Northern Territory Mineral Titles Regulation
Contents

Introduction - Northern Territory mineral titles ........................................................................................ 3

1. The Mineral Titles Act .................................................................................................................................. 4
   1.1 A new Act .................................................................................................................................................. 4
   1.2 Significant changes .................................................................................................................................. 4
   1.3 Types of mineral titles ......................................................................................................................... 5
   1.4 Ownership of minerals within the Territory ....................................................................................... 5
   1.5 Extractive and non-extractive minerals ............................................................................................... 6
   1.6 Status of titles granted, or applied for, under the Mining Act ............................................................... 6

2. Exploration titles and preliminary exploration ......................................................................................... 9
   2.1 Preliminary exploration ........................................................................................................................ 9
   2.2 Mineral Exploration Licence (EL) ....................................................................................................... 10
   2.3 Mineral Exploration Licence in Retention (ELR) ............................................................................... 13
   2.4 Extractive Mineral Exploration Licence (EMEL) ................................................................................ 15

3. Mineral production titles ............................................................................................................................ 16
   3.1 Mineral Lease (ML) ............................................................................................................................. 16
   3.2 Extractive Mineral Permit (EMP) ...................................................................................................... 18
   3.3 Extractive Mineral Lease (EML) ......................................................................................................... 18

4. Mineral titles on reserved land - Mineral authority (MA) ......................................................................... 19

5. Access and infrastructure ........................................................................................................................... 20

6. General provisions applying to mineral titles .......................................................................................... 22
   6.1 Applications generally ........................................................................................................................ 22
   6.2 Conditions applying to mineral titles ................................................................................................. 22
   6.3 Expenditure requirements generally .................................................................................................. 23
   6.4 Mineral titles register .......................................................................................................................... 24
   6.5 Transfers and dealings ....................................................................................................................... 25
   6.6 Caveats ............................................................................................................................................... 27
   6.7 Voluntary surrender .......................................................................................................................... 28
   6.8 Cancellation of mineral titles ............................................................................................................ 28
   6.9 Environmental and compensation securities .................................................................................... 28
   6.10 Reserves .......................................................................................................................................... 30
   6.11 Land access issues ............................................................................................................................ 30
   6.12 Royalties ......................................................................................................................................... 31
   6.13 Compliance and penalties for non-compliance ............................................................................... 32

7. Conducting mining operations .................................................................................................................. 32

8. Ratification Acts ........................................................................................................................................ 33

9. Aboriginal Land Rights (Northern Territory) Act .................................................................................. 34
   9.1 Consent required for an EL ................................................................................................................ 34
   9.2 Terms and conditions of an EL ......................................................................................................... 35
   9.3 Cancellation of EL ................................................................................................................................ 35
   9.4 Consent required for a mining interest .............................................................................................. 36
   9.5 Pursuing mining interests ................................................................................................................. 36
   9.6 Cancellation of mining interests ....................................................................................................... 36

10. Native title ............................................................................................................................................... 37
    10.1 Extinguishment of native title and compensation ......................................................................... 37
    10.2 The Native Title Act ....................................................................................................................... 37
    10.3 Future Acts ..................................................................................................................................... 37

11. Aboriginal cultural heritage .................................................................................................................... 37
Introduction - Northern Territory mineral titles

Mining is the Northern Territory's largest industry, and vast areas of the Territory are highly prospective and under-explored. Between 1 July 2004 and 30 June 2010, mining production in the Northern Territory grew by 40.3% per annum driven largely by increasing demand from east Asia.

The primary focus of this paper is mineral titles regulation in the Territory, that was recently overhauled by the newly enacted Mineral Titles Act 2010 (NT) (Mineral Titles Act). The paper provides an overview of Territory laws and regulations in respect of:

- types of mineral titles and the process for applying for, and maintaining, mineral titles;
- the major rights and obligations under the various mineral titles;
- transfers and dealings in mineral titles and registration of dealings;
- dealings with underlying landowners;
- the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth); and
- native title and Aboriginal and cultural heritage issues.

Mineral titles are regulated primarily through:

- the Mineral Titles Act; and
- the Mineral Titles Regulations 2010 (NT) (Mineral Titles Regulations).

The Mineral Titles Act and Mineral Titles Regulations are administered by the Minister for Primary Industry, Fisheries and Resources (the Minister).

In focussing on the regulation of mineral titles, this paper does not consider in detail other important laws that regulate the conducting of exploration and mining activities in the Territory, such as:

- the Mining Management 2001 (NT) that applies to all mining sites and activities and regulates the conducting of mining operations, most importantly from an environmental perspective;
- environmental laws and regulations including the Environmental Assessment Act (NT) and the Environment Protection and Biodiversity Conservation Act 1999 (Cth); and
- laws regulating occupational health and safety in conducting exploration and mining activities, including the Workplace Health and Safety Act 2007 (NT).

For specific advice or further information about the regulation of exploration and mining activities in the Northern Territory, please contact the following Clayton Utz resources law experts:

Brett Cohen  
Partner  
P: +61 8 9426 8462  
M: +61 (0)434 154 196  
E: bcohen@claytonutz.com

Margaret Michaels  
Partner  
P: +61 8 8943 2517  
M: +61 (0)419 816 406  
E: mmichaels@claytonutz.com

Pauline Gartlan  
Special Counsel  
P: +61 8 9426 8235  
M: +61 (0)434 651 092  
E: pgartlan@claytonutz.com
1. The Mineral Titles Act

1.1 A new Act

The Mineral Titles Act commenced on 7 November 2011 and repealed the long standing Mining Act.

According to the Explanatory Memorandum for the Mineral Titles Bill 2010, the aim of the Mineral Titles Act was to introduce a mineral titles regime that encourages active exploration, turn over of land and the active development of known mineral deposits in the Northern Territory, with a view to further strengthening the significant contribution of the resources industry to the Territory’s economy.

While it was acknowledged that the repealed Mining Act remained functional and served its intended purpose of providing a regime for the administration mineral titles, it was observed by the Minister that certain aspects of the repealed Mining Act were outdated. It was also intended that the new Mineral Titles Act provide an opportunity to reformat the legislation, making it easier to read and more logical in approach.

In the course of reviewing the Mining Act, submissions were received from various stakeholders that formed the basis of the booklet "Northern Territory Mining Act - Recommendations for Change" published in March 2008. Many of the recommendations were adopted in the formation of the Mineral Titles Act and the Mineral Titles Regulations.

1.2 Significant changes

Substantial parts of the repealed Mining Act that operated effectively were retained. The more significant changes introduced by the Mineral Titles Act and Mineral Titles Regulations include the following:

- Rationalising or abolishing a range of historical tenements of various types that the Territory Government observed were not being actively explored, mined or were otherwise inactive (see section 1.6).

- The abolition of mineral claims under the repealed Mining Act. The Minister observed in the second reading speech of the Mineral Titles Bill 2010 that activities carried out on a mineral claim are not significantly different to those carried out on a mineral lease. Mineral claims are to be converted to an exploration license or a mineral lease, depending on the use of the mineral claim (see section 1.6(a)).

- A concept of “preliminary exploration” has been introduced, with the intention of further enabling the potential of land to be assessed for future mineral exploration. Explorers may now in certain circumstances conduct exploration activities on land without a mineral title (see section 2.1).

- Mineral exploration licences, that previously could only be renewed for a maximum two terms of two years, may now be renewed for ongoing periods (see section 2.2). Mineral titles generally can be renewed for ongoing periods subject to Ministerial approval. This allows bona fide proponents more time to complete their exploration and feasibility programmes before progressing to mining and development. This is balanced however by more stringent operational conditions, including tighter expenditure requirements and penalties for non-performance (see sections 6.3 and 6.13).

- The Mineral Titles Act provides for a more flexible regime for dealings and the transfer of mineral titles, including a clearer regime for the registration of
agreements and mortgages affecting mineral titles (see section 6.5). For example, unlike under the repealed Mining Act, the Mineral Titles Act permits the transfer of applications relating to mineral titles. The Territory Government has stated that the aim of these changes is to strengthen investor security and provide greater clarity in the rules applying to the transfer of mineral titles.

- Disputes in relation to mineral titles will no longer be heard by the Mining Wardens in the Warden’s Court, that has been abolished. The Land, Planning and Mining Tribunal (the Tribunal) now hears disputes in relation to mineral titles (see section 6.13).

- The introduction of various penalties for non-compliance with conditions of mineral titles or applicable laws or regulations (see section 6.13).

### 1.3 Types of mineral titles

The Mineral Titles Act provides for the following mineral titles:

- mineral exploration licences (EL) - see section 2.2;
- mineral exploration licences in retention (ELR) – see section 2.3;
- extractive mineral exploration licences (EMEL) – see section 2.4;
- mineral leases (ML) – see section 3.1;
- extractive mineral permits (EMP) – see section 3.2;
- extractive mineral leases (EML) – see section 3.3; and
- mineral authorities on reserved land (MA) – see section 4.

