



Environmental Defenders Office

Exploring for minerals in the Northern Territory

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our website: <http://www.edo.org.au>.

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

*This factsheet was last updated on **31 March 2023**.*

Introduction

The Northern Territory Government (the Crown) owns the resources on and under the ground, not the people who own or occupy the land. Mining is controlled by different laws depending on what resource is being mined.

Mining of **minerals** is controlled under the [Mineral Titles Act 2010 \(NT\)](#) (**Mineral Titles Act**) and the [Mining Management Act 2001 \(NT\)](#) (**Mining Management Act**).

- The *Mineral Titles Act* is the law under which exploration and mining activities are approved or refused on specified areas of land. These various types of approvals are known as mineral titles.
- Once approved, the *Mining Management Act* is the law that controls how exploration and mining activities are conducted and what obligations mining companies have to protect the environment.

This factsheet focuses specifically on **exploration for minerals**, including:

- Types of mineral titles which apply (**exploration licences**);
- Rights to comment on and object to the grant of exploration licences;
- Landholder rights under those exploration licences, once granted; and
- What other approvals might be required.

Note: This factsheet does **not** look at approvals for mining activities after the exploration stage (i.e., development of a mine, mining, processing,

decommissioning and rehabilitation). It also does **not** cover exploration and production approvals for oil and gas projects (such as fracking).

Preliminary exploration activities

Before applying for an exploration licence, a mining company may seek to enter land to assess the potential for future exploration for minerals. This can include any of the following activities:¹

- Examination of geological characteristics;
- Removal of small samples of minerals for analysis;
- Marking boundaries for a proposed application for a mining approval; and
- With the Minister for Mining and Industry's approval – airborne geoscientific surveys.

These preliminary exploration activities do not require mineral titles under the *Mineral Titles Act*. However, consent is required from landowners to conduct preliminary exploration activities on Aboriginal land, on an Aboriginal community living area, on private land, and in a park or reserve.² Landowners may impose reasonable conditions on the entry and use of the land for that purpose. The mining company is also required to give notice to the owner, occupier, or interest-holder of the land 14 days before entering.

Visit: The Northern Territory Government website for further information on preliminary exploration:

<https://nt.gov.au/industry/mining-and-energy/mineral-exploration/preliminary-exploration-without-a-title>

Types of exploration licences

There are two different types of exploration licences for minerals:³

1. A **mineral exploration licence (EL)** gives the holder of the licence:⁴
 - The right to occupy the area specified in the EL;
 - The exclusive right to explore for minerals in the licence area; and

¹ See *Mineral Titles Act*, Pt 2.

² "Aboriginal land", "Aboriginal community living area", "private land", and "park or reserve" are all defined terms: *Mineral Titles Act* s 8."

³ "Minerals" is defined in s. 9 of the *Mineral Titles Act*. There is also another type of exploration licence which relates to exploring for extractive minerals, such as soil, sand, gravel, rock or peat: see *Mineral Titles Act*, Pt 4, Div 1.

⁴ *Mineral Titles Act*, Pt 3, Div 1.

- The exclusive right to apply for a mineral lease for all or part of the area (this is the approval that is necessary to conduct subsequent mining for minerals in the licence area).
2. A **mineral exploration licence in retention (ELR)** is granted to a company which has already been conducting exploration under an EL. It gives the company the chance to undertake further activities to determine whether future mineral operations are likely to be commercially viable. An ELR gives the licence holder:⁵
- The right to occupy the area specified in the ELR;
 - The exclusive right to continue conducting the activities authorised under an EL and to conduct studies and tests necessary to assess the development potential for mining operations; and
 - The exclusive right to apply for a mineral lease for all or part of the title area.

Environmental impacts of mineral exploration

Some exploration activities could have significant environmental impacts. For example, holders of exploration licences can:⁶

- dig pits, trenches and holes, sink bores and tunnels;
- extract and remove mineral samples for analysis;
- drill and use other methods to determine the quality, quantity and extent of the mineral;
- enter and occupy land in the licence or approval area with people, equipment, and vehicles;
- use water – including to take or divert water, sink a bore or a well, for use in the exploration or mining and for domestic use for workers;
- use land within or outside the licence area to build an access road across any land that is the shortest route from the exploration site to another road, a railway, an airstrip, the sea or a waterway;
- use land outside the licence area to build, maintain and use infrastructure for the exploration if the person who is conducting the exploration is granted an Access Authority (see further **below** at p. 9).

