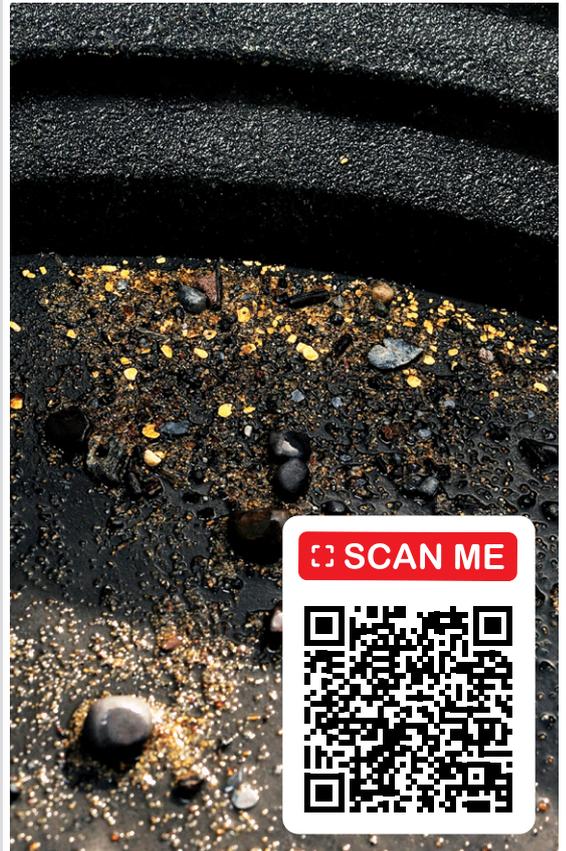




REVISED AS AT MARCH 2023

MINER'S RIGHTS



Contents

Who can obtain a Miner's Right?	1
How to obtain a Miner's Right	1
Authorisation under a Miner's Right.....	1
Section 40E Permits	2
What is available land?	2
What is Crown land?	2
Protection of certain Crown land	2
Access to Land Subject to Native Title.....	3
Passing over pastoral land	3
Conditions of Miner's Right	3
Compensation.....	4
Requirement to produce Miner's Right.....	4
Unauthorised mining	4
Important note	4
<i>Mining Act 1978</i> – Application for a Miner's Right.....	5
Payment Details.....	5

Who can obtain a Miner's Right?

A Miner's Right can be issued to an individual or to a company (incorporated under the Corporations Law).

How to obtain a Miner's Right

A Miner's Right may be obtained for a prescribed fee at the Department of Mines, Industry Regulation and Safety, Mineral House, 100 Plain Street, East Perth, or at any Mining Registrar's office. An application form is attached to this pamphlet.

Proof of identity is required:

- An individual must provide identification showing full name, including middle name(s).
- A company must provide a certificate of incorporation.

Authorisation under a Miner's Right

The purpose of a Miner's Right is for:

- **fossicking** on Crown land with the approval of relevant landholders; and
- providing access to Crown land for **prospecting and for minerals (including gold) and marking out purposes**.

The holder of a A Miner's Right is authorised to do all or any of the following things:

- pass and repass over Crown land for the purpose of prospecting and marking out any land which may be made the subject of an application for a mining tenement;
- prospect for minerals and conduct tests for minerals on **available land** (see definition below) for the purpose of determining whether to mark out or apply for a mining tenement in respect of any part of the land;
- extract or remove from available land on each occasion, up to 20kg of samples or specimens of rock, ore or minerals with as little damage to the surface of the land as possible;
- keep as the holder's property or use for testing or evaluation purposes any samples and specimens of any minerals you have found on **available land**;
- take and use water from any natural spring, lake, pool or watercourse situated in or flowing through **available land** for the purpose of prospecting and for domestic purposes; and (subject to the *Rights in Water and Irrigation Act 1914*) sink a well or bore on available land and take and use water from the well or bore; and
- camp on any Crown land either in a vehicle or caravan, or a tent or other temporary structure, or in the open air, for the purpose of prospecting.
- fossick by prescribed means on Crown land or conservation land with the prior written consent of
- any occupier of that land (e.g. a pastoralist); and
- any mining tenement holders (if the land is subject of a mining tenement)

Fossick means to search for, extract and remove rock, ore or minerals, other than gold or diamonds, as samples or specimens for the purpose of a mineral collection, lapidary work or a hobby interest.

- A holder of a Miner's Right can only use hand tools for fossicking, a metal detector, machinery or machine assisted tools cannot be used to fossick.

Section 40E Permits

Miner's Right holders (other than companies) may apply for a permit to prospect for minerals on Crown land that are the subject of an Exploration Licence. This is referred to as a Section 40E Permit.

What is available land?

Available land means Crown land that is not the subject of a mining tenement.

If the Miner's Right holder also holds a Section 40E Permit over land, that land is available land.

What is Crown land?

Crown land means all land except land that has been reserved or dedicated for a public purpose, land within a townsite, freehold land or land leased for purposes other than a pastoral lease, a grazing lease, a lease for timber purposes, or a lease for the use and benefit of Aboriginal inhabitants.

Land reserved for mining or commons (land or resources belonging to or affecting the whole of a community) and land reserved or dedicated for public utility is also Crown land.

Protection of certain Crown land

Specified categories of Crown land are protected.