### 1.4 Ownership of minerals within the Territory

All minerals located in the Territory (except for certain prescribed substances including uranium) are the property of the Northern Territory Crown.

Section 3 of the Minerals Acquisition Act 1953 (NT) (previously the Minerals Acquisition Ordinance 1953 (NT)) (Minerals Acquisition Act) vested the following in the Crown of the Commonwealth:

"All minerals existing in their natural condition, or in a deposit of waste material obtained from any underground or surface working, on or below the surface of any land in the Territory not being minerals, which, immediately before the commencement of this Act, were the property of the Crown or of the Commonwealth, are, by force of this Act, acquired by, and vested absolutely in, the Crown in right of the Commonwealth."

From 1 July 1978, pursuant to section 69 of the Northern Territory (Self Government) Act 1978 (Cth) the Crown of the Northern Territory holds all the interests of the Commonwealth in the minerals referred to in section 3 of the Minerals Acquisition Act.

The definition of "mineral" in section 2 of the Minerals Acquisition Act includes "all mineral substances, gold, silver, copper, tin and other metals, ores or other substances containing metals or minerals, and gems, precious stones, coal, shale, mineral oils and valuable earths and substances."
Uranium however is treated differently from other minerals. The ownership of uranium (and other prescribed substances) in the Territory was vested in the Commonwealth Crown under the Atomic Energy Act 1953 (Cth), and under the Mineral Titles Act the Territory Minister must exercise his powers in relation to prescribed substances in accordance with the advice of the Commonwealth Minister at the time.1

1.5 Extractive and non-extractive minerals

The Mineral Titles Act applies generally to the mining of all minerals other than certain prescribed substances. As under the repealed Mining Act, the Mineral Titles Act distinguishes between non-extractive minerals and extractive minerals, and deals with both substances separately. This is seen as necessary to protect extractive materials required for road construction, maintenance and other infrastructure.

(a) Non-extractive minerals

A non-extractive mineral includes the following substances:

- a naturally occurring substance obtainable by mining an inorganic element or compound or an organic carbonate compound;
- coal, lignite, oil shale or salt; or
- any other substance prescribed by regulation to be a mineral,

but does not include any extractive minerals, petroleum (which is independently regulated), water or any other substance prescribed by regulation.2

(b) Extractive minerals

In contrast, an extractive mineral includes soil, sand, gravel, rock or peat and any other substance contained in the Mineral Titles Regulations.3 The main minerals produced from these extractive minerals are fine and coarse sand, natural gravel, construction rock, crushed rock, porcelainite, clay, soil and dimension stone.

A large portion of the Territory's extractive mineral production happens within the Darwin region and this is relevant as it ensures that low-cost materials are available to support construction of new industrial plants, urban development and infrastructure as the city of Darwin expands.4 Demand for extractive materials to support this development is expected to accelerate significantly.

1.6 Status of titles granted, or applied for, under the Mining Act

The commencement of the Mineral Titles Act triggered transitional provisions to change over, convert and deal with any existing mineral titles and applications for mineral titles which were granted or were applied for under the Mining Act.

---

1 s187 of the Mineral Titles Act.

2 s9 of the Mineral Titles Act.

3 s10 of the Mineral Titles Act.

These provisions also provide for mechanisms to deal with inconsistencies between the two Acts or an existing mineral title or application and the Mineral Titles Act.

The principles for transition of titles and applications under section 194(2) of the Mineral Titles Act include:

- to achieve consistency of mineral titles held under the Mineral Titles Act;
- to maximise the potential of exploration for, and extraction and processing of, minerals or extractive minerals by ensuring those activities are conducted under appropriate mineral titles;
- to assess corresponding mineral titles and ensure they authorise appropriate activities to be conducted under the Mineral Titles Act;
- to facilitate the conversion of:
  (i) non-compliant titles to the appropriate mineral titles; and
  (ii) non-compliant existing interests to the appropriate mineral titles or other appropriate interests;
- to consult with holders of non-compliant titles or non-compliant existing interests to achieve appropriate conversions of the titles or interests; and
- to allow sufficient time to enable the holders of non-compliant titles or non-compliant existing interests to meet requirements under the Mineral Titles Act.
(a) Existing titles

As indicated in the table below, upon the commencement of the Mineral Titles Act, some mining interests that were granted under the repealed Mining Act were automatically converted into new mineral titles under the Mineral Titles Act.⁵

<table>
<thead>
<tr>
<th>Old title under the Mining Act</th>
<th>New title under the Mineral Titles Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>exploration licence</td>
<td>exploration licence</td>
</tr>
<tr>
<td>exploration retention licence</td>
<td>exploration retention licence</td>
</tr>
<tr>
<td>mineral lease</td>
<td>mineral lease</td>
</tr>
<tr>
<td>rights granted pursuant to section 61(2) of the Mining Act</td>
<td>mineral lease</td>
</tr>
<tr>
<td>mining lease or special mineral lease granted prior to the commencement of the Mining Act and contemplated by section 191(9) or 191(12) of the Mining Act</td>
<td>mineral lease</td>
</tr>
<tr>
<td>extractive mineral permit</td>
<td>extractive mineral permit</td>
</tr>
<tr>
<td>extractive mineral lease</td>
<td>extractive mineral lease</td>
</tr>
<tr>
<td>miner's right</td>
<td>mineral authority</td>
</tr>
</tbody>
</table>

The automatic conversion process does not apply to mineral titles granted for certain projects, including Rio Tinto's Alcan Gove bauxite project and Xstrata's McArthur River project.

Where a corresponding mineral title granted under the Mining Act does not fully comply with a requirements of the Mineral Titles Act, the Minister may: ⁶

- give the title holder a notice recommending a way to achieve compliance;
- require the title holder to take a specified action to achieve compliance; or
- if the non-compliance is such that it may be appropriate to convert the corresponding mineral title to another type of mineral title, give the holder of the non-compliant title a notice of conversion.

Where an interest granted under the Mining Act is non-compliant under the Mineral Titles Act, the interest continues in force and the Mineral Titles Act has no effect until the Minister converts the title, accepts a surrender of the title or cancels the title. An example of a non-compliant interest is a mineral claim granted under the Mining Act prior to the commencement of the Mineral Titles Act.

(b) Existing applications

All applications for mineral titles which were made under the Mining Act continue as though they were made under the Mineral Titles Act.⁷

---

⁵ s202(1) of the Mineral Titles Act.
⁶ s203 of the Mineral Titles Act.
Where an application for a grant or renewal is for a mineral title or interest which does not exist under the Mineral Titles Act, the Minister will deal with the application by reference to the Mineral Titles Regulations or to the transition provisions under the Mineral Titles Act.  

2. **Exploration titles and preliminary exploration**

2.1 **Preliminary exploration**

So as to further enable land to be assessed for future mineral exploration potential, Part 2 of the Mineral Titles Act and Part 2 of the Mineral Titles Regulations introduce a regime for mineral explorers to enter onto land to conduct "preliminary exploration" without having a mineral title.

(a) **Permitted preliminary exploration activities**

Preliminary exploration of land may include any of the following activities that do not involve significant ground disturbance:

- examination of geological characteristics;
- with the approval of the Minister, airborne geoscientific surveys;
- removal of small mineral samples for analysis; and
- marking boundaries for a proposed mineral title application.

(b) **Notice and consent requirements – Preliminary exploration**

There are notice requirements for conducting preliminary exploration in relation to pastoral leases, native title land and certain Crown land.

Consent is required from the landowner or the Minister (as applicable) in relation to reserves and reserved land, private land, Aboriginal land and Aboriginal community living areas. A person who consents to preliminary exploration may impose reasonable conditions on the entry and use of the land.

In relation to reserved land, the Minister must take into account the purpose of the reservation before deciding on granting consent for preliminary exploration and any conditions that may be imposed.

In relation to private land or a park or reserve, the relevant landowner must not unreasonably withhold consent for preliminary exploration, and any disputes may be referred to the Tribunal.

---

7 s198(1) of the Mineral Titles Act.

8 s200 of the Mineral Titles Act.

9 s17(3) of the Mineral Titles Act.

10 ss19-20 of the Mineral Titles Act.

11 s21 of the Mineral Titles Act.
For land within the area of an existing title, a person may only conduct preliminary exploration:\(^\text{12}\)

- by notice if the mineral title is an EL, and the preliminary exploration is for extractive minerals;
- by notice if the mineral title is an extractive EMEL, and the preliminary exploration is for non-extractive minerals; and
- with the consent of the title holder if the preliminary exploration is (i) for non-extractive minerals on an EL or (ii) for extractive minerals on an EMEL.

