

AMEC REQUIREMENTS IN BRIEF - LAND ACCESS

	Western Australia	New South Wales	South Australia	Queensland	Northern Territory	Victoria
Requirements for land access in brief	Form No. 21 Application for Mining Tenement to be served 14 days of lodging ELA + complete and return Form No. 2 Application for Permit to Enter Upon Private Land (Section 30 of the Mining Act 1978).	Written access agreement required for all exploration (section 140 of the Mining Act 1992).	Notice of entry (Form 21) to be served to the landowner at least 42 days prior to entry onto land to conduct mineral exploration OR a written land access agreement with the landowner must be in place.	Complete and return Application for exploration permit – mineral or coal . Written notice of entry or landholder agreement required for all exploration.	Complete and return Mineral title: grant of tenure form . Written notice must be provided to the landowner upon application for a mineral title and prior to entry to the land.	Written access agreement (or informed verbal consent for low impact activities) required A compensation agreement must be written, signed and registered with the Mining Registrar. (Sections 42 and 43 of the MRSDA Act).
Government code of practice and guidance for land access	Codes of Practice – Prospecting, exploration, mining on pastoral leases and Code of Conduct for Mineral Exploration on Pastoral Leases (pastoral leases) Private Land provisions	Codes of Practice – Community consultation, Environmental management, Produced water, and Rehabilitation . (mandatory depending on exploration licence conditions)	Codes of Practice (voluntary) – for Community and Stakeholder Engagement ; and for Mineral and Energy Explorers Guideline to Mineral Exploration	Statutory Code of Practice – Land Access Code 2016	Code of Conduct – for Mineral Explorers in the NT	Code of Practice – for Mineral Exploration
Template agreement available for land access	No template agreement for exploration on pastoral lease or private land. State, industry and native title group representatives, negotiated 'template' standard heritage agreements (RSHA) for three regional areas (Central Desert, Goldfields, Geraldton/Pilbara ¹). ²	NSW Government template + AMEC template available – Land Access Arrangement for Mineral Exploration - Government template for negotiation between explorers and landholders. AMEC NSW Land Access Toolkit – includes template, guide, factsheets, video	No template agreement is available. The Government discusses an example in the MG4 Guidelines: landowner rights and access arrangements in relation to mineral exploration and mining in South Australia .	Government template and guide – Standard Conduct and Compensation Agreement Guide to Land Access in QLD	No template agreement is available.	Victorian Government template – Government Guide to Commercial Consent Agreement for Access to Private Land in Victoria . AMEC Victorian Land Access Toolkit – in draft
Land access for early exploration - minimum disturbance (eg walking the area, driving on road or track, taking soil or water samples, aerial, surveying etc)	Private EL Applicant must serve a copy of the Form 21 within 14 days of lodging the application to the following: • clerk of the council • owner + occupier • each mortgagee. Proof of service must be provided to DMIRS. If only subsurface rights sought (land below 30m) service of the above not required. ³ Complete and return Form No. 2 Application for Permit to Enter Upon Private Land as required by Section 30 of the Mining Act 1978 and payment of a fee to the Director General of Mines.	Private Written access agreement between exploration licence holder and landholder. <i>See compensation.</i> Crown Holders of an exploration licence seeking access to Crown land for prospecting purposes must negotiate an agreement with Crown Lands/tenants as for a private landholder. ⁵	Private Consult with the landowner and issue them with a <i>Notice of Entry form</i> and then wait 42 days before entering the land or negotiate an agreement with landowners that includes the conditions of entry. ⁶ Freehold landowners have a right of objection to entry. An objection must be lodged with the Warden's Court and within 3 months from the date of service of the form. Crown Pastoral leaseholders are not able to lodge an objection but may still be able	Private Written notice of entry to be provided before entering private land to each landholder at least 10 business days prior to entry. The entry notice must include the following details: • land proposed to be entered; • period the land is to be entered; • activities proposed; • when and where the activities will be carried out; and • contact details. ⁸ Crown An Entry Notice for Public Land must be given to the public land authority at least 30 business days before entry.	Private Tell each landowner affected by the application within 14 days of submitting the application using the landowner/land manager notice form , or write a letter to the landowner and land manager. ⁹ Proof of service must be provided to Department within 14 days after service. Before any non-intrusive activity commences the land manager must be notified at least 14 days before the planned access. ¹⁰ Crown	Private Obtain either written consent or informed verbal consent of the owners and/or occupiers of the affected land. A compensation agreement must be written, signed and registered with the Mining Registrar. Crown An approved work plan is not required if public liability insurance and consents is held. ¹³ Explorer is required to adhere to all standard licence conditions and comply with the Code of Practice for Mineral Exploration .

