www.dpi.nsw.gov.au.
155 Section 13A(2) of the Mining Act 1992 (NSW); cl 15(2) of the Mining Regulation 2010 (NSW).
160 Section 15(5) of the Mineral Resources (Sustainable Development) Act 1990 (Vic); cl 16(1) of the Mineral Resources Development Regulations 2002 (Vic).
165 Mineral Resources Development Regulation 2002 (Vic) reg 16(1) and Sch 7.
170 Mining Act 1978 (WA) s 58(4); Mining Regulations 1981 (WA) reg 64A(1)(b).
175 Mining Regulations 1981 (WA) reg 64A(3).
180 Mining Regulations 1981 (WA) reg 64A(1)(a); Sch 1 Form 21.
185 Mining Act 1978 (WA) s 118; Mining Regulations 1981 (WA) reg 64B.
190 Mining Act 1978 (WA) s 118.
195 Mining Regulations 1981 (WA) reg 64(5).
200 Mining Regulations 1981 (WA) reg 64(7).
205 Mining Act 1971 (SA) s 28(5).
210 Mining Act 1971 (SA) s 28(5).
215 Mineral Resources Development Act 1995 (Tas) s 14(2).
220 Mining Act 2011 (NT) s 17(2)(a).
225 Mining Act 2011 (NT) s 17(2A).
230 Mining Act 2011 (NT) s 17(2)(b).
235 Mining Act 2011 (NT) s 17(3).
240 Mining Act 1992 (NSW) s 13(4)(b).
245 Mining Act 1992 (NSW) s 13(4)(c); see Mining Regulation 2010 (NSW) Sch 10 for the prescribed fee.
250 Mineral Resources (Sustainable Development) Act 1990 (Vic) s 15(1); Mineral Resources Development Regulations 2002 (Vic) reg 11(1)(b); see Sch 19 of the Regs for the prescribed fee.
255 Mineral Resources Act 1989 (Qld) s 133(1)(f); Mineral Resources Regulations 2003 (Qld) reg 12; see also Sch 6 Pt 3 of the Regs for the prescribed fee.
260 Mining Act 1978 (WA) s 58(1)(d); Mining Regulations 1981 (WA) regs 59A(2) and 64(1); See Sch 2 item 2 for the prescribed fee.
265 Mining Act 1978 (WA) s 58(1)(e); Mining Regulations 1981 (WA) reg 4D(2) and Sch 2 item 2.
270 Mining Regulations 1981 (WA) reg 64(7).
275 Mining Regulations 1981 (WA) reg 59B(2).
280 Mining Regulations 1981 (WA) reg 59B(4).
285 Mining Act 1971 (SA) s 29(1).
290 Mining Act 1971 (SA) s 29(2)(a); Mining Regulations 2011 (SA) Sch 1 sets out the prescribed application fee.
300 Mineral Resources Development Act 1995 (Tas) s 11(2)(d); Mineral Resources Regulations 2006 (Tas) Sch 2 Pt 1.
305 Mining Act 2011 (NT) s 17(1)(a); Mining Regulations 2010 (NT) Sch 1 sets out the prescribed application fee.
Petroleum

GENERAL

[70,890] Introductory Comments

This guide card provides an overview of exploration rights for petroleum in Australia. The procedure for grant of exploration tenures is covered in s 2 of this guide card. Dealings with exploration tenures and other obligations arising from the tenures are discussed throughout.

Ownership of Petroleum and the Legal Framework for Petroleum Exploration

With only minor exceptions, minerals and petroleum are the property of the Crown. Petroleum beyond the three nautical-mile limit and underlying Commonwealth land (offshore) are the property of the Commonwealth while within this limit they are the property of the relevant state or territory (onshore).

Accordingly, the legal framework of petroleum exploration legislation in Australia is partitioned into two categories:
2.1 onshore; and
2.2 offshore legislation.