(c) Preliminary exploration on application area

An applicant for an EL or EMEL may conduct preliminary exploration (see section 6.11(b)) in the proposed title area after giving the landowner a preliminary exploration notice 14 days before entering the land to start the exploration\(^\text{13}\). It is worth noting that a person (i.e. who is not the applicant) may conduct preliminary exploration in the proposed title area of an EL or EMEL without giving notice to, or obtaining consent from, the relevant applicant.\(^\text{14}\)

### 2.2 Mineral Exploration Licence (EL)

A mineral exploration licence (EL) is the primary title issued for the purpose of conducting exploration activities for non-extractive minerals.

(a) Title holder rights - EL

A EL grants the title holder the right to occupy and exclusive rights to conduct exploration for minerals on the area of the EL. The EL holder also has the exclusive right to apply for a mineral lease (ML) for all or part of the EL area.\(^\text{15}\)

An EL holder may conduct activities in connection with exploring for minerals including:\(^\text{16}\)

- digging pits, trenches and holes, and sinking bores and tunnels in the mineral title area;
- activities for ascertaining the quality, quantity or extent of other material in the title area by drilling; and
- extracting and removing samples of ore and other substances from the title area in amounts necessary to evaluate the potential for mining in the title area, in large samples with Ministerial approval.

(b) Application - EL

\(^\text{12}\) s22(1) of the Mineral Titles Act and r14 of the Mineral Titles Regulations.

\(^\text{13}\) r16(2) of the Mineral Titles Regulations.

\(^\text{14}\) s22(2) of the Mineral Titles Act and r15 of the Mineral Titles Regulations.

\(^\text{15}\) s26 of the Mineral Titles Act.

\(^\text{16}\) s29 of the Mineral Titles Act.
A person may apply to the Minister for an EL for a term of up to 6 years. The application must be made in the prescribed form and must include:\textsuperscript{17}

- a description of the blocks the application requires the EL to cover; and
- a technical work program for the first 2 operational years.

The area of the EL must be between 4 and 250 (adjoining) blocks, although the Minister may grant a title area of less than 4 blocks if circumstances justify it.\textsuperscript{18} For the purposes of the Mineral Titles Act, a block is approximately 3.43 km\textsuperscript{2}.\textsuperscript{19}

A person must not apply to the Minister for the grant of an EL over an area which was the subject of another (previous) EL within 30 days from the date of the expiration, surrender or forfeiture of the previous EL.\textsuperscript{20}

\textbf{(c) Surrender - EL}

The area of an EL must be reduced every 2 operational years during the term of the EL and any renewal period of the EL.\textsuperscript{21} The title holder must nominate to reduce the number of blocks in the title area by at least 50\% (adding 1 block in the case there are an odd number of blocks).\textsuperscript{22}

An EL holder may apply to the Minister for an exemption from the surrender requirements. If successful, the Minister may direct for the surrender requirements to be deferred or reduced or to exempt the EL holder from satisfying the requirements.\textsuperscript{23}

\textbf{(d) Renewal - EL}

In order to renew an EL, the title holder must apply to the Minister using the prescribed form prior to the expiration of the EL. An EL may be renewed for a period of 2 years, and may be renewed more than once.\textsuperscript{24} This is a significant difference to the treatment of ELs under the old Mining Act, which only allowed 2 renewal periods of 2 years.\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{17} s27 of the Mineral Titles Act; Approved Form 1 - Application - Exploration Licence.
\item \textsuperscript{18} s28 of the Mineral Titles Act.
\item \textsuperscript{19} s16 of the Mineral Titles Act.
\item \textsuperscript{20} s65(2) of the Mineral Titles Act.
\item \textsuperscript{21} s29(2) of the Mineral Titles Act.
\item \textsuperscript{22} s29(3) of the Mineral Titles Act.
\item \textsuperscript{23} s29(4) of the Mineral Titles Act.
\item \textsuperscript{24} s30(2) of the Mineral Titles Act.
\item \textsuperscript{25} s29A Mining Act.
\end{itemize}
(e) **Conditions - EL**

Upon grant, the EL holder must comply with any conditions attached to the EL as imposed by the Minister or as prescribed by the Mineral Titles Act and Mineral Titles Regulations (see section 6.2). In that regard, under the specific conditions imposed on an EL the holder must:

- give underlying landowners or occupiers of the title area (where applicable) 14 days' notice prior to commencing activities under the EL. This notice, that must be given in accordance with the Mineral Titles Regulations, must note the EL holder's intention to start conducting activities and to enter onto the EL area to conduct activities;
- carry out the work necessary for the discovery and assessment of the value of the minerals in accordance with the relevant technical work program;
- comply with minimum expenditure requirements (see section 6.3));
- within 28 days of a discovery, give the Minister notice of a discovery of:
  (i) a mineral of economic or scientific interest; and
  (ii) underground water (and provide samples and data upon request);
- only extract or remove substances that are authorised to be extracted or removed; and
- only sell minerals discovered in the title area if the sale has been approved by the Minister.

(f) **Expenditure - EL**

The title holder of an EL must comply with the expenditure requirements contained in the title instrument and provide the Minister with an expenditure report each year which contains the following information:

- the amount the title holder expended on technical work in that operational year; and
- the amount the title holder intends to expend in the next operational year.

The Mineral Titles Regulations set out the due dates of these reports to be lodged and the late fees payable where deadlines are not met.

If the holder of an EL breaches expenditure conditions in respect of a mineral title for an operational year when the mineral title must be reduced (see section 2.2(c)), the Minister need not consider an application to waive all or part of the required reduction.

If the EL holder breaches expenditure conditions in respect of a mineral title for two consecutive years, the Minister may take steps to cancel the EL in accordance with section 105(2)(e) of the Mineral Titles Act (see section 6.8).

---

26 s32 of the Mineral Titles Act.

27 r81 of the Mineral Titles Regulations; Approved Form 17 - Mineral Exploration and Mining Expenditure Reporting.
The holder of multiple ELs may apply to the Minister for approval of an "expenditure project area" in relation 2 or more of the ELs within a single project area. This allows a holder of ELs to aggregate the area of the ELs for the purpose of making and reporting expenditure. Non compliance with expenditure conditions within an expenditure project area may result in the cancellation of the expenditure project area approved.

2.3 Mineral Exploration Licence in Retention (ELR)

Upon being satisfied that an ore body of economic potential exists in the area of an EL, and that mining minerals in the area is not currently commercially viable or more feasibility work is required, the Minister may designate an area of an EL as a mineral exploration licence in retention (ELR), thereby effectively extending the term of an EL.

(a) Title holder rights - ELR

The rights under an ELR are substantially the same as for an EL. An ELR gives the title holder the right to occupy, exclusive right to continue conducting EL activities and exclusive right to apply for a mineral lease for all or part of the area specified in the instrument.

An ELR title holder may also carry out any studies and tests needed to assess the development potential of ore bodies or anomalous zones in the title area for the evaluation of the commercial viability of mining and processing minerals.

(b) Application - ELR

An EL holder may apply to the Minister for a ELR for a term not exceeding 5 years if the following conditions have been satisfied:

• an ore body of possible economic potential has been found in the title area; and
• the title holder reasonably believes that mining minerals in the title area is not commercially viable or further work is required for assessing its feasibility.

The Minister may designate an EL as an ELR if satisfied of the above matters, and that the applicant will have the technical and financial capacity to develop and mine the ore body.

An ELR application must be made during the term of the relevant EL, made in the approved form and must include the following information:

• a description of the proposed title area; and
• a technical work program for the first year of operation.

An ELR application may be made in relation to all or part of the area covered by an EL.

28 r80(1) of the Mineral Titles Regulations.
29 r80(3) of the Mineral Titles Regulations.
30 s34 of the Mineral Titles Act.
31 s37(2) of the Mineral Titles Act.
32 s34(5) of the Mineral Titles Act; Approved Form 2 - Application - Exploration Licence in Retention;
33 s33 of the Mineral Titles Act.
If an ELR is issued in respect of the whole title area of a EL, the ELR will effectively replace the EL. If an ELR is issued in respect of part of the title area, the EL will continue on foot in respect of the remaining part of the EL area.  

(c) **Renewal - ELR**

An ELR holder may apply to the Minister to renew the ELR for a period up to 5 years, and the ELR may be renewed more than once.

(d) **Conditions - ELR**

An ELR holder must comply with the conditions attaching to an EL (including minimum expenditure requirements (see section 6.3) and any additional conditions imposed by the Minister (see section 6.2)).

The holder must also provide the Minister with a reserves report between 1 July and 14 July each year.

It is a specific condition of an ELR that, once the mining and processing of minerals in the title area of the ELR becomes commercially viable, the ELR holder must apply to the Minister for an ML.

(e) **Expenditure - ELR**

The title holder of an ELR must comply with the expenditure requirements contained in the title instrument and provide the Minister with an expenditure report in the prescribed form each year which contains the following information:

- the amount the title holder expended on technical work in that operational year; and
- the amount the title holder intends to expend in the next operational year.

The Mineral Titles Regulations set out the due dates of these reports to be lodged and the late fees payable where deadlines are not met. As with an EL, failure to comply with expenditure conditions may result in the cancellation of the ELA (see section 2.2(f)).

