

Access to Western Lands Leases for Fossicking and Mineral Exploration

Mineral prospecting, exploration and mining, along with fossicking for minerals and gemstones and precious stones may be carried out in NSW under the provisions of the Mining Act 1992.

The Mining Act is administered by the Department of Primary Industries (Minerals).

The Mining Act provides for these activities on all types of land tenure, and may grant power of entry onto land and provision of right of way to mining areas. There are exceptions for land that is deemed “agricultural” and for land within certain distances from homesteads and other property improvements.

The interactions between miners, prospectors, fossickers and landholders may be complex and difficult, but cooperative arrangements can often be made to satisfy the needs and concerns of each party.

A Mining Warden is empowered under the Act to determine disputes and determine compensation to land owners where appropriate.

Western Lands Leaseholders need to be aware that authorities can be granted to individuals or companies to access land and carry out mining related activities. Western Lands Leases contain a condition that states: “All minerals within the meaning of the Mining Act 1992, and all other metals, gemstones and precious stones, which may be in, under or upon the land leased are reserved to the Crown and the lessee shall permit any person duly authorised in that behalf to enter upon the land leased and search, work, mine and remove all or any minerals, metals, gemstones and semiprecious stones in, under or upon the land leased.”

However, leaseholders do have rights, and the Mining Act requires miners and prospectors to obtain their agreement, and in some cases consent, before accessing land.

This requirement extends to people who wish to fossick for minerals, gemstones etc, who must obtain the consent of the landholder to enter their land. This requirement was recently extended to include all Western Lands Leaseholders. (This reverses a previous right to enter and previous information provided to leaseholders by the Western Lands Commissioner).

A mineral exploration licence gives the holder the exclusive right to explore for the minerals specified in the Licence. It does not automatically entitle the holder to enter any of the lands in the area covered by the licence.

Access arrangements are usually agreed to with the landholder. However, if agreement cannot be reached, an access arrangement can be determined by an arbitrator.

If the exploration program identifies a deposit of economic size and grade, the company or person has to obtain a development consent and a mining lease before it can start mining. An Environmental Impact Statement is a compulsory component of a development application.

The Department of Primary Industries has some excellent fact sheets outlining these issues in more detail. These are available at www.dpi.nsw.gov.au/minerals/titles.

For more information

For more information on Western Division issues contact your local Department of Natural Resources office.

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Visit the website:
www.naturalresources.nsw.gov.au

Note: This information does not constitute formal legal advice.

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