Onshore activities are governed by the legislation of the state or territory and conducted by the relevant Minister.1

Offshore exploration is administered under a framework of joint authority between the Commonwealth government and the state and territory governments. State and territory legislation pertaining to exploration extends to the coastal waters in an area of three nautical miles from the low tide coast line. The area beyond this boundary and up to the outer limit of the continental shelf is governed by Commonwealth legislation2 which provides for the administration of activities through a joint authority arrangement. All states and territories have passed mirror legislation to reflect Commonwealth legislation.

Notes

1 There is no legislation in Tasmania or the Australian Capital Territory dealing with onshore petroleum exploration.

[71,090] Categories of Permit for Onshore Exploration

Title to explore for petroleum in Australian states and the Northern Territory is conferred by exploration permits or licences by the relevant Minister in each individual jurisdiction.3 In Queensland a petroleum exploration permit granted by the Minister is termed an Authority to Prospect.4

Table 1.2 sets out exploration permit classifications in the Northern Territory and the states.

Table 1.2 Exploration permit classification

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<th>Jurisdiction</th>
<th>Permit Classification</th>
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</tr>
<tr>
<td>Northern Territory</td>
<td>Exploration Permit</td>
</tr>
</tbody>
</table>

**Notes**


5 Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 31; Petroleum Act 1923 (Qld) s 18.

**[71,290] Entitlements and Rights Conferred**

In the Northern Territory, Western Australia, New South Wales, Victoria, and South Australia, a holder of title to explore for Petroleum in Australia has the right to explore for petroleum and carry out activities which are incidental to the purpose of exploration.1

The rights of the permitee are subject to conditions which may be imposed by the Minister or prescribed by legislation. Generally, this means that the holder of an exploration tenure can undertake exploration, evaluation and testing activities, but cannot undertake activities for extraction or production for commercial purposes.

In Queensland exploration rights are conferred on the holder of an authority to prospect through prescribed authorised and unauthorised activities. Activities which are incidental to carrying out authorised activities are also permitted.5

In the Northern Territory, Victoria and South Australia exploration rights are defined in a list of permitted activities. These rights are not intended to be narrowly applied and are given a broader practical application through the additional right to carry out any activities incidental to the purpose of exploration.

In South Australia, petroleum exploratory rights are also obtained by a Speculative Survey Licence. The rights afforded by a Speculative Survey Licence resemble a limited version of an exploration licence.

In Western Australia a permitee can explore for petroleum via a Petroleum Drilling Reservation. Subject to conditions set out in the act, the rights conferred are to drill for petroleum and any incidental activities to that purpose.

**Notes**

1 Petroleum Act 1998 (Vic) s 18; Petroleum and Geothermal Energy Resources Act 1967 (WA) s 38; Petroleum Act 1936 (WA) s 38; Petroleum (Onshore) Act 1991 (NSW) s 29; Petroleum Act 1984 (NT) s 29; Petroleum and Geothermal Energy Act 2000 (SA) s 21 and s 10(3).


10 Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 32.

15 Petroleum and Gas (Production and Safety) Act 2004 (Qld) (P&G Act) s 33. The P&G Act commenced on 31 December 2004. It contains provisions governing numerous areas including exploration and production, and issues arising from interactions of petroleum activities, coal exploration and mining activities. The P&G Act also deals with safety and technical requirements for all petroleum and gas activities. The Petroleum Act 1923 (Qld) was retained in order to deal with certain tenures, however all safety matters are dealt with under the P&G Act.

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Notes

1 Petroleum Act 1998 (Vic) s 18; Petroleum and Geothermal Energy Resources Act 1967 (WA) s 38; Petroleum Act 1936 (WA) s 38; Petroleum (Onshore) Act 1991 (NSW) s 29; Petroleum Act 1984 (NT) s 29; Petroleum and Geothermal Energy Act 2000 (SA) s 21 and s 10(3).