(f) **ML application and forced cancellation of ELR**

If the Minister is satisfied that the mining and processing of minerals in the area of an ELR is commercially viable, the Minister may give notice requiring the ELR holder, within a specified period of time, to deliver written reasons why the ELR holder has not applied for an ML, or apply for an ML.

The Minister may cancel an ELR if:

---

34 s33(1) of the Mineral Titles Act.
35 s35 of the Mineral Titles Act.
36 s36 of the of the Mineral Titles Act.
37 s38 of the Mineral Titles Act.
38 r83 of the Mineral Titles Regulations.
39 r81(2) of the Mineral Titles Regulations; Approved Form 17 - Mineral Exploration and Mining Expenditure Reporting.
• no reasons are provided why the ELR holder has not applied for an ML;
• no ML application is made; or
• having regard to the reasons submitted by the ELR holder, the Minister is satisfied in the interests of the Territory that the ELR should be cancelled.40

2.4 Extractive Mineral Exploration Licence (EMEL)

An extractive mineral exploration licence (EMEL) is the title issued for the purpose of conducting exploration activities for extractive minerals.

(a) Title holder rights - EMEL

An EMEL gives the title holder the right to occupy the title area and exclusive right to conduct exploration for extractive minerals.41 An EMEL holder has the right to conduct activities in connection with exploration for extractive minerals as are reasonable necessary for exploration and any other activities specified in the EMEL instrument.42

An EMEL holder also has exclusive right to apply for either of the following for all part of the area of the EMEL: 43

• an extractive mineral permit (EMP) – for the extraction of extractive minerals from the natural surface of the land only (see section 3.2); or
• extractive mineral lease (EML) – for the mining of extractive minerals (see section 3.3).

(b) Application - EMEL

A person may apply to the Minister for the grant of an EMEL for a term of up to 2 years in the prescribed form and the application must include:44

• a description of the blocks comprising the proposed title area (which must not exceed 4 blocks); and
• a technical work program for the proposed term and an estimate of the proposed exploration expenditure.

(c) Renewal - EMEL

An EMEL is not renewable.45

40 s39 of the Mineral Titles Act.
41 s46(1) of the Mineral Titles Act.
42 s48 of the Mineral Titles Act.
43 s46(1)(c) of the Mineral Titles Act.
44 s47 of the Mineral Titles Act; Approved Form 4 - Application - Extractive Mineral Exploration Licence.
45 s47(4) of the Mineral Titles Act.
(d) **Conditions - EMEL**

Upon grant, the EMEL holder must comply with any conditions attached to the EMEL as imposed by the Minister or prescribed by the Mineral Titles Act and Mineral Titles Regulations (see section 6.2).

It is a specific condition of an EMEL that the holder give underlying landowners or occupiers of the title area (where applicable) 14 days' notice prior to commencing activities under the EMEL. The notice, that must be given in accordance with the Mineral Titles Regulations, must note the EMEL holder's intention to start conducting activities and to enter onto the title area to conduct activities.  

### 3. Mineral production titles

#### 3.1 Mineral Lease (ML)

A mineral lease (ML) is the primary title issued for the commercial exploitation of non-extractive minerals and the development of non-extractive mineral projects.

(a) **Title holder rights - ML**

An ML holder has the right to occupy, and the exclusive right to conduct the following activities in, the area of the ML:

- mining for minerals and other activities specified in the Mineral Titles Act;
- exploration for minerals;
- the evaluation, processing or refining of minerals;
- treatment of tailings and other material;
- the storage of waste and other material;
- the removal of minerals;
- activities that are ancillary to mining conducted under another ML granted to the title holder (e.g. operating a treatment plant); and
- any other activities approved by the Minister and specified in the ML instrument.

(b) **Application - ML**

A person may apply to the Minister for an ML in the prescribed form and the application must contain:

- a description of the land comprising the proposed ML area;

---

46 s49 of the Mineral Titles Act.

47 ss40 and 44 of the Mineral Titles Act.

48 s41 of the Mineral Titles Act; Approved Form 3 - Application - Mineral Lease.
• evidence of an ore body of likely economic value in the proposed area, unless the ML is required to conduct activities that are ancillary to the mining conducted under another ML (e.g. operating a treatment plan); and

• a summary of the mining work proposed.

The Minister may grant an ML for a term the Minister considers appropriate.

(c) Renewal - ML

An ML holder may apply to renew all or part of the ML prior to the expiry of the term and, if granted, an ML will be renewed for a period the Minister considers appropriate. An ML may be renewed more than once.49

(d) Conditions - ML

Upon grant, the ML holder must comply with any conditions attached to the ML as imposed by the Minister or prescribed by the Mineral Titles Act and Mineral Titles Regulations (see section 6.2). A ML holder must meet annual minimum expenditure requirements and provide annual reports to the Minister (see section 6.3).

The specific conditions that attach to an ML include requirements that the ML holder:50

• meet the requirements of any contractual arrangements entered into with the Territory relating to the mining and development of mineral deposits in the title area and the processing of the minerals; and

• conduct authorised activities in relation of the ML area in a way that interferes as little as possible with the rights of other occupiers of land in the vicinity of the ML area.

An ML holder must also provide the Minister with a production report and a reserves report between 1 July and 14 July each year.51

(e) Expenditure - ML

An ML holder must comply with the expenditure requirements contained in the title instrument and provide the Minister with an expenditure report in the prescribed form each year which contains the following information:52

• the amount the ML holder expended on technical work in that operational year; and

• the amount the ML holder intends to expend in the next operational year.

The Mineral Titles Regulations set out the due dates of these reports to be lodged and the late fees payable where deadlines are not met.

49 s43 of the Mining Act.
50 s45 of the Mineral Titles Act.
51 r84 of the Mineral Titles Regulations.
52 r81(2) of the Mineral Titles Regulations; Approved Form 17 - Mineral Exploration and Mining Expenditure Reporting.
3.2 Extractive Mineral Permit (EMP)

An extractive mineral permit (EMP) is issued for the extraction of extractive minerals from the natural surface of the land only (being usually for the extraction of sand, gravel, rock or soil). An extractive mineral lease (see section 33.3) on the other hand allows the mining of extractive minerals.

(a) Title holder rights - EMP

An EMP gives the holder the right to occupy the title area, the exclusive right to extract (from the natural surface of the land only) extractive minerals and the exclusive right to apply for an extractive mineral lease (that would allow mining of extractive minerals) for all or part of the title area.53

An EMP gives the title holder the right to temporarily store and process extractive minerals, remove extractive minerals from the EMP area and perform any other related activities specified in the EMP instrument.54

(b) Application - EMP

A person must apply to the Minister for the grant of an EMP in the prescribed form. The application must include a description of the title area including the land (which must not exceed 100 ha) and a summary of the work proposed to be carried out. The Minister may grant an EMP for a term not exceeding 5 years.55

(c) Renewal - EMP

An EMP holder may apply to renew the EMP, or part of the EMP, at any stage during its term. An EMP may be renewed for a term of up to 5 years and may be renewed more than once.56

3.3 Extractive Mineral Lease (EML)

An extractive mineral lease (EML) is issued for the mining of extractive minerals and is generally granted for longer term quarry type operations. An extractive mineral permit (see section 33.2) on the other hand restricts extraction to the natural surface of the land.

(a) Title holder rights - EMP

An extractive mineral lease (EML) is a mineral title that grants the title holder the right to occupy the title area and the exclusive right to conduct mining for extractive minerals.57 An EML holder is also authorised to conduct the following other activities in connection with the conducting of mining activities:58

- processing of extractive minerals;

---

53 s50(1) of the Mineral Titles Act.
54 s53 of the Mineral Titles Act.
55 s51 of the Mineral Titles Act; Approved Form 5 - Application - Extractive Mineral Permit.
56 s52 of the Mineral Titles Act.
57 s54 of the Mineral Titles Act.
58 s57 of the Mineral Titles Act.
• removal of extractive minerals;
• storage of waste and other material; and
• any other related activities approved by the Minister and specified in the EML instrument.

(b) Application - EMP
A person must apply to the Minister for the grant of an EML in the prescribed form. The application must include a description of the land comprising the proposed title area (which must not exceed 100 ha) and a summary of the work proposed to be carried out.59

The Minister may grant an EML for a term not exceeding 10 years.60

(c) Renewal - EMP
The title holder may apply to renew the EML or part of the EML before the expiry of the EML. An EML may be renewed for a term of up to 10 years and may be renewed more than once.61

4. Mineral titles on reserved land - Mineral authority (MA)

The Minister may declare reserves in the Territory that exclude certain land from particular exploration or mining activities (see section 6.10). Exploration for, or mining of, a particular mineral may be excluded for example.

The declaration of a reserve however does not necessarily mean that the land is completely excluded from exploration and mining activities. A mineral authority (MA) may be declared by the Minister in respect of general reserved land.