Exploration activities that cause ‘substantial disturbance of the mining site’ also require an Authorisation under the *Mining Management Act* before the company can start exploration.

⁵ *Mineral Titles Act*, Pt. 3, Div 2.

⁶ The kinds of activities an exploration licence holder may undertake and kinds of conditions that might be included in an EL are set out in ss 31-32 of the *Mineral Titles Act*. Rights under mineral titles more generally are set out in Pt 5, Div 3 of the Act.

In some circumstances, an environmental approval under the *Environment Protection Act 2019* (NT) may also be required. This is discussed further **below** at p. 8.

Note: Substantial Disturbance includes:⁷

- land clearing
- earthworks such as cutting, filling, excavating, or trenching
- above-ground works such as building access tracks and roads, buildings, bridges, railways, pipelines, telephone and power lines, conveyors and airstrips
- underground works such as digging tunnels and wells or laying pipelines, conduits and cables
- water works such as building dams, impoundments, canals, drainage works, or the alteration of river or creek banks, water courses and shore lines
- extraction of resources from the surface of the land, underground, riverbeds or undersea mining and quarrying
- stockpiling of materials such as ore, overburden, waste materials and by-products
- exploration works involving seismic lines, drill pads, drill holes - including vacuum, auger and RAB, grids, tracks, costeans and camp establishment
- active remote sensing and seismic techniques in water
- drilling and blasting
- any activity that is likely to have a significant impact on plants or animals

What is the process for objecting to an exploration licence?

1. A mining company applies to the Minister for a mineral title, such as an exploration licence.⁸
2. Within 14 days, the mining company must notify landowners in the application area that an application has been made. Copies of the template forms used to notify landholders are included on the NT Government website:
<https://nt.gov.au/industry/mining-and-energy/mineral-titles/mineral-titles-forms-and-guidelines/land-access-and-landowner-notification-forms-and-guidelines>.
3. The Minister publishes a notice in a newspaper (usually the NT News) telling people that an application has been made. The notice will tell people what type of mineral

⁷ See *Mining Management Act*, s 35.

⁸ The decision process for mineral title applications is set out in Pt 5, Div 2 of the *Mineral Titles Act*.

title the application is for and the land over which the mineral title is proposed to cover.

Visit: The Department publishes all advertisements of applications for the grant of mineral titles (which include exploration licences) on its website:

<https://industry.nt.gov.au/publications/mining-and-energy/mineral-titles-advertising>

4. Certain people who are **on the land which is covered by the application** can object by writing to the Minister within **30 days** of the notice. The people who can object are called **landowners** in the *Mineral Titles Act* and are:

- people who own private land and are recorded as being the owner in the land register
- a lease holder of a pastoral lease under the *Pastoral Land Act*
- a lease holder of a grazing licence or occupation licences or other types of licence granted under the *Crown Lands Act* or *Special Purposes Leases Act*
- an Aboriginal Community Living Area Association
- the Land Trust for any Aboriginal land
- the holder of the native title for any native title land
- the land manager for a park or reserve
- the Conservation Land Corporation

Any other person, such as neighbours of the proposed site, members of the public, environment or community groups can make written submissions to the Minister within **30 days** of the notice.⁹

Note: Your objection or submission must be in writing, and sent to the Department by post or email:

Department of Industry, Tourism and Trade
GPO Box 4550
Darwin NT 0801
Email: titles.info@nt.gov.au

⁹ As noted below at p. 6, if the Minister refers an application for a mineral title to the Tribunal, then objectors are considered parties to the Tribunal hearing, whereas other people making submissions are not.

5. The Minister gives the mining company a copy of any objections or submissions. The company then has a right to provide a response to the Minister within **21 days**.
6. The Minister must consider any objections and submissions.
7. Before the Minister makes a decision, she has the option to refer the application to the Northern Territory Civil and Administrative Tribunal (**Tribunal**). If an application is referred to the Tribunal, it can hold a hearing and make a recommendation to the Minister. People objecting to a mineral title application are parties to the Tribunal hearing and have the right to attend and present their views.
8. The Minister makes a decision to grant or refuse to grant the exploration licence. The Minister may also decide to grant an exploration licence for only part of the land applied for.