¹ Central Desert Native Title Service Agreement (http://www.dmp.wa.gov.au/Documents/Minerals/Minerals-Central_Desert_Native_Title_Application.doc); Goldfields Land and Sea Council Agreement (<http://www.dmp.wa.gov.au/Documents/Minerals/HeritageGoldfieldsAgreement2003pw-0008.doc>); Yamatji Marlpa Aboriginal Corporation Agreement (http://www.dmp.wa.gov.au/Documents/Minerals/Minerals-YMAC-Heritage_Agreement.doc).

² DMIRS policy requires applicants to sign and offer the relevant RSHA to affected groups before the State will assert the expedited procedure of the *Native Title Act 1993* should apply but these are no longer commonly accepted by the native title groups.

³ [Mining Regulations 1981 - Section 7](#)

⁵ https://www.industry.nsw.gov.au/_data/assets/pdf_file/0010/138574/Exploration-licence-holders-access-arrangements-fact-sheet.pdf

⁶ http://www.minerals.statedevelopment.sa.gov.au/exploration/exploration_activities

⁸ Set out in *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld) (Common Provisions Act); *Mineral and Energy Resources (Common Provisions) Regulation 2016* (Qld) (Common Provisions Regulations) Land Access Code 2016.

⁹ https://nt.gov.au/_data/assets/pdf_file/0009/379926/flow-chart-pastoralist-land-manager-stakeholder-engagement-access-agreement-grant-of-tenure.pdf

¹⁰ <https://nt.gov.au/industry/mining-and-petroleum/land-access-agreements-for-exploration/mineral-title-non-intrusive-activity>

¹³ <https://earthresources.vic.gov.au/legislation-and-regulations/guidelines-and-codes-of-practice/code-of-practice-for-mineral-exploration>