An MA is a mineral title that corresponds to a mineral title that may be otherwise granted under the Mineral Titles Act.

(a) Application - MA
A person may apply for a MA in accordance with the Mineral Titles Act to use certain reserved land for mineral exploration or mining activities.62

An MA granted in these circumstances will be subject to similar obligations, and have similar conditions, to a normal corresponding mineral title unless the Minister determines otherwise.

As indicated in the table in section 1.6, a MA also replaces a miner's right under the Mining Act.63

59 s55 of the Mineral Titles Act; Approved Form 6 - Application - Extractive Mineral Lease.
60 s55(3) of the Mineral Titles Act.
61 s56(3) Mineral Titles Act.
62 s118 of the Mineral Titles Act.
63 s118(2) of the Mineral Titles Act.
(b) Renewal - MA

The Minister may grant or renew an MA for a period the Minister considers appropriate.\textsuperscript{64}

(c) Application for ML, EMP or EML

A holder of a MA that corresponds to an exploration title (i.e. an EL or EML) may apply for the grant of an ML (in the case of EL) or an EMEL or EMP (in the case of an EML). Upon the grant of an ML, EMEL or EMP (as appropriate) in these circumstances, the reservation of the land declared by the Minister ceases to have effect in relation to the title area.\textsuperscript{65}

5. Access and infrastructure

The Mineral Titles Act grants potentially strong rights of access and occupation to holders of mineral titles for the purpose of accessing mineral titles, the use of water and constructing infrastructure associated with exploration and mining activities.

(a) Access and road construction

A title holder has the right to access the title area by the shortest practicable route from any of the following:\textsuperscript{66}

- a council or Northern Territory owned road;
- a railway line;
- an airstrip; and
- sea or waterway.

For the purpose of accessing the title area, a mineral title holder may enter land to construct or maintain a road, or do other work, that enables the title holder to have access to the title area.\textsuperscript{67}

(b) Access authorities for infrastructure

An mineral title holder has the right to enter land outside the title area to construct, maintain and use infrastructure associated with mining and exploration activities if the title holder also holds an "access authority" for the relevant land.\textsuperscript{68} The potential scope of an access authority is therefore quite wide.

A title holder may apply for an access authority by satisfying each of the following at least 14 days prior to making the application.\textsuperscript{69}

\textsuperscript{64} s118(5) of the Mineral Titles Act.
\textsuperscript{65} s120 of the Mineral Titles Act.
\textsuperscript{66} s83 of the Mineral Titles Act.
\textsuperscript{67} s83(2) of the Mineral Titles Act.
\textsuperscript{68} s84(1) of the Mineral Titles Act.
\textsuperscript{69} s84(3)(a) of the Mineral Titles Act.
• providing written notice of its intention to apply to any affected landowner and any mineral title holder;

• publishing a notice of its intention to apply in a newspaper within the area the land is situated; and

• obtaining the consent of relevant landowners.

The Minister may grant an access authority to the title holder subject to the conditions specified in the access authority if the Minister is satisfied that the application process has been complied with, and the proposed infrastructure is necessary for conducting mining activities.70

(c) Rights to use and take water

The holder of a mineral title has the right to:71

• within the title area, take or divert water (other than water artificially conserved by or for a landowner in the title area e.g. a dam or well) or sink a bore or well and extract water from the bore or well; and

• use that water in connection with mining and exploration activities conducted in the title area.

A mineral title holder also has, in relation to the title area or an EL or EMEL held by another person, the right to use water in those other title areas as necessary for conducting mining and exploration activities under the holder's mineral title.72

As noted above, a mineral title holder may apply for an access authority to enter land which is outside the title area. The access authority may be used by the mineral title holder to enter land and construct infrastructure for the taking of water.

Under the Northern Territory Water Act mining operations are exempt from licensing for consumptive use.73 However, under the Mining Management Act the operator of a mine site is required to submit a Mining Management Plan for approval, detailing potential environmental impacts of the operation and how these will be managed.74 Details of water requirements and management issues should be included in the Mining Management Plan and will also be required in relation to the Northern Territory environmental assessment process.

70 s85(4) of the Mineral Titles Act.
71 s81 of the Mineral Titles Act.
72 s82 of the Mineral Titles Act.
73 s7 of the Water Act.
74 s35(3) of the Mining Management Act.
6. General provisions applying to mineral titles

6.1 Applications generally

In addition to any specific requirements that may apply in relation to an application for a particular mineral title, the general criteria that applicants must meet in order to apply for a mineral title are as follows:

- the applicant must have given the Minister all the information required by the Minister to make a proper decision;
- the applicant must have complied with requirements under the Mineral Titles Act;
- where the applicant already holds, or previously held, one or more mineral titles at the time of the application the applicant must have:
  (i) complied substantially with the conditions of each mineral title, to the extent required by the Minister;
  (ii) paid all outstanding fees and rent in relation to the relevant mineral titles and complied with rehabilitation requirements for the title area; and
  (iii) complied substantially with the rehabilitation requirements imposed under the Mining Management Act (NT) in respect of the title area; and
- where the applicant is currently engaged in negotiations under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) or the Native Title Act 1993 (Cth) in relation to a mineral title, the Minister must be satisfied that the applicant is actively negotiating in good faith.

A person may not apply for a mineral title in respect of a title area which is already the subject of a mineral title except in permitted circumstances under the Mineral Title Regulations.

6.2 Conditions applying to mineral titles

Specific conditions in relation to particular mineral titles are imposed by the Mineral Titles Act. Conditions that are imposed generally on all mineral titles in Part 5 of Division 4 of the Mineral Titles Act include (but are not limited to) conditions:

- requiring compliance with applicable laws;
- prohibiting the disturbance of improvements to the land without consent;
- for the protection of animals owned by, or under the control of, landholders;
- requiring notification to be made to the Minister of the recovery of drill cores, cuttings or geological samples; and

75 s58 of the Mineral Titles Act and r44 of the Mineral Titles Regulations.
76 s65(3) of the Mineral Titles Act.
77 See division 3 of the Mineral Titles Regulations.
• requiring the title holder to provide the Minister with reports concerning activities conducted and expenditure made in relation to mineral titles.

The Minister may include conditions in a mineral title instrument as the Minister considers appropriate, including conditions requiring the title holder to obtain the Minister’s approval before taking particular action.78 A condition on a mineral title may be amended, suspended or removed. This may be done at the initiation of the Minister or on application by the mineral title holder.79

6.3 Expenditure requirements generally

(a) Types of expenditure that may be claimed

Guideline 6 - Benchmark Minimum and Admissible Expenditure published by the Territory Department of Resources provides examples of the expenditure types which may be claimed against expenditure commitments for mineral titles. The categories of acceptable expenditure include:

• geological activities and prospecting;
• geochemical activities;
• geophysical and remote sensing activities;
• drilling;
• bulk sampling and earth works;
• rehabilitation;
• pre-feasibility including metallurgical and environmental;
• office studies;
• overheads; and
• preliminary airborne exploration.

Guideline 6 also provides a list of non-admissible expenditure (i.e. expenditure that cannot be claimed) which includes the following:

• land access negotiations (e.g. compensation, site clearance and negotiation costs);
• rent for mineral titles;
• fines and late lodgement fees;
• insurance;
• transfer costs;
• marketing costs (either for the title or the commodity);

---

78 s85(2) of the Mineral Titles Act.
79 s100 Mineral Titles Act.
costs of raising capital or floating a company e.g. preparing prospectuses;
• title searches;
• costs of transfers, dealings or joint ventures concerning mineral titles;
• costs of compliance with stock exchange disclosure obligations;
• legal costs;
• bonds and security deposits;
• advertising;
• training not directly related to the relevant mineral title;
• data capture where the data is not supplied to the Department in the correct format;
• purchase of data or reports where these are not supplied to the Department in the correct format;
• costs or attending or sponsoring conferences;
• tenement management or administration fees; and
• salaries and wages of staff not engaged on activities related to the relevant mineral title.

(b) Compliance with expenditure conditions

Not complying with expenditure requirements may render a mineral title liable for cancellation due to breaching a condition of the mineral title (see section 6.8).

If a holder has not complied with an expenditure condition in respect of a mineral title for an operational year, the mineral title holder may apply to the Minister for a variation of the condition under section 100(3)(b) of the Mineral Titles Act.

(c) Amalgamated reporting

A title holder of two or more mineral titles may apply to the Minister to amalgamate its expenditure reports, and report on a consolidated basis, if any of the following apply:80

• the expenditure reports relate to titles held by the title holder;
• the titles are either all ELs, MLs or ELRs; and
• the title areas are adjoining or substantially contiguous.

6.4 Mineral titles register

The Minister must keep a mineral titles register (Register) which records the following information in relation to mineral titles:81

80 r87(2) of the Mineral Titles Regulations.
81 s121 of the Mineral Titles Act.
• applications for mineral titles;
• dealings with mineral titles and applications;
• legal and equitable interests held by persons in mineral titles and applications;
• caveats; and
• information previously contained in the register maintained under the repealed Mining Act.

