Tenements and Titles

Minerals

TYPES OF TENEMENTS

[130,010] Introductory comments

Despite government ownership of most mineral resources, all states and the Northern Territory engage private enterprise rather than state corporations or authorities to carry out exploration and mining activities. The states and the Northern Territory have established statutory licensing regimes and title to mining tenements in each jurisdiction lies in the grant of title under the relevant state and territory legislation.

Although the details of the regimes differ somewhat from state to state (and the Northern Territory), there are common features.

All regimes comprise at least two stages; exploration and mining (or production). Some regimes also include a third, intermediate stage, referred to as retention. The third stage permits retention of title after the discovery of minerals until production is commercially feasible.

Most regimes also include separate system for small-scale individual prospecting and mining, often referred to as prospecting. In the exploration phase, for example, these licences are known as either prospecting permits/licences or miner’s rights. Generally, titles designed for small-scale operations restrict the amount of materials permitted to be removed, the technology able to be used and the area of the title.

[130,210] Tenement types by phase

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<td>NT</td>
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### Jurisdiction | Tenement
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Tas | Prospecting licence  
Exploration licence  
Special exploration licence

**Development/retention phase**

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<td>Western Australia</td>
<td>Retention licence</td>
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**Production phase**

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<th>Tenement</th>
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<tr>
<td>Western Australia</td>
<td>Mining lease</td>
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</table>
| Queensland            | Mining claim (for minerals other than coal)  
|                       | Mining lease                      |
| New South Wales       | Mineral claim                     |
|                       | Mining lease                      |
| Northern Territory    | Mining claim                      |
|                       | Mineral lease                     |
|                       | Extractive mineral lease (mining of soil, sand, gravel clay, stone used in ceramics manufacture or construction)  
|                       | Extractive mineral permit         |
| South Australia       | Mineral claim                     |
|                       | Mining lease                      |
|                       | Precious stones claim (opal)      |
|                       | Opal development lease            |
| Victoria              | Mining licence                    |
| Tasmania              | Mining lease                      |

**HOW TO APPLY**

**Introductory comments**

In each state and territory, except for parts of NSW, minerals are the property of the Crown in right of the state or territory. In NSW, for historical reasons, some minerals are still privately owned. Each state and territory has its own mining legislation which regulates the application for and obtaining of mineral tenements.

However, even in NSW, all prospecting and mining for minerals prescribed by the regulations, whether privately or publicly owned, now require an authorisation under the Mining Act 1992 (NSW). Prior to 15 November 2010, certain areas were held under Private Mining Agreements (PMAs) under the provisions of the Mining Act 1992 (NSW). These provisions were repealed following the commencement of the Mining Amendment Act 2008 (NSW). Savings provisions allow PMAs to continue for a period of 12 months from 15 November 2010 to allow the mineral owner to apply for an authorisation to continue their operations.
Some mining tenements (but not all) require applicants to “mark out” the area of a proposed tenement as part of the application process. Generally, the marking out requirements have been interpreted strictly by the courts. However, it is generally accepted that title is not conferred by marking out; rather title is conferred by grant of tenement. Consequently, any defects in marking out are cured by subsequent grant of title.

Most state and territorial departments responsible for administering the mining legislation now host websites that provide information on applying for tenements, including the relevant forms, areas over which tenements may be applied for, areas over which tenements currently exist and contact details.

Western Australia

General conditions (applicable to more than one licence)

An application for a licence must be in the prescribed form, lodged in the prescribed manner and accompanied by:

- the prescribed rent for the year;
- the prescribed application fee.¹

An applicant for a licence must, when requested, provide such further information as may be required, excluding information or evidence relating to assays or other results of any testing or sampling that may have been carried out.⁵

For each mining tenement application, the applicant must cause an advertisement (as prescribed) to be published in a newspaper or newspapers and on a day of the week nominated by the Director General within 14 days of the date of the application.

Prospecting licence (PL)

Any person may apply for a PL and a person may be granted more than one PL.

The PL applicant must mark out the PL area in accordance with the Mining Act 1978 (WA) and Mining Regulations 1981 (WA). The maximum area of a PL is 200 hectares. No minimum area is specified.

Security is required to be lodged in the amount of $5000 for compliance with the licence conditions (reg 112).

A warden or the mining registrar is empowered to grant a PL. An application only comes before a warden if a notice of objection has been lodged. An applicant may appeal a warden or mining registrar’s refusal to grant a PL or the grant of a PL on unreasonable conditions to the Minister.

Special prospecting licence (SPL)

Any individual may apply for an SPL, however a company may not apply.

The same application that applies to a prospecting licence (PL) also applies to an SPL, except that:

- where the SPL is in respect of land that is already subject to a PL or exploration licence (EL) (primary tenement), then:
  - the PL or EL must have been in force for at least 12 months;
  - without the prior consent of the PL holder, only one SPL can be applied for;
  - only 1 SPL for every 200 hectares aggregate can be applied for within an EL area, unless the holder of the EL gives written consent;
- where the SPL is in respect of land that is already subject to a primary tenement that is an ML, then:
before applying the consent of the primary tenement holder must be obtained; 
there is no need to wait 12 months before applying.
The maximum area of an SPL is 10 hectares.