Visit: The Department publishes notices on its website announcing the grant or cessation of mineral titles: <https://industry.nt.gov.au/publications/mining-and-energy/mining-notices>

Visit: There is a flowchart of the objection and submission process for mineral titles (which include exploration licences) on the Department's website: <https://nt.gov.au/industry/mining-and-energy/mineral-titles/objections-and-submissions-to-mineral-title-application>

Note: The Traditional Owners of Aboriginal land, as defined by the [Aboriginal Land Rights \(Northern Territory\) Act 1976 \(Cth\)](#) (**ALRA**), have a right to refuse consent to exploration for minerals on Aboriginal land. If the proposed title area of a licence application is Aboriginal land, the Minister may only grant an exploration licence after consent has been obtained in accordance with the legal processes set out in ALRA.

Can I appeal a decision to grant an exploration licence?

There are no rights for third parties (e.g., objectors, submitters, landholders, members of the public) to apply for a review on the merits of the decision by the Minister to grant an exploration licence.¹⁰

The only way third parties can appeal or challenge a decision to grant an exploration licence is to apply to the Supreme Court of the Northern Territory for “judicial review” of the Minister’s decision. This type of legal case asks the Court to consider whether the Minister’s decision met the applicable legal requirements. Judicial review does not allow for arguments about whether the decision is good or bad or could be improved.

In order to apply for judicial review of any decision, you need to have grounds for believing that the decision is legally incorrect. You also need to have sufficient interest in the matter. This is called standing.

Judicial review cases are complex and can be costly. There is also a risk if you are unsuccessful that you might have to pay the other parties’ legal fees – which can be very substantial. You should always seek independent legal advice before taking legal action.

Read: EDO factsheet on Judicial Review and Merits Review in the NT:
<https://www.edo.org.au/publication/judicial-review-and-merits-review-in-the-nt-2/>

Read: EDO Northern Territory Toolkit: Judicial Review in Environmental Matters:
<https://www.edo.org.au/publication/the-northern-territory-environmental-defenders-toolkits/>

What rights does a landholder have once an exploration licence has been granted?

The mining company must give written notice to the landowners or occupiers of the land if they intend to commence authorised activities under an exploration licence.¹¹ Notice must be given at least 14 days before the activities commence. The notice must include:

- the name and contact details of the mineral title holder;
- the name and contact details of the person who will be in charge of conducting the authorised activities;
- the nature of the exploration to be conducted;

¹⁰ Merits review is a type of review that considers all the evidence about a decision afresh and determines what is the preferable decision.

¹¹ *Mineral Titles Act*, ss 32(1), 38(1) and *Mineral Title Regulations 2011* (NT) cl 71.

- the intended start date and estimated duration of exploration;
- a map of the land on which the exploration is to be conducted; and
- details of the proposed place of entry onto the land.

Under s. 106 of the *Mineral Titles Act*, A person with an interest in land is entitled to compensation from the holder of a mineral title for:

- damage to the land, and damage to any improvements on the land, caused by activities conducted under the title; and
- any loss suffered as a result of that damage (for example, loss suffered as a result of being deprived of the use of the land).

However, compensation for damage caused by exploration activities in a park, reserve or on pastoral land is limited to compensation for damage that occurred in excess of what was reasonably necessary to conduct the activities.

The *Mineral Titles Act* provides for written agreements to be entered into in relation to compensation and establishes procedures for dispute resolution if agreement cannot be reached, including the potential to file an application at the Tribunal. This factsheet does not provide detailed information about the compensation process. Anyone seeking to enter into a dispute resolution process should seek independent legal advice.

What other approvals might be required for exploration activities?

Authorisation for substantial disturbance

If exploration activities under the relevant exploration licence would cause substantial disturbance of the mining site (see **above** at p. 3), a mining company also needs to get an Authorisation from the Minister under the *Mining Management Act*.

An Authorisation gives the mining company the right to carry out the mining activities specified in the Authorisation. When a mining company applies for an Authorisation, it must also submit a Mining Management Plan (**MMP**) to the Minister. The mining management plan must include:

- details about the environmental protection management system and how it will be implemented;
- a description of the mining activities;
- a plan and costing of the activities for the closure of the mine;
- plans of the current and proposed mine workings and infrastructure; and
- details about the organisational structure of the mining company.

Applications for Authorisations are not publicly advertised and there are no rights for anyone to object to the grant of an Authorisation.

The Minister cannot approve an MMP unless the Minister is satisfied that:

- the environmental protection management system for the site is appropriate for the activities and will, as far as practicable, operate effectively in protecting the environment; and
- that mining activities under the plan will be done in accordance with good industry practice.

The Minister may decide to impose conditions on an Authorisation, including conditions for the protection of the environment and conditions that take into account any environmental impact assessment that has taken place under the *Environment Protection Act*.