A person may perform a search the Register by contacting the Titles Information Service in Darwin and requesting a Minister's Certificate for a mineral title. Certain information is restricted and will not be made available in the Minister's Certificate without written authority from the relevant mineral title holder.

6.5 Transfers and dealings

(a) Approval and registration of dealings

A legal or equitable interest in a mining title or an application (Mineral Rights Interest) cannot be created, transferred, assigned, mortgaged, charged, devolved or dealt with in any way unless in writing.\(^2\)

A transfer of all or part, or a devolution of, a Mineral Rights Interest must be approved by the Minister, and the instrument has no effect until registered - this is the only way in which a holder can transfer a legal or equitable interest in a mineral title. The Minister must register a transfer or devolution\(^3\) unless the Minister is satisfied there are circumstances why the application should be refused.\(^4\)

While a transfer and devolution is required to be registered, s122(2) of the Mineral Titles Act provides that registration does not give any validation to the mineral rights interest that it would not have had at common law. Therefore, a transfer or other dealing is not validated by registration, the actual transfer or dealing itself must be effective to be enforceable.

An agreement, arrangement, mortgage or dealing relating to a mineral rights interest that is not a transfer or devolution (General Dealing) may also be registered, although prior Ministerial consent is not required for General Dealings as it is for a transfer or devolution. The Minister must register the General Dealing unless satisfied that there are grounds to refuse the application.\(^5\)

All transfers of interests in mineral titles and agreements must be assessed for Territory stamp duty prior to lodgement with the Department for registration.

(b) Priority between competing interests

\(^2\) s122 of the Mineral Titles Act.

\(^3\) A "devolution" is where property is transmitted consequential upon the death or bankruptcy of a person, or the receivership or liquidation of a company, that holds a mineral title or application. The mineral title or application will "devolve" onto the trustee or representative.

\(^4\) ss123 and 124 of the Mineral Titles Act.

\(^5\) s125 of the Mineral Titles Act.
The priority system is of particular important when securing interests in mineral titles. Priority may become particularly important:

- where there are competing applications for different types of mineral titles; and
- when considering priority of interests in mineral titles (registered or unregistered and legal or equitable).

In the absence of express provisions in Territory legislation governing the priority of registered and unregistered interests, the general legal and equitable principles for the resolution of priority disputes concerning land should apply. A dealing will typically only convey a legal interest upon registration (see above). The general principles provide that:

- where there are two competing equitable interests, the first in time prevails unless there is postponing conduct (e.g. fraud) on the part of the holder of the earlier equitable interest;
- where there is a prior legal interest and a later equitable or later legal interest, the interest created earlier in time prevails, except where the holder of the prior legal interest creates the subsequent interest or act fraudulently; and
- where there is an equitable interest and later legal interest, the equitable interest prevails unless the holder of the legal later legal interest is a bona-fide purchaser for value without notice of the prior equitable interest.

**Competing applications for mineral titles**

Applications take priority according to the business day on which they are lodged, and an application can not be made in respect of the area of an existing mineral title or application except as prescribed by the Mineral Titles Regulations (see section 6.1).

Where two or more applications are made for the grant of a mineral title on the same day, over the same mineral title area, neither application is given statutory priority and the Minister will consider both applications in accordance with the provisions of the Mineral Titles Act.86 The Minister therefore considers each application on its merits and makes the grant to the applicant by Ministerial discretion.

**General Dealings**

Under the Mineral Titles Act, registration of a General Dealing (as defined in section 6.5(a)) over a mineral title gives it priority over an unregistered General Dealing, and a later registered General Dealing (unless the other General Dealing related to a charge required to be lodged under the Corporations Act 2001 (Cth) (now the Personal Properties Securities Act 2009 (Cth)) or an estate or interest in land registered under the Land Titles Act).87

(c) **Mortgages of mineral titles**

A person claiming a legal or equitable interest in a mineral title or application for a mineral title, may register a mortgage against the relevant mineral title or application to protect the person's interest as a General Dealing. A mortgage may be registered by lodging an Instrument of Dealing - Approved Form 15, together with a copy of the mortgage document.

---

86 s65 of the Mineral Titles Act.

87 s125(4) and (5) of the Mineral Titles Act.
A mortgage of a mineral title has effect only as security for repayment of the money intended to be secured by it. It does not operate as a transfer of the mineral title. The mortgage is subject to any terms and conditions agreed between the parties to the mortgage.

Part 7 (Mortgages) of the Law of Property Act (NT) applies to an interest in relation to land granted, created or taking effect under the Mineral Titles Act. The Law of Property Act affords rights, such as powers of the mortgagee (s86 of that Act), provisions in relation to the mortgagee's power of sale and provisions concerning foreclosure and action for possession (s83 of that Act).

Where there are two or more mortgages affecting the same mineral title, they take priority according to the date and time of their registration.

6.6 Caveats

A person claiming a legal or equitable interest in a mineral title or application, may lodge a caveat on the relevant title or application to protect their interest.88

Given the very wide range of legal and equitable interests that may be registered (see section 6.5(a)), the scope of potential application for caveats is not particularly broad. Caveats do however provide protection for the holder of an interest in a mineral title that is not yet registered (e.g. if there is a possible delay in registration of a transfer) or may be incapable of registration.

(a) Lodging a caveat

A caveat may be lodged by completing a Caveat Application - Approved Form 10, specifying the name of the caveator and address at which the caveator may be given notices, and the interest claimed in the mineral title or application. Evidence to support the interest claimed must accompany the prescribed form.

(b) Duration

If accepted by the Minister, a caveat will forbid the registration of subsequent dealings with the relevant mineral title or application until the caveat ceases to have effect.89 A caveat may cease to have effect where:90

- the caveat is withdrawn by the caveator;
- the Tribunal orders that the caveat be removed from the register or cancelled; or
- the caveat is cancelled after 30 days' notice is given to the caveator of a dealing as set out below.

Once the caveat ceases to be in force, the caveator is prohibited from lodging another caveat claiming the same interest in the cancelled caveat.

(c) Notice of a dealing and continuation

88 s131(1) of the Mineral Titles Act.
89 s131 of the Mineral Titles Act.
90 s133 of the Mineral Titles Act.
If a dealing is lodged in respect of a mineral title which is the subject of a caveat, the caveator is given notice of the dealing. The caveator then has 30 days after this notification to either lodge a notice of continuation of the caveat, or take action in the Tribunal to prevent registration of the dealing.  

The caveat ceases to have effect in relation to that dealing 30 days after the Minister gives notice to the caveator of the dealing or, if the caveator lodges a notice of continuance during the 30 days, the day the notice is accepted. If a notice of continuation is given within the timeframe and is accepted by the Minister, the caveat ceases to have effect in relation to the notified dealing and the registration of the dealing will proceed. If no notice of continuation is accepted the caveat ceases to be in force and the dealing may be registered.

### 6.7 Voluntary surrender

A mineral title holder may apply to the Minister to surrender all or part of an area of a mineral title from a particular date. An EL cannot be surrendered if a surrender would leave no more than 3 separate areas of land in the area, each comprising of at least 4 adjoining blocks.

Whether an application to surrender is granted is at the discretion of the Minister.

### 6.8 Cancellation of mineral titles

The Minister may cancel a mineral title or part of a title area if the Minister is satisfied that the title holder:

- has contravened a condition of the mineral title;
- became liable to pay an amount under the Mineral Titles Act and such amount remained outstanding for three months;
- has not used good work practices in conducting activities;
- no longer has financial resources to carry out a technical works program in relation to an EL; or
- has not, for a continuous period of two years, conducted authorised activities to a degree consistent with genuine exploration, mining or processing of minerals or extractive minerals.

The Minister must give the holder of the mineral title notice of the proposed cancellation, and give the holder an opportunity to make submissions in relation to the proposed cancellation.

### 6.9 Environmental and compensation securities

#### (a) Compensation securities

---

91 s134 of the Mineral Titles Act.
92 103(1) of the Mineral Titles Act.
93 s103(2) of the Mineral Titles Act.
94 s103(5) of the Mineral Titles Act.
95 s105(1) of the Mineral Titles Act.
The Minister may require that a title holder or applicant of a mineral title provide a security for payment of the following:96

- damage payable to:
  (i) the owner of land as a result of any damage caused to the land or loss suffered as a result of that damage,97 and
  (ii) a title holder who sustains damage due to actions taken by the title holder under an access authority;98 and

- compensation that may become payable under the Native Title Act 1993(Cth) (see Section 10).