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APPLICATION FOR ONSHORE TITLES

[71,390]

In the Northern Territory, South Australia, and New South Wales an application may be made for an exploration title over any land in respect of which another petroleum title is not already in force or applied for or which is otherwise unavailable.\(^1\)

In Queensland, an Authority to Prospect (ATP) can only be granted through a call for tenders published in the Queensland Gazette.\(^5\) Similarly, in Western Australia, an exploration permit may only be applied for following an invitation published by the Minister in the Western Australian Gazette.\(^10\)

In New South Wales, the Minister may invite applications for an exploration licence by notification in the New South Wales Gazette or grant an exploration licence without inviting applications for such a licence.\(^15\)

In South Australia, the Minister must call for tenders for an exploration licence if:

(a) the licence is to be granted for an area within a highly prospective region; or

(b) a person has unsuccessfully applied for an exploration licence for the relevant area and asks the Minister to call for tenders.\(^20\)

The Minister has discretion to call for tenders in other cases.

In the Northern Territory, an invitation for applications by the Minister is not a prerequisite for applying for an exploration permit.\(^25\)

Notes

1 Petroleum Act 1984 (NT) s 29(2); Petroleum Act 1998 (Vic) s 7; Petroleum and Geothermal Energy Act 2000 (SA) s 21(2) and s 10(3).
30 Ibid s 17.
40 Petroleum and Geothermal Energy Resources Act 1967 (WA) s 43D.

GRANT OF TENURE FOR ONSHORE TITLES

[71,490] Deciding Tenders and Grants

[71,510] Process for Application and Criteria for Deciding Tenders and Grants

New South Wales (Exploration Licence)

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An application for a petroleum title must be made in an approved form accompanied by:

(a) the appropriate lodgement fee in respect of the application;
(b) a map or plan on which there is delineated the boundaries of the area to which the title is intended to apply;
(c) a proposed work program and indicating the nature and extent of the operations to be carried on under the authority of the title;
(d) evidence of financial and technical resources available to the applicant.

An application for a title may be refused if it does not meet the above requirements or if the Minister decides that it would be in the public interest not to grant the title or to grant a title over the land concerned to someone else.

Victoria (Exploration Permit)

An application for an exploration permit must include:

(a) the details of the applicant’s relevant technical qualifications and the relevant technical qualifications of its employees; and
(b) the relevant technical advice and financial advice available to the applicant.

The application must also comply with the general requirements for applications under Petroleum Act 1998 (Vic) s 96, including the requirement to submit a proposed work program and details of how much the applicant intends to spend on each part of that program.

The Minister may grant or refuse to grant an exploration permit. The chief factors to be considered by the Minister in deciding between competing offers include:

(a) the respective merits of the work programs proposed by the applicants; and
(b) the likelihood that work programs will be carried out.

Queensland (Authority to Prospect (ATP))

The Minister is empowered to use any process to decide whether to grant an ATP, including a process involving a preferred tenderer. The preferred tenderer to address a number of matters required by the Minister, including the payment of the annual rent for the first year and security to ensure that all the necessary financial transactions are completed before the grant of the authority to prospect.

If the preferred tenderer does not comply with the matters, then the tenderer is no longer the preferred tenderer, and the Minister may select another tenderer as the new preferred tenderer.

The Minister is required to consider all tenders and make a decision on whether to grant an ATP to one of the tenderers or not to grant any ATP at all. An ATP can only be granted if:

(a) the tenderer is an eligible person, and
(b) the Minister has approved the tenderer’s proposed work program, and
(c) a relevant environmental authority under the Environmental Protection Act 1994 Ch 5A has been issued for the proposed authority to prospect.

The Minister may publish a gazette notice (call for tenders) inviting tenders for an ATP. All tenders in response to a call for tenders lapse when the call is terminated, in which case a tenderer will have no right to reimbursement or any other form of compensation against the state.