Exploration licence (EL)
An individual or company may apply for an EL.
In addition to the general requirements specified above, the application must:
• include a statement specifying:
— proposed exploration method; 
— details of proposed work program and expenditure amounts; 
— technical and financial resources available; 
• identify the blocks applied for;\(^1\) 
• not be marked out.
In general, an EL may be granted for areas of land up to 70 blocks, except in areas not designated minerals areas, where the maximum number is 200 blocks.
The same security is payable with respect to an EL as with respect to a PL.
An EL is only considered by a warden if an objection has been lodged to it and not withdrawn.
Only the minister may award an EL, regardless of whether a warden has recommended the grant or refusal of the EL.

Retention licence (RL)
The holder of an exploration licence (EL), prospecting licence (PL) or mining licence (ML) may apply for a retention licence (RL) (by following the general requirements above).
A RL may be granted in respect of the whole or any part of land within the boundaries of a primary tenement.
There is no maximum area.
An RL application is only considered by a warden if an objection has been lodged to it and not withdrawn.
Only the minister may award an RL, regardless of whether a warden has recommended the grant or refusal of the RL. The minister may not grant an RL unless the minister is satisfied that mining of an identified resource on the land in respect of which the RL is sought, is for the time being impracticable.

Mining licence (ML)
Subject to the Mining Act 1978 (WA), the conditions of the tenement (if applicable) and while the tenement continues in force, the holder of a prospecting licence (PL), an special purpose licence (SPL) or an exploration licence (EL) enjoys the right to apply for and have granted one or more MLs or general purpose leases (GPLs) the subject of the land.
An application for a ML must be accompanied by a mining proposal or a statement and a mineralisation report prepared by a qualified person. The statement must set out information regarding the mining operation likely to be carried out including:
• when mining is likely to commence; 
— the most likely method of mining; and 
• the location, and the area, of land that is likely to be required for the operation of the plant, machinery and equipment and for the other activities associated with those mining operations.
An ML application is only considered by a warden if an objection has been lodged to it and not withdrawn.

Only the minister may award an ML, regardless of whether a warden has recommended the grant or refusal of the ML. If the ML application is accompanied by a statement and a mineralisation report, the minister cannot grant the application if the Director, Geological Survey's report states there is no significant mineralisation.

There is no appeal from the minister’s decision to grant or refuse an ML, except for judicial review of an administrative action.

**Special purpose licence (SPL)**

A statement must accompany the application to include either a development and construction proposal or a statement setting out specific intentions for the SPL.

**General purpose lease (GPL)**

The minister may, following a recommendation by the warden or mining registrar, grant a GPL to be used with respect to mining operations on such terms and conditions as the minister considers reasonable. The maximum area is 10 hectares unless the minister considers that a larger area is required.

**Miscellaneous licence**

The general provisions above, apply to the application for a miscellaneous licence. The area of a miscellaneous licence must be marked out. There is no limit to the number of licences a person or company may hold.

**Notes**

1 See s 41(1) for a PL or SPL; see s 58(1) for an EL; see s 74 for ML.

5 See s 58(3) for ELs, s 41(3) for PLs and SPLs.

10 To define the area of an EL, the land of Western Australia is divided into “blocks”.

**Queensland**

**General criteria applicable to all applications (unless specified otherwise)**

The licence instrument contains all the key terms and conditions, however, a licence holder must also comply with the Mineral Resources Act 1989 (Qld) (the MRA).

A licence is applied for by lodging the prescribed forms, paying the prescribed rent and application fee and generally including the applicant(s) address details, specifying the minerals in respect of which the licence is sought, identifying the land over which the licence is sought (including the boundaries), specifying the technical and financial resources available to the applicant(s) and including a description of the proposed work program.

A licence under the MRA may only be granted to an “eligible person”. An eligible person includes an adult, a company, a local government area and an educational institution.

**Prospecting permit (PP)**

A PP may only be issued in the name of a single eligible person.

In addition to the general requirements above, the application for a parcel PP must be accompanied by a sketch and description (or other acceptable means) of the land over which the PP is sought and include the name and address of each owner and occupier over which the parcel PP and any access routes is proposed.
Mining claim (claim)
A person may only apply for a claim over land already held by that person under an existing prospecting permit (PP).
A mining claim may be granted in respect of any specified minerals except for coal.
The area and shape of a claim must conform to certain specifications.
A person may not, at any time, have a direct or indirect interest in more than two claims.
Before applying for a claim, it must be marked out in the prescribed manner and the application for a claim must be lodged within 5 days of its marking out.

Exploration permit (EP)
In addition to the general criteria applicable to all licence applications, an applicant for an EP must also include: details of exploration data already captured by the applicant in relation to that land; and the resources proposed to be committed to the exploration work.
A person may not apply for an EP within 2 months of that land ceasing to be subject to an EP.

Mineral Development licence (MDL)
Only a current holder of an exploration permit (EP) or a mining lease (ML) may apply for an MDL in respect of land that comprises the EP or an ML.
In addition to the general criteria applicable to all licence applications, a statement must be included with the application giving detailed description and technical particulars of the mineral occurrence the subject of the application and the resources proposed to be committed to the work program.