Without the consent of the occupier of any Crown land, or otherwise without the direction of a Warden, a Miner's Right holder cannot prospect or fossick on Crown land that is:

- under crop or within 100 metres thereof;

- used or situated within 100 metres of a yard, stockyard, garden, cultivated field, orchard, vineyard, plantation, airstrip or airfield;
- situated within 100 metres of any land that is in actual occupation and on which a house or other substantial building is erected;
- the site of or within 100 metres of any cemetery or land reserved or demarcated exclusively for the purpose of burials; or
- land that is the subject of a pastoral lease which is the site of, or within 400 metres of the outer edge of, any water works, race, dam, well or bore, not being an excavation previously made and used for mining purposes by a person other than the pastoralist.

Nothing prevents the holder of a Miner's Right from passing and repassing over the protected Crown land described above to access available land for the purpose of prospecting or fossicking.

Access to Land Subject to Native Title

A Miners Right does not provide a holder with a lawful right to access land subject to exclusive possession native title rights. In circumstances where exclusive possession native title exists, a Miners Right holder must seek the permission of the relevant native title party before entering.

Noting, pursuant to s104 *Mining Act 1978* (WA), entry onto land, including native title land, is permitted for the purposes of surveying, marking out or posting notices in connection with an application for a mining tenement.

Passing over pastoral land

Before passing or repassing over the protected Crown land described above, the holder of a Miner's Right must take all reasonable and practical steps to notify the pastoralist of the intention to do so.

When passing or repassing, the Miner's Right holder must:

- take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise;
- cause as little inconvenience as possible to the pastoralist;
- comply with any reasonable request made by the pastoralist;
- restrict the number of passes or repasses to the minimum necessary for the purpose of mining on or marking out that other land; and
- make good any damage caused by the passing and repassing to any improvements or livestock on the land.

Conditions of Miner's Right

The holder of a Miner's Right must:

- not use explosives or tools other than hand held tools;
- cause all holes, pits, trenches and other disturbances to the surface of the land to be backfilled and made safe;
- take all reasonable steps to prevent fire damage to trees or other property; and
- take all reasonable steps to prevent damage to property or to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise.

Compensation

The holder of a Miner's Right is liable to pay compensation for any loss or damage caused and not made good by the holder. If compensation cannot be settled by agreement, the pastoralist or other lawful occupier of the Crown land may apply to the Warden's Court for compensation to be determined.

Requirement to produce Miner's Right

A Police Officer or Authorised Officer of the Department of Mines, Industry Regulation and Safety may require from any person fossicking or prospecting on land to produce evidence relating to the entitlement to so be on that land and require the person to provide an explanation concerning the fossicking or prospecting.

A person who refuses or fails to comply with such a request, or obstructs or hinders the person making the request, or knowingly misleads or deceives the person making the request, commits an offence. The penalty for this offence is \$10,000.

If the Police Officer or Authorised Officer is not satisfied with the evidence or explanation, he or she may direct the person to cease prospecting on the land. A person who refuses or neglects to comply with the direction commits an offence. The penalty for this offence is \$10,000.

The Police Officer or Authorised Officer giving such a direction is authorised to remove the person from the land and stop and remove any machinery being used for the purpose of prospecting on the land, using such assistance as is necessary for that purpose.

Keep your Miner's Right protected and legible. You may be requested by a Police Officer or Authorised Officer to produce it as evidence of your right to be on Crown land for the prospecting purposes.

Unauthorised mining

It is an offence under the Mining Act to carry out mining, including fossicking and prospecting, on any land without authorisation, and a **penalty of \$150,000** (plus \$15,000 per day if the offence is a continuing one) applies for an individual.

Important note

The information contained in this pamphlet is to serve as a guide only, and every holder of a Miner's Right has an obligation to be fully aware of the relevant provisions of the Mining Act and associated regulations.

Payments

A Miner's Right can be obtained for a fee by attending in person at the Department of Mines, Industry Regulation and Safety (DMIRS), Mineral House, 100 Plain Street, East Perth, or at any Mining Registrar's office. You can also apply Online through the Departments website or via Cheque/Money order accompanied with the attached Application form.

Please note that a Miner's Rights cannot be obtained at the DMIRS Core Libraries.

(OFFICE USE ONLY)

Miner's Right No:

Receipt No:

MINING ACT 1978 APPLICATION FOR A MINER'S RIGHT

TO: Executive Director, Resource Tenure
Department of Mines, Industry Regulation and Safety
Level 1, Mineral House
100 Plain Street
EAST PERTH WA 6004 (May also be sent to any Mining Registrar's Office)

Email: mineraltitles.enquiries@dmirs.wa.gov.au

(name **in full**-block letters)

of

Postcode: _____

(full postal address)

Telephone No: _____ Email: _____

hereby make application for the use of a Miner's Right pursuant to Section 40C of the *Mining Act 1978*.

The prescribed fee is payable.

(Signature of Applicant)

N.B. Proof of identity must support the Application for a Miner's Right

PAYMENT

Cheques and money orders should be made payable to:
Department of Mines, Industry Regulation and Safety

Application Checklist

Completed application form	
Proof of identity showing full name including middle name(s)	
Payment of the prescribed fee	

Government of Western Australia

**Department of Mines, Industry Regulation
and Safety**

8.30am – 4.30pm

Mineral House, 100 Plain Street
East Perth, Western Australia 6004
Tel: +61 8 9222 3333
Fax: +61 8 9222 3862

Online

Website: www.dmirs.wa.gov.au
Email: mineraltitles.enquiries@dmirs.wa.gov.au

Mailing address

Locked Bag 100
East Perth WA 6892

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS) 13 14 50

**This publication is available in other formats
on request to assist people with special needs.**

N.B. The information contained in this pamphlet is designed to assist in gaining a general awareness of the requirements of the *Mining Act 1978* and is not intended to be a substitute for understanding the statutory requirements of the Act and Regulations thereunder.