The Minister can decide to:

- refuse to approve the MMP and refuse to grant the authorisation; or
- approve the MMP and grant the authorisation.

The Minister cannot grant an Authorisation unless they have approved the MMP. Once an Authorisation has been granted a mining company has to comply with its current MMP.

Environmental approvals

Exploration activities with the potential to have a significant impact on the environment may also require assessment and approval under the [Environment Protection Act 2019 \(NT\)](#) and the [Environment Protection Regulations 2020 \(NT\)](#).

Commonwealth approval may also be required – where an activity has, or is likely to have, a significant impact on a matter of national environmental significance¹² or is on Commonwealth land, under the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\) \(EPBC Act\)](#).

Read: EDO Factsheet on environmental impact assessment in the Northern Territory:

<https://www.edo.org.au/publication/environmental-impact-assessment-under-the-environment-protection-act-2019-nt/>

Read: EDO Factsheet on referrals under the EPBC Act:

<https://www.edo.org.au/publication/factsheet-the-epbc-act-referrals-and-opportunities-to-comment/>

¹² Matters of national environmental significance are listed in the EPBC Act and include, for example, threatened species and ecological communities. They are discussed further in the [EDO Factsheet on EPBC Act referrals](#).

Can a mining company access and use land outside of the area of the exploration licence as part of their operations?

A mining company can only access and use land outside of the area of the exploration licence if they obtain an **Access Authority**.¹³ An Access Authority allows a mining company to enter land outside the area in which they are allowed to explore (or mine) to construct, maintain and use infrastructure (such as roads) for the exploration and mining activities.

The Minister may only grant an Access Authority if the following steps have been taken:

1. At least **14 days** before making the application, the title holder must:
 - Give written notice of the intention to apply for the Access Authority to each landowner of the relevant land; and
 - Publish a notice of intention in a newspaper circulating in the area in which the relevant land is situated; and
 - Get the consent of the landowners if the land is:
 - Private land;
 - Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act*; or
 - An Aboriginal community living area.
2. The Minister must be satisfied that the infrastructure to be constructed is necessary for conducting the approved exploration (or mining) activities.

Owners of land must not unreasonably refuse to consent to the title holder's entry onto the land. The law does not say what unreasonable refusal of consent is. However, if a mining company thinks you are unreasonably refusing to give consent, it may apply to the Tribunal for a decision about whether the consent is reasonable. If the Tribunal determines that the refusal of consent is unreasonable, the person must grant consent.

Dispute resolution mechanisms

Under regulation 116 of the [Mineral Titles Regulations 2011 \(NT\)](#), the Tribunal also has powers to resolve certain disputes about mining which may arise for landholders. These include disputes about:

- the entry onto land to conduct preliminary exploration;
- the entry onto land to conduct authorised activities under a mineral title or to construct, maintain and use infrastructure under an access authority; and
- the use of a landowner's water by a person who is conducting preliminary exploration or fossicking or by the holder of a mineral title.

¹³ *Mineral Titles Act*, s 84.

Glossary

Key terms used in this factsheet:

- **ALRA** means the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)
- **Department** means the NT Department of Industry, Tourism and Trade
- **EL** means a mineral exploration licence
- **ELR** means a mineral exploration licence in retention
- **EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- **Extractive Minerals** are soil, sand, gravel, rock or peat, or another substance prescribed by the *Mineral Title Regulations 2011* (NT)¹⁴
- **Exploration** for minerals or extractive minerals, means all methods of searching for or evaluating deposits of minerals or extractive minerals (excluding by fossicking)
- **Minerals** are any of the following naturally occurring substances that are obtainable by mining: an inorganic element or compound (for example, an inorganic carbonate compound), an organic carbonate compound, or coal, lignite, oil shale or salt, or another substance prescribed by the *Mineral Title Regulations*¹⁵
- **Mining** is the extraction of minerals or extractive minerals from land of the Northern Territory by one of the following methods: underground, surface or open-cut workings, on-site leaching, dredging, or another method prescribed by regulation
- **Minister** means the NT Minister for Mining and Industry
- **MMP** means a Mining Management Plan under the *Mining Management Act*
- **Tribunal** means the Northern Territory Civil and Administrative Tribunal

Evaluate this resource

EDO welcomes feedback on this factsheet. Your feedback will help us ensure we are providing useful information.

If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:



¹⁴ See *Mineral Titles Act*, s 10.

¹⁵ See *Mineral Titles Act*, s 9.