Mining lease (ML)
Unless otherwise approved by the minister, only current holders of an exploration permit (EP), prospecting permit (PP), or mineral development licence (MDL) may apply for a ML in respect of the mineral for which the licence is held.
In addition to the general criteria applicable to all licence applications, before lodging an application for an ML, the proposed area of the ML must be marked out in accordance with the Mineral Resources Act 1989 (Qld) (the MRA), and the application for an ML must be lodged within 5 days of the marking out.
Included in the application must also be the proposed term of the ML, a statement (acceptable to the mining registrar) outlining the proposed mining program, its method of operation, estimating when operations will start, if a mining program is not proposed, outlining the use proposed for the land and the commencement date and the proposed infrastructure.
Before a ML is granted, the applicant must agree to compensate landowners.
The minister may, at their discretion, and in compliance with the MRA, grant or refuse to grant an ML.

[131,010] New South Wales

Common terms for applying for or grant of tenements
All tenements under the regime in NSW are granted at the discretion of the minister and cannot be granted over land that is already the subject of a tenement for that specific mineral without the written consent of the holder/applicant of that prior tenement.
The Mining Act 1992 (NSW) (the Mining Act), which governs the grant of mining tenements in NSW, also limits the holders of tenements from starting prospecting operations in an “exempted area” without first obtaining the minister’s written consent. An “exempted area” under the Mining Act are lands set aside for public purposes, such as travelling stock reserves, road reserves, water supply reserves, state forests, public reserves and permanent corridors.

The governor may also constitute any land as a minerals allocation area for all minerals, for specified minerals and more than one mineral allocation area may be specified in respect of the same land.

Without the minister’s consent, a person may not apply for a tenement in respect of land for 2 years after the cancellation or refusal of that tenement over that land.

The applicant for a tenement must arrange for notice of the application to be published in a newspaper generally circulating in NSW within 14 days of lodging the application.

Exploration licence (EL)
Any person may apply for an EL.

The minister’s consent is required before applying for an EL in respect of a mineral in an allocated mineral in a minerals allocation area.

The EL application must specify the minerals to be explored and be accompanied by the required information and fee. Information to be included in an application includes a description of the land, details of available financial and technical resources, details of the proposed program of work, the proposed amount of expenditure.

The minister may also invite tenders for the grant of ELs in relation to minerals in a minerals allocation area.

The decision-maker may in their discretion either grant or refuse to grant the EL.

Assessment lease (AL)
Unless already subject to an existing tenement, any person may apply for an AL.

The minister’s consent is required before applying for an AL in respect of an allocated mineral in a minerals allocation area, unless the applicant already holds an exploration licence (EL) or mining lease (ML) in respect of that mineral over that land.

The AL application must include the same information required for the EL application, except that in addition to that information, an AL application must also include an assessment of the mineral bearing capacity of land the subject of the application and the extent of any mineral deposits on that land and details of any proposed marketing program or environmental study.

The decision maker of the AL application may exclude land from assessment in the AL application.

The decision maker has discretion, in accordance with the Mining Act, to grant or to refuse to grant an AL application.

Mining lease (ML)
Any person may apply for a ML.

The minister’s consent is required before applying for an ML in respect of an allocated mineral in a minerals allocation area, unless the applicant already holds an exploration licence (EL) or assessment lease (AL) in respect of that mineral over that land. If no tenement exists in that area, the minister may call for tenders for people to apply for the ML.

The ML application must include the same information required for an EL application,
except that in addition to that information, an ML application must also include an assessment of the mineral bearing capacity of land the subject of the application and the extent of any mineral deposits on that land.

Compliance with the public consultation process is required before a ML can be granted.

The minister has discretion whether or not to grant the ML.

Opal prospecking licence (OPL)

An OPL can only be granted over lands defined as an “opal prospecting block” within an area designated under the Mining Act 1992 (NSW) as an “opal prospecting area”.

Any person may apply for an OPL over an opal prospecting block by lodging an application in writing with the Director-General attaching: the fee prescribed by regulations and any information prescribed by regulations.

If more than one application is lodged in respect of the same opal prospecting block, the applications are to be dealt with in the order in which they were lodged, or if they were lodged simultaneously, as prescribed by regulation.

An OPL may be granted or refused in the Director-General’s discretion.

Mining claim (claim)

The Mining Act 1992 (NSW) makes provision for the creation of Mineral Claims Districts (MCD). Special conditions approved by the minister and advertised in the Government Gazette apply to mineral claims granted over land within a district.

In addition to the requirements above, before applying for a claim, a person must first:

• mark out the area of land the subject of the claim application and prepare a plan of the area; and

• notify all affected landholders.