An application for an ATP must be in an approved form, address the capability criteria and be accompanied by the prescribed fee. It must also include a statement about how and when the tenderer proposes to consult with, and keep informed, each owner and occupier...
of private or public land on which authorised activities for the proposed authority are, or are likely to be, carried out, as well as a proposed work program that complies with the initial work program requirements.\textsuperscript{95}

**Western Australia (Petroleum Exploration Permit)**

Petroleum Exploration Permits are granted by the Minister following the publication of an instrument (notice) in the Government Gazette inviting applications for either specified areas or any vacant area within the state.\textsuperscript{100}

The application must be accompanied by particulars of:

- (a) the proposals of the applicant for work and expenditure in respect of the blocks specified in the application; and
- (b) the technical qualifications of the applicant and its employees; and
- (c) the technical advice available to the applicant; and
- (d) the financial resources of the applicant.\textsuperscript{105}

An application must be accompanied by the prescribed fee and a deposit of 10% of the amount that is determined on the application.\textsuperscript{110}

**South Australia (Exploration Licence)**

An application for the grant of an exploration licence must be made under the Petroleum and Geothermal Energy Act 2000 (SA) and must be accompanied by:

- (a) a statement of the financial and technical resources available to the applicant and contain other information required in the approved form; and
- (b) the prescribed fee.\textsuperscript{115}

In considering an application for the grant of an exploration licence, the Minister must have regard to the following:

- (a) the suitability of the applicant’s proposed work program for evaluating the prospectivity of the licence area and discovering regulated resources; and
- (b) the adequacy of the applicant’s technical and financial resources; and
- (c) if applications have been invited for the licence by public advertisement — the stated criteria for evaluation of the applications.\textsuperscript{120}

The applicant must also submit a work program, including an estimate of exploration expenditure to be incurred in the first term of the licence.

**Northern Territory (Exploration Permit)**

An application for exploration permit must be lodged with the Minister. The application must contain the following:

- (a) a statement containing the name and address of the applicant;
- (b) a statement containing the designated number of each block the subject of the application;
- (c) map clearly delineating the application area and the boundaries of existing exploration permit or licence areas in the immediate vicinity of the application area;
- (d) a proposed technical works programme for exploration of the blocks during each year of the term of the proposed exploration permit;
- (e) evidence of the technical and financial capacity of the applicant to carry out the proposed technical works programme and to comply with the Petroleum Act 1984 (NT);
- (f) where the application is made by 2 or more persons, the proposed sharing arrangements between the applicants;
- (g) the name of the designated operator and evidence of the technical capacity of the operator to carry out the proposed technical works program;
Application can be made for one or more exploration permits.

### Notification

**New South Wales**

The Petroleum (Onshore) Act 1991 (NSW) does not provide a statutory basis for formal notification regarding the application or a statutory time period for notification of a decision.

If a petroleum title is granted on, or subsequently becomes subject to, the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice. Notice must also be given to the holder where a condition is varied or any 2 or more petroleum titles held by the same holder that contain a security condition are amended so as to require a single security to be given and maintained.

**Victoria**

If an exploration permit is granted, written notice of that decision must be given to every unsuccessful applicant for the permit within 14 days after the decision has been made. If no exploration permit is granted to any of the applicants for the permit, all applicants must be notified in writing of that decision. There is no statutory time period specifying by when notification of a decision must be made.

**Queensland**

Each of the unsuccessful tenderers for the authority to prospect must be given notice of the decision after a call for tenders has been decided. The giving of the notice provides closure of the tender. There is no statutory time period specifying by when notification of a decision must be made.

**South Australia**

Notice of grant of a licence must be published in the Gazette. There is no statutory time period specifying by when notification of a decision must be made.

**Western Australia**

As a general rule, the notice of the grant of an exploration licence and such particulars as the Minister thinks fit should be published in the Gazette. However, on the expiration of the period specified in a notice, if only one application has been made under that subsection in respect of the block or blocks specified in the notice, the Minister may reject or grant the application. However, if 2 or more applications have been made in respect of the block or blocks specified in the notice, the Minister may reject any or all of the applications. If the Minister does not reject all of the applications, and only one application remains unrejected, the Minister may notify the applicant by notice in writing served on the applicant.

If two or more applications remain unrejected, the Minister is only required to inform the following applicant or applicants that he is prepared to grant to the applicant(s) a permit in respect of that block or those blocks:

(a) the applicant(s) whose application has not been rejected; and
(b) the amount that the applicant(s) has specified as the amount that he is prepared to pay in respect of the grant of a permit to him is not less than the amount specified by any other applicant whose application has not been rejected.