Security may be provided in the form of cash, a negotiable instrument or bank guarantee.99

This obligation to provide a security may arise during the application process or at any time during the team of a mineral titles.100

(b) Mining or environmental securities

The Mining Management Act also requires securities to be paid as a condition to any authorisations granted under the Act, for the primary purpose of securing environmental rehabilitation obligations in relation to mining activities. The operator of a project is responsible for rectifying any environmental harm arising from mining activities and for final rehabilitation of the affected area. The securities payable under the Mining Management Act secure the following payments:101

- an operator's obligations to comply with the Mining Management Act or an authorisation granted under that Act;
- payment of costs to prevent, minimise or rectify environmental harm on a mining site or outside a mining site if the harm results or could result from a mining activity; and
- payment to rehabilitate a mining site.

The Minister determines the level of the security commensurate with protecting the community from closure and rehabilitation liabilities. The Department states that the default expectation for operators is to submit 100% of the security calculated for rehabilitation.

---

96 s106(2) of the Mineral Titles Act.
97 s107 of the Mineral Titles Act.
98 s108 of the Mineral Titles Act.
99 s106(5) of the Mineral Titles Act.
100 s106(2) of the Mineral Titles Act.
101 s43 of the Mining Management Act.
6.10 Reserves

The Minister may reserve (i.e. exclude) certain land from exploration, mining or any other purposes prescribed under the Mineral Titles Act by Gazette notice. Exploration for, or mining of, a particular mineral may be excluded for example. Mineral titles or application areas may be carved out from reserved areas.

(a) Special reserved land

The Minister may reserve certain land as "special reserved land", which reserves such land completely from exploration, extraction and mining activities. A person may not apply for the grant of a mineral title for any part of special reserved land. Special reserved land might include a park or reserve determined by the Minister to warrant special protection, or land over which mining would be impracticable.

The Minister may revoke the reservation of land as special reserved land only after giving notice of the proposed revocation, receiving public submissions and thereafter being satisfied that the revocation is in the interests of the Territory. Such a decision must be made by the Minister and cannot be delegated.

(b) General reserved land

The Minister may alternatively reserve certain land as "general reserved land". Such land may be reserved from exploration, extraction or mining of minerals generally, or in relation to particular minerals.

The Minister may vary or revoke the reservation of general reserved land only after taking into account the purposes for which the land was reserved, and if the Minister is satisfied that it is in the interests of the Territory to do so. Unlike in relation to special reserved land, the revocation power in relation to general reserved land may be delegated by the Minister.

Mineral authorities, that authorise the conducting of exploration and mining activities on reserved land, may be granted by the Minister (see section 4).

6.11 Land access issues

(a) Private land

Each application for the grant of a mineral title must include a list of landowners (if any) and the applicant must serve notice of the application on any landowners within 14 days of making an application. Following the service of the notice, the title holder must also provide evidence of the service to the Minister within 14 days of the date of service.

(b) Mineral title applications

[References to sections of the Mineral Titles Act]
An applicant for a mineral title may conduct a preliminary exploration on the application title area after giving landowners a preliminary exploration notice 14 days before entering the land to start the exploration\(^\text{107}\) and when conducting the preliminary exploration must:

- comply with the reasonable requests of any landowners;
- only use water conserved artificially by or for the landowner with the landowners consent;
- if it is necessary for the person to stay overnight, inform the landowner accordingly; and
- have in the person's possession the documents required by regulation which may include documents relating to the person's identity and proof of attempts to give notice of the exploration.

(c) **Compensation**

A person who holds an interest in land, including the registered owner of the freehold, a licence holder under the Crown Lands Act (NT) or the landowner in relation to a park or reserve, is entitled to compensation from a mineral title holder if the land or improvements on the land are damaged due to activities conducted under the mineral title.\(^\text{108}\) Securities may be required to secure payment of compensation (see section 6.9).

A mineral title holder and a person entitled to compensation may enter into written agreement concerning the compensation payable. If the compensation can not be agreed, a claimant may apply to the Tribunal for a determination.\(^\text{109}\)

### 6.12 Royalties

(a) **Statutory royalties**

The Northern Territory imposes royalties on the recovery of minerals through the Mineral Royalty Act. This Act imposes a profit based royalty regime that uses the Net Value of the production of a mine to calculate the royalties payable, as opposed to production value or tonnage produced.

The Commonwealth delegates some of its powers with respect to uranium and other prescribed substances mined in the Northern Territory (but outside of the Ranger River Project), under the Uranium Royalty (Northern Territory) Act (Cth) by authorising the Northern Territory to administer a royalty regime on its behalf.

The rate of royalty payable is 20% of the Net Value of mineral commodities sold or removed from a "production unit" (i.e. mining project). The first $50,000 of Net Value is not liable to royalty.\(^\text{110}\)

Within 30 days of the end of each 6 month period, the mineral title holder is required to pay the royalty it estimates to be payable in respect of the "net value of the saleable mineral

\(^{107}\) r16(2) of the Mineral Titles Regulations (see section 2.1).  
\(^{108}\) s107(1) of the Mineral Titles Act.  
\(^{109}\) ss109-111 of the Minerals Titles Act.  
\(^{110}\) s10 of the Mineral Royalty Act.
commodity sold or removed without sale from the production unit for that six-monthly period. Returns are then submitted at a later stage and penalty royalties may be payable if the "estimated" payment is less than 80% if the "actual" amount payable.

(b) Private royalties

Private royalties may be payable pursuant to contractual arrangements with third parties.

6.13 Compliance and penalties for non-compliance

(a) Penalties and offences

A range of penalties and offences apply under Part 9 of the Mineral Titles Act in relation to non-compliance with conditions of mineral titles or provisions of the Mineral Titles Act and Mineral Titles Regulations. Fines and, for more serious breaches, terms of imprisonment apply for certain offences or breaches. Offences under the Act may be prosecuted by summary proceedings in a Court of summary jurisdiction.

(b) Lands, Planning and Mining Tribunal

The handling of disputes in relation to mineral titles will now be primarily adjudicated by the Lands, Planning and Mining Tribunal (Tribunal). Mining Wardens and the Warden's Court will be abolished and no longer utilised under the Mineral Titles Act, except in respect of those matters commenced before the commencement of the new Act. It was the view of the Territory Government that the Tribunal has significant expertise in lands matters and is therefore better placed to deal with often complex mining issues.

7. Conducting mining operations

This paper does not consider in detail the provisions of the Mining Management Act or the various other permits, licences and approvals that may be required (including environmental) in relation to the conducting of mining activities in the Territory. An overview of the Mining Management Act however is set out below.

The Mining Management Act applies to all mining sites and activities (other than fossicking) in the Northern Territory and regulates the operation of mines. Holders of a mineral title must obtain an "Authorisation" under the Mining Management Act for substantial ground disturbing activities.

In particular, the Mining Management Act operates by regulating the management of mining sites from an environmental perspective, by performing the following functions:

- authorising and monitoring mining activities;
- facilitating implementation of environment protection systems;
- implementing audits, inspections, investigations, monitoring and reporting;

---

111 s40(1) of the Mineral Royalty Act.

112 Division 4 of Part 9 of the Mineral Titles Act.

113 Division 6 of Part 12 of the Mineral Titles Act.

114 s3 of the Mining Management Act.
• enforcing obligations of all persons on mining sites with respect to protection of environment;
• assisting the industry to introduce programs of improvement to achieve best practice environment management;
• requiring payment of security from title holders; and
• enforcing penalty provisions.

The Mining Management Act also establishes the Mining Board whose function is to advise the Minister and recommend guidelines in relation to mining specific issues including best practice management, legislation, guidelines and levels of competency required by persons engaged in mining activities.\(^{115}\)

Under the Mining Management Act every person on a mining site has an obligation to take care of the environment and must not wilfully or recklessly:\(^{116}\)

• cause environmental harm on a mining site; or
• interfere with or misuse anything provided on a mining site for environmental protection.

The term environmental harm includes causing any actual or potential harm or adverse effect on the environment or causing any potential harm on the environment which may be caused by an act or omission.\(^{117}\)

All events which constitute a serious accident or critical incident under the Mining Management Act and which occur on a mining site must be reported to the Chief Executive Officer (CEO).\(^{118}\) Once reported, the CEO may then instruct a mining officer to investigate the occurrence and provide a report of the outcome of the inspection to the CEO.\(^{119}\)

8. Ratification Acts

An agreement made between the Commonwealth or Northern Territory Government and a miner may be ratified by the Northern Territory Parliament (Ratification Act, also known as an Agreement Act, Government Agreement or State Act.)

The effect of a Ratification Act is to bind the miner and the Territory to the terms of the agreement by entrenching the agreement in legislation.\(^{120}\) The Ratification Act also prevails in the event of an inconsistency between a Northern Territory Act, such as the Mining Act, and the Ratification Act.\(^{121}\)

---

\(^{115}\) s50 of the Mineral Titles Act.

\(^{116}\) s13 of the Mining Management Act.

\(^{117}\) s4 and s25 of the Mining Management Act.

\(^{118}\) s29 of the Mining Management Act.

\(^{119}\) s30 of the Mining Management Act.

\(^{120}\) See s4(7) and s5 of the TEARA.