A claim may be granted or refused in the discretion of the Director-General.
• fill in or render safe all holes, pits, trenches and other disturbances to the land made while prospecting which would likely endanger an animal or person;
• take all necessary steps to prevent fire, damage to trees and other property and to prevent damage to any property or damage to livestock;
• comply with any other conditions imposed by the licence grant instrument; and
• comply with the minimum expenditure and work program conditions in the licence

Prospecting licence (PL)
A PL holder may, subject to the licence conditions:
• enter and re-enter the land the subject of the PL, as necessary
• prospect, subject to the licence conditions, including digging pits, trenches and holes, and sinking bores and tunnels to the extent necessary;
• or disturb up to 500 tonnes of material from the ground, including overburden;
• to apply for, and, subject to the Mining Act 1978 (WA), have granted to it one or more mining or general purpose leases.

Special prospecting licence (SPL)
A SPL holder may:
• prospect for gold only;
• remove up to 50 tonnes of material, without special ministerial approval;
• carry out activities to the following depths:
  — 50m if not specified; or
  — negotiated between a holder of a special prospecting licence and the underlying primary tenement holder to a depth which is less than 50m below the surface; or
  — the minister may agree to a depth that is greater than 50m.

If the primary tenement is forfeited, expires or is surrendered before the SPL, the SPL becomes a normal prospecting licence with no depth restriction on activities.
An SPL holder is subject to the same obligations as a prospecting licence (PL) holder (including the general obligations).

Exploration licence (EL)
A EL holder is authorised to:
• enter the land for the purposes of exploration for minerals with employees, contractors and such vehicles, equipment and machinery as may be necessary;
• excavate, extract or remove earth, soil, rock, stone fluid or mineral bearing substances not exceeding 1,000 tonnes over the term of the licence, or such greater tonnage approved by the Minister.
An EL holder must comply with the general obligations set out above.

Retention licence (RL)
A RL holder is authorised to carry out the same work as the holder of an exploration licence (EL). It is “holding” title for a mineral resource that has been identified but is not able to be further explored or mined.

Mining licence (ML)
The holder of a ML is permitted, subject to the licence conditions and the Mining Act 1978 (WA), to work and mine the land, take and remove any minerals (except for iron
ore, unless expressly authorised) and dispose of them, take and divert water subject to the
drances in Water and Irrigation Act 1914 (WA), and do all things necessary to effectively
carry out mining operations in, on or under the land. Note, that further approvals are
generally required before production of minerals may start, including approvals in respect
of environmental impact.

**Special purpose lease**

A SPL is for purposes directly connected with mining operations such as operating
machinery, depositing or treating tailings or for prescribed purposes.

**General purpose lease (GPL)**

A GPL entitles its holder, and their agents and employees, to the exclusive occupation
of the land for one or more permitted purposes. These include erecting, placing and
operating machinery in connection with mining operations, depositing or treating of
minerals or tailings and use of land for any other specified purpose directly connected
with mining operations.

Standard conditions include the requirement to pay rent, to use the land only for the
specified purpose, to lodge periodical reports and to report any significant discovery of
minerals.

An application for a GPL is determined in the same manner as for a mining
licence (ML).

**Miscellaneous licence**

A miscellaneous licence is for purposes such as a road, pipeline, water, as prescribed in
the regulations.

**Queensland**

**Common rights and obligations**

Each tenement requires its holders to:

- carry out improvement restoration to the tenement area (and if necessary, remove
  all equipment and plant on the land the subject of a tenement);
- (if required) pay royalty, rent, security;
- use the land for the purpose for which the tenement was granted in accordance
  with the conditions of the tenement and the MRA;
- lodge reports and give all information (as required).

**Prospecting Permit (PP)**

A PP entitles the holder to prospect for and/or hand-mine for minerals (excluding coal)
and/or peg a mining lease or mining claim on the available land specified.

There are two types of prospecting permits:

- a parcel prospecting permit can be granted for a particular parcel for a term of
  3 months;
- a district prospecting permit:
  — can be granted for all available land within a mining district for a term of
    1–12 months;
  — is subject to the holder obtaining the written consent of the land owner for
    access to occupied land.

In addition to the common conditions described above:
• a mining registrar may from time to time by notice in writing vary any condition imposed by the mining registrar (as long as it is consistent with a relevant environmental condition).

**Mining Claim (Claim)**

A mining claim is granted to holders of prospecting permits to carry out small-scale operations with limited use of machinery, can be up to one hectare in area, entitles the holder to prospect and hand-mine for specified minerals and is granted for minerals other than coal.

In addition to the common conditions described above, a claim holder may not erect any permanent building or any structure on the claim area.

**Exploration permit (EP)**

An EP confers upon its holder the rights, subject to conditions to enter onto the land the subject of the EP, and explore for the minerals specified in the EP.

The minister will include as a condition of all EPs that the holder comply with minimum expenditure conditions.

**Mineral Development licence (MDL)**

A MDL allows its holder to hold tenure over an identified mineral resource for a specified period until conditions (for example, market, economic or technology) are favourable to develop the resource.

Subject to the terms of the licence, an MDL holder has the right to undertake activities to progress the evaluation of the economic and technical feasibility of developing the discovered resource, including geological/geophysical studies, mining feasibility studies, metallurgical testing and marketing, engineering and design studies and environmental studies.