Such notification must be made in writing and served in writing to the applicant(s), who must within a period of three months after notification (which may only be extended for another three months) make a written request to the Minister for the grant of the permit mentioned in the notice and pay the balance of the amount to be paid in respect of the permit or enter into an agreement with the Minister for payment by instalments. 70

Northern Territory

A notice of grant or refusal of application for exploration permit must be given to the applicant. 175

[71,550] Key conditions of permit

New South Wales

As a general rule, a petroleum title (including an exploration permit) is granted subject to the conditions imposed by the Minister and specified in the title and any conditions prescribed by the regulations. 180

In the event of any inconsistency between conditions prescribed by the regulations and conditions imposed by the Minister, the latter prevail to the extent of the inconsistency.

The conditions that may be imposed on a title include conditions with respect to work to be carried out by the holder of the title in or in relation to the land comprised in the title during or after the term of the title, and amounts to be expended by the holder of the title in carrying out any such work. This list is non-exhaustive. 185

Other conditions that may be imposed on a title include provision for the carrying out of an approved work program, and approved expenditure, for each year of the term of the title. The Minister may vary these conditions by written notice to the holder of the title. 190

In addition, on the grant of a petroleum title or while a petroleum title is in force but not subject to a condition requiring security, the Minister may impose a condition requiring the holder of the title to give security for the fulfilment of the holder’s obligations in respect of that title and to maintain that security until those obligations are fulfilled or no longer apply. The Minister also has the power to vary that condition at any time by varying the amount and form of security required to be given and maintained. 195

Victoria

An authority or the issue of an authority may be subject to any conditions that the Minister considers being appropriate, such as conditions:

(a) relating to the operations that are to be carried out under the authority;
(b) requiring the expenditure of a minimum amount of money in relation to operations under the authority;
(c) requiring the carrying out of approved work programs during the term of the authority;
(d) concerning the protection of the environment;
(e) concerning the rehabilitation of any land affected by operations under the authority;
(f) requiring compliance with any written directions of the Minister in relation to any matters covered by the authority that are not otherwise the subject of a condition;
(g) requiring the holder of the authority to obtain specified approvals or submit specified information to the Minister before beginning a specified operation or using specified equipment;
(h) requiring the holder of the authority to provide other specified information to the Minister.\textsuperscript{200}

In addition, an authority is subject to the mandatory statutory condition that the holder of the authority must comply with all applicable laws in carrying out any activity under the authority.\textsuperscript{205}

\textbf{Queensland}

An authority to prospect is granted subject to the following mandatory conditions:

(a) standard relinquishment condition;\textsuperscript{210}

(b) restriction on flaring or venting;\textsuperscript{215}

(c) permitted period for production or storage testing;\textsuperscript{220}

(d) obligation to consult with particular owners and occupiers;\textsuperscript{225}

(e) obligation to pay a petroleum royalty and annual rent;\textsuperscript{230}

(f) requirement to have a work program and compliance with exploration activities in the work program;\textsuperscript{235}

(g) obligation to lodge any proposed later work program.\textsuperscript{240}

The following general mandatory obligations also apply to an Authority to Prospect (ATP):

(a) obligations in relation to overlapping mining tenements;\textsuperscript{245}

(b) water rights obligation;\textsuperscript{250}

(c) general provisions for petroleum wells, water supply bores and water observation bores;\textsuperscript{255}

(d) provisions for ATP in the area of coal or oil shale tenements;\textsuperscript{260}

(e) provisions relating to ATPs overlapping greenhouse gas tenements;\textsuperscript{265}

(f) common petroleum authority provisions.\textsuperscript{270}

\textbf{Western Australia}

The Minister may impose on a permit any condition as the Minister thinks fit and specify the conditions in the permit.\textsuperscript{275}