\(^{121}\) See s4(3) of the TEARA.
Ratification Acts are typically prepared for large-scale projects (usually requiring significant infrastructure), and facilitate the obtaining of regulatory approvals, co-ordination of the Territory Government's activities and other Territory based development (e.g. sharing of port facilities). Ratification Acts also act as an assurance for financiers and the miner in relation to large projects.

The following Acts are examples of Ratification Acts which operate in the Territory in respect of mining projects:

- the McArthur River Project Agreement Ratification Act;
- the Merlin Project Agreement Ratification Act;
- the Mining (Gove Peninsula Nabalco Agreement) Act; and
- the Tanami Exploration Agreement Ratification Act.

9. **Aboriginal Land Rights (Northern Territory) Act**

The Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA) applies to all mineral titles in the Northern Territory which are situated on Aboriginal land (as defined in the ALRA) and is administered by the Federal Minister for Aboriginal Affairs (Federal Minister). The ALRA provides for the establishment of:

- Aboriginal land trusts to hold the legal title of land for the benefit of traditional landowners; and
- Land Councils to manage issues concerning Aboriginal land and protect the interests of traditional Aboriginal owners of Aboriginal land. There are four Land Councils established in the Northern Territory; the Northern Land Council, the Central Land Council, the Tiwi Land Council and the Anindilyakwa Land Council.

The ALRA also provides Land Councils with a right of veto over exploration proposals relating to Aboriginal land.

9.1 **Consent required for an EL**

An EL may only be granted to an applicant in respect of Aboriginal land:122

- with the consent of the relevant Land Council and the Federal Minister; or
- by Proclamation by the Governor-General (because the national interest requires that the licence be granted),

and if the applicant has entered an agreement with the relevant Land Council agreeing to be bound by any terms and conditions to which the grant will be subject.

The applicant must submit an application to the Land Council setting out the proposal in accordance with section 41(6)(e) of the ALRA. Where the Land Council receives an application, it must either consent or refuse to consent to the application within the negotiating period and within 7 days from the date of the decision notify the applicant, the Minister and

---

122 s40 of the ALRA.
the Federal Minister in writing whether it consents or refuses to consent to the grant of the EL.123

9.2 Terms and conditions of an EL

After receiving the application, the Land Council will consult with the relevant Aboriginal owners or Aboriginal community or group and will engage in negotiations with the applicant, on behalf of the Aboriginal owners, Aboriginal community or group.124

The standard negotiating period for an application commences on the day the application is received and ends 22 months after the 1 January of the year the application was made, unless the applicant and Land Council otherwise agree to extend the period.125

Where a Proclamation has been made by the Governor-General, the applicant and Land Council must agree upon the terms and conditions which the grant will be subject within 180 days from the date of the Proclamation or:

• as agreed in writing by the Land Council and the applicant; or
• as extended by the Federal Minister.126

Where the Land Council and applicant cannot agree on terms and conditions of the grant of the EL, the parties may refer the terms and conditions to be determined in accordance with the Commercial Arbitration Act (NT).127

Where the applicant requires the consent of a Land Council, the terms and conditions shall include terms and conditions requiring the payment by the applicant of compensation for damage or disturbance caused to the Aboriginal Land by the exploration activities.128

9.3 Cancellation of EL

If after an EL has been granted, a Land Council provides a statement to the Federal Minister that:

• the mineral title holder is conducting or is likely to conduct exploration works contrary to the EL program provided to the Land Council; and

• the works are causing or are likely to cause a significant impact on the land and on Aboriginals to the extent that the Land Council would not have consented to the grant,

the Federal Minister will assess the notice and consult with the Minister within 90 days of receiving the notice. If the Minister is satisfied that the Land Council was entitled to make the

123 s42(1) of the ALRA.
124 s42(2) of the ALRA.
125 s42(13) of the ALRA.
126 s43 of the ALRA.
127 s44(2) of the ALRA.
128 s44A(1) of the ALRA.
statement and the EL is not in required for the purpose of the national interest, the Minister may cancel the EL.\textsuperscript{129}

9.4 Consent required for a mining interest

A mining interest may only be granted to an applicant in respect of Aboriginal Land with the consent of the Federal Minister and if the applicant has entered an agreement with the Land Council agreeing to bound by terms and conditions to which the grant will be subject.\textsuperscript{130}

9.5 Pursuing mining interests

A person who holds or previously held an EL or ELR in respect of Aboriginal Land may apply for a mining interest in the title area by submitting a statement to the Land Council and the Federal Minister which contains the following information:

- a comprehensive proposal in relation to the proposed mining works; and
- the name, position and qualifications of each person (not exceeding 3) who will represent the applicant in meetings with the Land Council,

and shall engage in negotiations with the Land Council in relation to the terms and conditions the mining interest will be granted. The negotiations should be complete within 12 months of receipt of the statement by the Land Council or any other time as agreed in writing by the parties. If the negotiations cannot be completed in this time, either party may request the Federal Minister to refer the matters in dispute to the Mining Commissioner for resolution by conciliation or, failing that, arbitration.\textsuperscript{131} The application for a mining interest is not subject to the consent of the Federal Minister.

9.6 Cancellation of mining interests

The Federal Minister must assess a copy of a statement of a mining proposal sent by an intending miner within 90 days and if the Federal Minister considers:

- the proposed mining works or related activities described in the statement are not in accordance with the works that were initially proposed under the application for a grant of an EL;
- the Land Council consented to the grant of the EL; and
- the works are causing or are likely to cause a significant impact on the affected land and on Aboriginals to the extent that the Land Council would not have consented to the grant of the licence,
- the application for the interest must not be granted and if it has already been granted, it should be cancelled.\textsuperscript{132}

\textsuperscript{129} s47(1) and s47(2) of the ALRA.

\textsuperscript{130} s45 of the ALRA.

\textsuperscript{131} s46(7) of the ALRA.

\textsuperscript{132} s47(4) of the ALRA.
10. Native title

Native title refers to the rights of indigenous people to their traditional land and waters as recognised at common law. The Governments in Australia had traditionally disregarded any concept of native title, granting traditional lands to settlers without any agreement with, or the payment of compensation to, Aboriginal people.

10.1 Extinguishment of native title and compensation

Native title can be extinguished in a number of ways including the valid grant of certain titles by the Crown prior to 23 December 1996 (careful analysis has to be done of certain acts that occur in the period between 1 January 1994 and 23 December 1996) including freehold and certain exclusive possession leases listed in Schedule 1 to the Native Title Act 1993 (Cth) (NTA). Native title can also be extinguished by the construction of public works by the Crown such as roads, railways and buildings.

10.2 The Native Title Act

The NTA confers onto Aboriginals who hold native title rights and interests, or who have made a native title claim, the right to be consulted on, and in some cases to participate in, the decisions about activities proposed to be undertaken on the land. Consequently, indigenous Australians have been able to negotiate benefits for their communities, including in relation to employment opportunities, heritage protection and/or monetary compensation.

If native title still exists in relation to the land underlying exploration sites, then the conversion of those sites to a mining lease will require compliance with the future act procedures (see section 10.3).

10.3 Future Acts

A future act is a proposed act, such as the grant of an exploration licence or a mining lease or the conversion of an exploration licence into a mining lease, on land that may affect native title rights, by extinguishing it or by creating interests that are inconsistent with the existence or exercise of native title rights. The NTA requires that certain procedural rights be granted to registered native title claimants before a future act is granted. If the relevant future act process is not followed then the act may be invalid to the extent that native title is affected.

In relation to the grant of mineral titles the most common form of procedural rights under the NTA that are carried out before the grant of the mineral title are:

- the "right to negotiate" process, a compulsory six month period of negotiation with relevant registered native title claimants in order to obtain the consent of those parties to the grant of the tenement. In the absence of agreement, the National Native Title Tribunal recommends whether the grant should be made and if so whether any conditions should be imposed; or

- entering into an Indigenous Land Use Agreement (as that term is defined in the NTA) with relevant native title parties.

Commercial matters (including compensation payments and other benefits) are generally dealt with in a separate ancillary agreement between the tenement holder and the native title parties.

11. Aboriginal cultural heritage

Whilst not strictly related to the grant of mineral titles, mineral title holders in the Territory must also be aware of the operation of the Aboriginal Sacred Sites Act (Sacred Sites Act) in
conducting exploration and mining activities. It is an offence under the Sacred Sites Act for an unauthorised person to enter onto or work on a sacred site. The Sacred Sites Act carries penalties of up to $52,000 or a 2 years imprisonment for an individual and $260,000 for a company.\textsuperscript{133}

The Aboriginal Areas Protection Authority (AAPA) is established under the Sacred Sites Act to, amongst other things, administer and enforce the provisions of the Act and maintain a register of Aboriginal sacred sites.\textsuperscript{134}

\textsuperscript{133} Section 200 of the Sacred Sites Act; Section 3 Penalty Units Act 2009.

\textsuperscript{134} Section 10 of the Sacred Sites Act.