In addition, the minister may direct a MDL holder to apply for a mining lease (ML) if the minister believes that operations should start on the land the subject of the MDL. If the MDL is unable to convince the minister that operations should not start, then the MDL holder must either apply for a ML or the minister may, in their discretion, cancel the MDL.

**Mining lease (ML)**

A holder of a ML is entitled to enter and be within and upon land comprising the ML for the purposes for which the ML is granted. This includes the right to machine-mine specified minerals and carry out activities associated with mining or promoting mining activities.

A ML also confers property rights in respect of the minerals that are mined from the ML area.

**New South Wales**

**Common rights and obligations**

Generally, the licence entitles its holder to carry out the activities specified in the licence, whether that be exploring for specified minerals or mining them.

If an application is made by the holder of an exploratory licence (EL) for an assessment lease (AL) or a mining lease (ML), or by the holder of an AL for an ML, the relevant licence continues in force until the AL or ML (as applicable) application is dealt with, limited to 2 years.
The Minister may amend conditions of an tenement relating to the provision or the amount of security.

A tenement may be granted conditionally or unconditionally. Conditions may include a condition requiring the payment of royalty to the minister (except for (mineral owner) tenement) and a condition with respect to cores and samples obtained through drilling.

**Exploration licence (EL)**

The holder of an EL is allowed to explore for the minerals specified in the EL, in accordance with the conditions of the EL.

The holder of an EL may not exercise any rights granted by an EL within a certain distance of dwelling houses, significant improvements or gardens without the prior consent of the owner or, in the case of a dwelling house the owner and occupier.

The Mining Act also includes a class of EL known as “low-impact” ELs. Before being granted a low-impact EL, notice must be served on: registered native title bodies corporate, registered native title claimants and Ntscorp Ltd (at least 4 months’ notice required). The minister by Gazettal-notice determines what activities may be undertaken in a low-impact EL, being activities unlikely to have a significant impact on the land and prospecting operations are limited to those operations decided by the minister.

**Assessment lease (AL)**

The AL holder is allowed to continue prospecting operations and to recover minerals in the course of assessing the viability of commercial mining.

It is designed to allow retention of rights over an area in which a significant mineral deposit has been identified, but in respect of which mining is not commercially viable in the short term but there is a reasonable prospect that it will be in the longer term.

There is no minimum or maximum size for an AL and generally there are no fixed expenditure conditions and no rent is payable.

**Mining lease (ML)**

The minister grants an ML for a specified mineral or minerals. The ML authorises the holder (and its agents) to enter onto the land the subject of the ML, to prospect and mine for the minerals specified in the ML and to carry out primary treatment operations necessary to separate the minerals from the ore and carry out any mining purpose. The holder of an ML may also fence or any part of the mining area.

There is no minimum or maximum area of an ML.

The holder of an ML for coal may apply to include petroleum in the ML by lodging an application with the Director-General.

The grant of the ML is conditional on the continuous operation of the mine (unless authorised by the minister).

Other conditions may include:

- payment of security to secure the fulfilment of obligations;
- construction of a fence around any unfenced shaft, machinery or other surface works;
- the carrying out or discontinuance of a specific mining purpose;
- a condition proposed by a government agency or directed by the premier during the consultation process.

A subsidence mining management plan must be prepared wherever underground mining is likely to lead to subsidence.
Opal prospecting licence (OPL)
OPLs are granted for the purpose of exploring for opals over opal prospecting blocks (OPBs).
At the end of the term, a report must be submitted covering all prospecting operations.
The holder may only carry out drilling and shaft sinking prospecting operations in the licence area, and may undertake mining operations to recover opals.

Mineral claims (Claim)
Claims permit their holders to prospect for or mine the minerals the subject of the claim, which includes erecting any building or structures, exercising any rights granted by easements, removing timber, stone or gravel from the claim area and carrying out any mining purpose.
The claim must be effectively worked, which means that there must be some work done to extract or find minerals. In addition, there must not be any significant or substantial cessation of operations unless approved by the Director-General.
The claim area must also be rehabilitated before the claim expires or is cancelled.

TERM AND RELINQUISHMENT

Introductory comments
State and territorial mining legislation specifies the manner in which:
• tenements may be surrendered (in part or in whole);
• tenements may be forfeited (usually by breach of the title conditions or the relevant mining act).
It is important to note that in WA, not only the relevant minister may forfeit a tenement for non-compliance with the relevant act or tenement, but third parties may also apply for a tenement to be forfeited where there has been non-compliance with the expenditure requirements of an exploration tenement. The forfeiture system is regarded as a legitimate means of self-regulation of the mining industry; to ensure that tenement holders actively exploit the land the subject of their permits.