Such conditions include conditions with respect to work to be carried out by the permit holder in or in relation to the permit area during the term of the permit, or amounts to be expended by the permit holder in the carrying out of such work, or conditions with respect to both of those matters, including conditions requiring the permit holder to comply with directions given in accordance with the permit concerning those matters.\textsuperscript{280}

\textbf{South Australia}

An exploration licence is granted subject to the condition that the licensee authorises the Minister to make use of information and records provided by the licensee and to disclose information and records provided by the licensee as authorised by the regulations.\textsuperscript{285}

Regulated activities to be carried out under the licence are:

(a) activities requiring high level official surveillance; or

(b) activities requiring low level official surveillance.\textsuperscript{290}

Activities are generally classified as requiring high level official surveillance unless the licensee satisfies the Minister that, in view of the licensee’s demonstrated competence to comply with the requirements of the Petroleum Act 2000 (SA) and the conditions of the licence, the activities should be classified as requiring low level official surveillance.\textsuperscript{295}

Activities requiring high level official surveillance refer to those activities that require the Minister’s prior written approval.\textsuperscript{300} For activities requiring low level official surveillance a notice must be given as required by the conditions imposed on the licence or by the regulations.
A licensee must also have adequate technical and financial resources to ensure compliance with the licensee’s environmental obligations (including the rehabilitation of land adversely affected by regulated activities carried out under the licence).  

Northern Territory

The Minister may impose on an exploration permit any conditions as the Minister thinks fit. Those conditions must be specified in the permit.

Appeals against the decision not to grant tenure

New South Wales

No challenge can be made to the grant of a petroleum title except in proceedings commenced within 3 months after the date on which notification of the granting of the title is published in the Gazette.
Victoria
The Petroleum Act 1998 (Vic) does not provide for an appeal or review mechanism with respect to the grant of an exploration licence.

Queensland
An unsuccessful applicant cannot appeal against the decision. However, the Judicial Review Act 1991 (Qld), in particular s 32 “Request for statement of reasons”, applies to the decision making process about which this notice is given. Consequently, unsuccessful applicants are entitled to make an application to the court for a statutory order of review in relation to the decision. They may also request the Minister to provide a written statement in relation to the decision.

Western Australia
The Petroleum Act and Geothermal Energy Resources Act 1967 (WA) does not provide for an appeal or review mechanism with respect to the grant of an exploration licence.

South Australia
Pursuant to s 124 of Petroleum Act 2000 (SA), “reviewable administrative acts” include:
(a) a decision to grant or refuse an application for a licence;
(b) a decision to refuse an application for the renewal of a licence;
(c) a decision to impose licence conditions or about the nature of licence conditions.
An applicant who has been affected by a reviewable administrative act may apply to the Minister for reconsideration within 14 days after receiving notice of the act. Such an application will not postpone the effect of the reviewable administrative act unless the Minister decides that it should do so and suspends its operation accordingly.

Northern Territory
If an application for grant of exploration is refused, the applicant must be given a notice of determination stating the reasons for the determination. In addition, the unsuccessful applicant has the right to apply for a review of the determination. The applicant must lodge a notice request with the Minister within 14 days after the date on which the applicant was served with the notice of the determination.

Notes
1 Petroleum (Onshore) Act 1991 (NSW) s 3: “appropriate lodgment fee means a lodgment fee determined under s 138A(a)”.
5 Petroleum (Onshore) Act 1991 (NSW) s 12.
10 The map or plan must be drawn in accordance with Petroleum (Onshore) Regulation 2007 (NSW) cl 4.
15 Petroleum (Onshore) Regulation 2007 (NSW) cl 13.
20 Work program must comply with Petroleum (Onshore) Regulation 2007 (NSW) cl 5.
30 Petroleum (Onshore) Regulation 2007 (NSW) cl 15.
45 Petroleum Act 1998 (Vic) s 20A.
To be provided pursuant to Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 488.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 40.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 40(2).

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 41.

An eligible person is (a) an adult; or (b) a company or a registered body under the Corporations Act 2001 (Cth); or (c) a government owned corporation. Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 19.