Western Australia

Term and renewal

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<tr>
<th>Licence Type</th>
<th>Term and Conditions</th>
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<tbody>
<tr>
<td>PL</td>
<td>4 years, with the provision to extend for one further 4 year period.</td>
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<tr>
<td>SPL</td>
<td>3 months or for any period which is a multiple of 3 months up to a maximum of 4 years. The term granted cannot be extended or renewed.</td>
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<tr>
<td>EL</td>
<td>For ELs applied for before 10 February 2006, the term is 5 years plus possible extension of 2 + 2 years and further periods of 1 year thereafter. At the end of both the third and fourth year of its term, the licensee is required to surrender 50% of the licence. For licences applied after 10 February 2006, the term is 5 years plus possible extension of 5 years and a further period of 2 years thereafter, 40% of ground to be surrendered at the end of year 5.</td>
</tr>
<tr>
<td>RL</td>
<td>Term cannot exceed 5 years and is renewable for further periods up to 5 years.</td>
</tr>
<tr>
<td>ML</td>
<td>21 years and may be renewed for further terms.</td>
</tr>
<tr>
<td>SPL</td>
<td>21 years and may be renewed for further terms.</td>
</tr>
</tbody>
</table>
Forfeiture
The warden on application of the minister, any official or any person, may make an order for forfeiture of a prospecting licence (PL) or miscellaneous licence if, any amount of rent or royalty is owing and remains unpaid, any term of the licence has not been complied with; a report to the Department has not been filed; or the holder of the licence is convicted of an offence under the Mining Act 1978 (WA).

Surrender
A licence holder may apply to surrender its licence by lodging the requisite forms. The holder of an exploration licence (EL) may only surrender part of a block with the prior approval of the minister.

Queensland

Term and renewal

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>Term and renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prospecting permit (PP)</td>
<td>A district PP may be granted for between 1 and 12 months. A parcel PP may be granted for 3 months. Subject to conditions, if a holder of a PP applies for a claim during the term of a PP, the PP continues until determination of the claim application.</td>
</tr>
<tr>
<td>Mining Claim (Claim)</td>
<td>Initial term (unless terminated sooner) is for up to 10 years. If the land the subject of a claim will be needed for another purpose, the claim may be granted on the condition that it is not renewable (either on renewal or first grant). The claim may be renewed for a further term, not to exceed 10 years — there is no limit on the number of renewals — but renewals are not as of right.</td>
</tr>
<tr>
<td>Exploration permit (EP)</td>
<td>An EP can be granted for up to 5 years. There is no limit on the number of renewals — but renewals are not as of right.</td>
</tr>
<tr>
<td>Mineral development licence (MDL)</td>
<td>A MDL may be granted for up to 5 years (or such longer period as the minister approves). There is no limit on the number of renewals — but renewals are not as of right.</td>
</tr>
<tr>
<td>Mining lease (ML)</td>
<td>A ML is not restricted by the Mineral Resources Act 1989 (Qld) (the MRA) to any particular term. The term is a function of the mineral reserves and the projected mine life.</td>
</tr>
</tbody>
</table>

Surrender
Subject to the conditions described below, a holder of a tenement may apply to surrender a tenement at any time prior to the expiry of its term.

Prospecting permits (PP)
The holder of a PP may surrender the PP by notice in writing to the mining register.

Mining claim (claim) and mining lease (ML)
The holder of a claim or ML may surrender their tenement by lodging with the mining registrar a notice of surrender in the approved form; a duly completed royalty return together with the royalty payable to the Crown as or evidence of payment (under an ML only if the whole land is surrendered) and the fee prescribed under a regulation.
Exploration permit (EP), Mineral development licence (MDL)

The holder of an EP or an MDL may, by notice in writing, surrender an EP or MDL. The Minister may only accept a surrender of an EP or an MDL if satisfied the EP or MDL holder has carried out improvement restoration and the relevant environmental authority has been cancelled or surrendered under the Environmental Protection Act.

Cancellation and forfeiture

Prospecting licence (PP)

A mining registrar may at any time, by notice in writing, cancel the permit and must give reasons for cancellation.

Mining claim (claim)

A mining registrar may cancel a claim (in their discretion) if the mining registrar considers that the claim holder has:

• carried out activities that are not bona fide for the purposes for which the claim was granted;
• failed to pay moneys payable under the claim by the due date (other than rental);
• failed to comply with any condition that of the claim.

Before cancelling the claim for all causes except non payment of rent or penalty, the mining registrar must serve a show cause notice on the claim holder inviting the claim holder to show cause within a specified time as to why the claim should not be cancelled.

Exploration permit (EP), mining development licence (MDL) and mining lease (ML)

The minister may (in his or her discretion) cancel an EP, an MDL or an ML if they consider that an EP, MDL or ML holder has:

• carried out activities that are not bona fide for the purposes for which the EP, MDL or ML was granted;
• failed to pay any moneys in relation to the EP, MDL or ML by the due date for payment;
• has failed to comply with any condition of the EP, MDL or ML or as incorporated by the MRA into an EP (including the requirement to notify the minister of a mineral discovery in the case of an EP).

Before cancelling the EP, MDL or ML for all causes except non payment of rent or penalty, the minister must serve a show cause notice on the claim holder inviting the claim holder to show cause within a specified time why the EP, MDL or ML (as the case may be) should not be cancelled.

[134,210] New South Wales

Term and renewal

<table>
<thead>
<tr>
<th>Licence type</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>General conditions</td>
<td>If a licence renewal is applied for as specified in the Mining Act while the licence remains in force, the licence remains in force until the renewal application has been dealt with.</td>
</tr>
</tbody>
</table>
Licence type | Term
---|---
Exploration licence (EL) | The term of an EL is at the discretion of the minister; however, it is typically granted and renewed for periods of 3 to 5 years. The minister cannot grant an EL for a period exceeding 5 years and may renew an EL for a further period of up to 5 years.
Assessment lease (AL) | The term of an AL is at the discretion of the minister however the term cannot exceed 5 years.
Mining lease (ML) | MLs are granted for a term of up to 21 years, unless approved by both the minister and the premier to exceed this period and may renew a ML for a further period of up to 21 years (or a longer period with the approval of the premier).
Opal prospecting licence (OPL) | OPLs are granted for a period of either 28 days or 3 months over designated opal prospecting blocks (OPBs).
Mineral claim (claim) | Claims can be granted for up to 5 years, as determined by the Director-General, except in mineral claims districts (MCDs), where special conditions may specify a shorter period.

Cancellation

A decision-maker may cancel an authority as to the whole or any part of the land to which it relates if:

1. requested by the title holder;
2. the title holder contravenes a provision of the Mining Act or the regulations, does not use the land comprised in the title in good faith for the purposes for which it was granted, contravenes a condition a title, or does not comply with the requirements of any compensation agreement; or
3. a decision-maker reasonably considers that the title holder gave false or misleading information in or in connection with an application or any report;
4. the title holder is convicted of any offence relating to mining or minerals;
5. the land is required for a public purpose.

Before cancelling a title on a ground referred to in para 2, the decision-maker must give written notice of the proposed cancellation and the grounds for it, give the holder a reasonable opportunity to make representations and take any such representations into consideration. Any person aggrieved by a cancellation decision may appeal the decision to the NSW Land and Environment Court. A title holder is only entitled to compensation if the title was cancelled because the land is required for a public purpose — the amount of compensation is for mining improvements made and determined by the minister.
Overlapping tenements

INTRODUCTORY COMMENTS

In recent years, especially with the development of the coal seam gas (CSG) industry on the eastern seaboard of Australia, the issue of multiple uses for the same resource has attracted greater attention. CSG and coal are by their nature co-located resources. The question is who has the right to explore for and produce the resources, where more than one resource is located in the same area or the same resource can be used to produce more than one mineral. For example, the same coal seam can be used to produce CSG or mined for conventional coal. However, in addition to the potential competing interests between coal protagonists and CSG protagonists, proponents of geothermal, carbon capture and storage and underground coal gasification might also be competing over the same land.

Most jurisdictions have amended their existing legislation or passed new legislation to address the multi-industry land-use issue. In Queensland, the issue has received particular attention.

Apart from overlapping tenement issues between competing industries, there are also overlapping tenement issues between mining tenement holders and prospective mining tenement holders. Examples of potential mining tenement conflicts include:

- two parties making an application for an exploration tenement over the same piece of land;
- one party makes an application for an exploration licence and the other makes an application for a mining lease over the same piece of land.

WESTERN AUSTRALIA

[141,010] Priorities under the Mining Act 1978 (WA)

Subject to the Mining Act 1978 (WA), if more than one application is received for a mining tenement (except for a miscellaneous licence) in respect of the same land or any part of it, then the applicant who “first complies with the initial requirement” in relation to their application has the right of priority over every other applicant to have the mining tenement granted. This rule applies to an application for a prospecting licence (PL), exploration licence (EL), mining licence (ML) or general purpose lease (GPL). The minister may, under the Mining Act 1978 (WA), exercise their discretion not to grant an exploration licence or other lease or may refuse an application on public interest grounds.

[141,210] Co-existence of petroleum and geothermal titles

Under the WA Petroleum Act, petroleum titles and geothermal titles may subsist in respect of the same area. It allows for the concept of multipurpose land use by providing that the minister must write to the registered holder of the first title, allowing at least one month’s notice and take into account any matters that the person wishes the minister to consider before a new title is granted. This process is a consultation mechanism rather than a right to veto an application.

[141,410] Co-existence of petroleum and mining titles

The WA legislation does not explicitly address the co-existence or priority of rights between mineral tenement holders or applicants and petroleum tenement holders or applicants. However, overlapping titles can be granted between petroleum and mineral tenement holders.
[141,610] Competing applications under the Mineral Resources Act 1989 (Qld)

The Mineral Resources Act 1989 (Qld) enables the grant of exploration permits (EPs) for either minerals (EPM) or coal (EPC).

An EPC may be granted over the area of a EPM and vice versa.

If a person applies for a mining lease (ML) where there currently exists an exploration permit (EP), mineral development licence (MDL) or another mining lease (ML), then the applicant must obtain the written view of the holder of the other tenement regarding the application. The views must be lodged with the mining registrar on or before the last day of objections, otherwise the applicant must provide a statutory declaration explaining the reasons why the views could not be obtained. The mining registrar may, in its discretion, reject the application for an ML if its area is covered by either an MDL or another ML.

[141,810] Competing or multi-purpose use of land — coal seam gas regime and coal

The coal seam gas regime (CSG regime) is established by Pt 7AA of the Mineral Resources Act 1989 (Qld) and Ch 3 of the Petroleum and Gas (Production and Safety) Act 2004 (Qld).