Petroleum and Gas (Production and Safety) Act 2004 (Qld), s 38(2).

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 38(3).

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 37. The requirements for the initial work program are set out in s 48 of Petroleum and Gas (Production and Safety) Act 2004 (Qld) and s 13 of the Petroleum and Gas (Production and Safety) Regulation 2004 (Qld).

Petroleum and Geothermal Energy Resources Act 1967 (WA) s 30. The Petroleum and Geothermal Energy Resources Act 1967 (WA) was amended by the Petroleum and Energy Legislation Amendment Act 2010, which came into operation on 25 May 2011, primarily for the purpose of bringing it into line with recent amendments to the petroleum common mining code which applies to offshore waters under Commonwealth law.


Petroleum and Geothermal Energy Resources Act 1967 (WA) ss 33(4) and 34.

Petroleum Act 2000 (SA) s 65.

Petroleum Act 2000 (SA) s 23.

Petroleum Act 1984 (NT) s 16.

Petroleum Act 1984 (NT) s 16(2).

Petroleum (Onshore) Act 1991 (NSW) s 16(1) and (3).

Petroleum (Onshore) Act 1991 (NSW) s 16(3).

Petroleum Act 1998 (Vic) s 22.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 44.

Petroleum and Gas (Production And Safety) Bill 2004 (Qld) Explanatory Notes.

Petroleum Act 2000 (SA) s 92.


Petroleum Act 1967 (WA) s 36(1), and s 103 dealing with payment by instalments.

Petroleum Act 1984 (NT) ss 16 and 20.

Petroleum (Onshore) Act 1991 (NSW) s 23. An example for a condition imposed by the regulations is the condition under Petroleum (Onshore) Regulation 2007 cl 10 requiring the holder of a petroleum title who wishes to vary the work program in force in respect of the title to lodge a submission with the Minister providing adequate details of the variation proposed to be made and setting out the reasons for making it.

Petroleum (Onshore) Act 1991 (NSW) s 23.

Petroleum (Onshore) Act 1991 (NSW) s 23(4).

Petroleum (Onshore) Act 1991 (NSW) s 16.

Petroleum Act 1998 (Vic) s 100.

Petroleum Act 1998 (Vic) s 101. This condition cannot be varied except under Div 5.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 65.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 72.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 73.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 74.

Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 75.
235 Petroleum and Gas (Production and Safety) Act 2004 (Qld) ss 77 and 78.
240 Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 79.
245 Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 6.
250 Petroleum and Gas (Production and Safety) Act 2004 (Qld) Pt 4, Ch 2.
255 Petroleum and Gas (Production and Safety) Act 2004 (Qld) Pt 10 of Ch 2.
260 Petroleum and Gas (Production and Safety) Act 2004 (Qld) Div 4, Pt 4 of Ch 3.
265 Petroleum and Gas (Production and Safety) Act 2004 (Qld) Pt 5 of Ch 3A.
270 Petroleum and Gas (Production and Safety) Act 2004 (Qld) Ch 5 (including requirements for entry into private land).
275 Petroleum Act 1967 (WA) s 43.
280 Petroleum Act 1967 (WA) s 43(2).
285 Petroleum Act 2000 (SA) s 73.
290 Petroleum Act 2000 (SA) s 74.
295 Petroleum Act 2000 (SA) s 74(2).
300 Petroleum Act 2000 (SA) s 74(3)(a).
305 Petroleum Act 2000 (SA) s 75.
310 Petroleum Act 1984 (NT) s 27.
315 Petroleum (Onshore) Act 1991 (NSW) s 25(1). Section 25(2) further clarifies that the grant of a petroleum title may not be reviewed under any other Act. This means that the decision to grant a petroleum title will not be subject to the laws authorising the review of administrative decisions (eg the Administrative Decisions Tribunal Act 1997 (NSW)). Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 54.
320 Petroleum and Gas (Production and Safety) Act 2004 (Qld) s 54.
325 Petroleum Act 2000 (SA) s 125.
335 Petroleum Act 1984 (NT) s 25(6) and Div 6.

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