[142,010] Priority to existing activities

The coal seam gas (CSG) regime gives holders of producing tenements (petroleum leases (PL) (for CSG)) and coal mining leases (ML) priority over the holders of non-producing tenements. Generally, the consent of a producing tenement holder is required before activities can be carried out on non-producing tenements.

In relation to overlapping exploration tenements (e.g., authority to prospect (ATP) over an exploration permit for coal (EPC) or mineral development licence (MDL)) the legislation restricts the conduct of incompatible authorised activities on one tenement if those activities have already started on the other tenement.

[142,210] Mining licence (ML) application over authority to prospect (ATP) / petroleum licence (PL) application over exploration permit for coal (EPC)

The Mineral Resources Act 1989 (Qld) (the MRA) and Petroleum and Gas (Production and Safety) Act 2004 (Qld) prescribe the following general procedure:

- the parties must exchange basic information including a development plan (in relation to the ML or PL applicant) and an outline of the exploration activities carried out or proposed to be carried out (in relation to the other party);
- the parties must use reasonable attempts to negotiate an arrangement between them;
- the holder that has not applied for a production tenement may make submissions about the ML or PL application;
- the Minister must make a decision about whether to give a preference to petroleum development, if the Minister is satisfied of each of the following:
  - there is a resource or reserve of petroleum in the land;
  - the petroleum deposit has been identified under the relevant codes;
  - there is a prescribed level of knowledge about the petroleum deposit;
the location, quantity, quality, geological characteristics and continuity of
the petroleum deposit are known or have been estimated or interpreted
from specific geological evidence and knowledge; and
— there are reasonable prospects for the eventual economic production of
petroleum from the petroleum deposit.

If the minister is not satisfied of the matters set out above, the minister cannot
make a preference decision.

• if the production tenement applicant does not comply with the procedural
requirements, the minister may refuse the application;
• if the holder that has not applied for a production tenement does not comply with
the procedural requirements or does not indicate that it requests a preference
decision, the production tenement application may be considered under the
normal MRA or Petroleum and Gas (Production and Safety) Act 2004 (Qld)
application procedures (as the case may be).

[142,410] Mining licence (ML) application over Prospecting licence
(PL) / Prospecting licence application over mining licence (ML)

An application for a PL over an existing coal or oil shale ML (ie producing tenement)
or vice versa, may only be granted if the applicant has negotiated a coordination
arrangement with the existing production tenement holders. The minister may refuse the
production tenement application in cases where the parties have had reasonable attempts
to reach an arrangement but the existing production tenement holder does not consider
that an arrangement can be made.


The Queensland government has introduced a bill to amend the coal seam gas (CSG)
regime described above in recognition of the long-term nature of coal seam gas (CSG) —
liquefied natural gas (LNG) projects.

[142,810] Retention Declaration Areas for authorities to prospect
(ATPs)

The Bill proposes to introduce the concept of a “retention declaration area” for
authorities to prospect (ATP).

Where reserves and resources within an ATP are required to underpin long-term supply
for a coal seam gas (CSG) — liquefied natural gas (LNG) project, the Bill would allow
an ATP holder to seek a retention declaration which would enable the ATP holder to
satisfy its relinquishment requirements without losing its acreage. The introduction of
retention declarations is intended to give ATP holders an option to retain their tenement
area in circumstances where production is not intended to commence before
relinquishment requirements would ordinarily apply. Retention declarations will remain
subject to the overlapping tenement regime.

[143,010] Grant of prospecting licences (PLs) for coal seam gas
(CSG) — liquefied natural gas (LNG) projects

A PL for delayed production to support a CSG-LNG project will only be granted if it
is made jointly with the overlapping holder, with their written consent, or if a coordination
arrangement is in place, if a coal or oil shale exploration or production licence has been
granted in respect of the same piece of land.
NEW SOUTH WALES

[143,210] Competing applications under the Mining Act 1992 (NSW)

In NSW, two authorities can be granted over the same land as long as the decision maker is satisfied that the grant of the later tenement does not make the exercise of the rights under either tenement impracticable.

Unless the prior applicant or tenement holder consents, a tenement may not be granted over land:

• the subject of an exploration licence (EL) or an EL application, where the tenement and the EL are in respect of the same minerals;
• the subject of a prior application or an existing mining licence (ML), assessment lease (AL) or mining claim (MC).

If an application for a tenement is made over land already the subject of an EL (other than EL in respect of which the tenement is sought), the decision maker must notify each EL holder. The EL holder may object to the grant of the tenement, stating the reasons of objection. The decision-maker must take into account the notice of objection when determining the tenement application.

[143,410] Competing or multi-purpose use of land — coal seam gas and coal

Under the Mining Act 1992 (NSW), the holder of a mining lease for coal may apply for the inclusion in the mining lease of petroleum. There is no reciprocal provision in the NSW Petroleum Act. The minister may not accept the application if the land to which the application relates is subject to an existing petroleum exploration licence or a petroleum mining lease granted under the NSW Petroleum Act.

[The next page is 220,001]