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	The permit holder must also give a copy of the permit to the landholder on the first occasion that the land is entered. Crown Applicant must serve a copy of the Form 21 within 14 days of lodging the application to: • Council and local government • Pastoral Lessee – include copy of the map.⁴ Proof of service must be provided DMIRS. Tenement affecting pastoral leases will be granted subject to a condition that pastoral lease holder must be notified prior to undertaking airborne geophysical surveys. Ministerial Consent required for any access/exploration on certain Crown Reserves. Ministerial consent and Permits for entry from Department of Planning, Lands and Heritage are required for any access/exploration on certain Aboriginal Reserves.		to claim compensation. Note: Pastoral Act reform is under consultation in 2021. For airborne surveys, the licensee is required to provide notification to Department of Energy and Mines using the standard Notification of airborne survey on an exploration licence form 14 days prior to the survey.⁷		Pastoral land: before any non-intrusive activity commences, the pastoralist must be notified at least 14 days before the planned access.¹¹ Aboriginal Land Both Minister & Land Council need to give approval under the <i>Aboriginal Land Rights Act</i>¹² where applicable.	Following the granting of a licence approval, the property interest in the land must be registered.¹⁴
Land access for advanced exploration - substantial disturbance (eg drilling, bulk sampling, constructing a road, changing a fence line etc) ¹⁵	<u>Program of Work</u> must be lodged and approved by DMIRS to use mechanised equipment for drilling, surface disturbance or excavation of costeans. Tenement affecting pastoral leases will be granted subject to a condition that pastoral lease holder must be notified prior to undertaking any ground disturbing activities utilising mechanised equipment. Ministerial Consent required for any access/exploration on certain Crown Reserves. Permits for entry required for any access/exploration on certain Aboriginal Reserves. An Area must be cleared for Aboriginal Cultural Heritage prior to any ground disturbing operations.	Same as for early exploration, negotiate written access agreement including provision for compensable loss as appropriate.	Issue the landholder with a <u>Notice of use of declared equipment (Form 22)</u> at least 21 days prior to commencement of operations or negotiate an agreement if the explorer intends to use equipment such as earthmoving and drilling equipment.¹⁶ Landowners (including pastoral lessees) can object to a Form 22 by lodging a complaint with the Warden's Court within 3 months.¹⁷	Must first have a legally binding agreement with the landholder. Either: • a conduct and compensation agreement • a deferral agreement, or • an opt-out agreement. Resource companies must comply with the mandatory conditions of the <u>Land Access Code</u>.	Must apply for a <u>mining authorisation</u> under the <i>Mining Management Act</i> to undertake activities likely to cause substantial disturbance. May also need to undertake a formal environmental impact assessment process.¹⁸ Access agreement required prior to substantial disturbance activities commencing.¹⁹ Mine Management Plan - Up to 60 days to reach agreement on Land Access with Pastoralist/Land Manager.²⁰ An Explorer must first consult with Land Council prior to undertaking any activity.	Written access agreement that must be lodged with the Mining Registrar (as for early exploration but no verbal consent) Must have: • Approved work plan, Rehabilitation bond; • Public liability insurance, • other consents and approvals as required.
Restricted/ Exempt Land	Private No exploration: • On land within 400 metres of the outer edge of any water works, race, dam, well or bore	Private No exploration: • Within 200m of a dwelling-house that is the principal place of residence of the person occupying it or • Within 50m of any garden, or	Private Exempt land is set out in section 9 of the Mining Act. It includes:²¹ • land that is lawfully and genuinely used as a yard, garden, cultivated	Private Restricted land is the area within 200 metres of: • A permanent building used for the purpose of a residence, business,	Crown Minister may reserve land (<i>special reserved land</i>) from exploration for minerals generally under section 112 of the Mineral Titles Act. A person is not entitled to apply for the grant of a	Private Must not explore on private land within 100 metres laterally or below of: • a dwelling house that existed before an approved work plan was registered in respect of the license

⁴ Section 118, Regulation 64B

⁷ Page 6 M05 Mineral exploration licences - General conditions, procedures and information (<https://sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/ISM05.pdf>)

¹¹ <https://nt.gov.au/industry/mining-and-petroleum/land-access-agreements-for-exploration/mineral-title-non-intrusive-activity>

¹² Section 40 - <https://www.legislation.gov.au/Details/C2016C00111>

¹⁴ <http://earthresources.vic.gov.au/earth-resources-regulation/information-for-community-and-landholders/mining-and-extractives>

¹⁵ <https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/accessing-private-land/advanced>

¹⁶ https://energymining.sa.gov.au/minerals/exploration/exploration_activities

¹⁷ MG22 - https://energymining.sa.gov.au/minerals/exploration/exploration_activities

¹⁸ <https://nt.gov.au/industry/mining-and-petroleum/mining-activities/substantial-disturbance>

¹⁹ https://nt.gov.au/_data/assets/pdf_file/0009/379926/flow-chart-pastoralist-land-manager-stakeholder-engagement-access-agreement-grant-of-tenure.pdf

²⁰ https://dpir.nt.gov.au/_data/assets/pdf_file/0004/256270/Flow-chart-stakeholder-engagement-land-access-substantial-disturbance.pdf

²¹ https://energymining.sa.gov.au/minerals/exploration/exploration_activities

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	On land within 100 metres of: land under crop, a yard, stockyard, garden, cultivated field, orchard, vineyard, plantation, airstrip or airfield, occupied land on which there is a house or other substantial building, the site of any cemetery or burial ground unless the consent of the pastoralist/landowner has been granted. Crown Minister may exempt land from mining under Section 19 of the Mining Act. Tenement applications can only be made over these areas upon issue of a ministerial invitation. Tenement applications cannot be made over protected Aboriginal Heritage Areas excluded under section 19 of the Aboriginal Heritage Act 1972. Exploration licences cannot be applied for over areas excluded under Section 57(4) of the Mining Act (being lands that, due to the intensity of mining activity are only available to applications for prospecting licences or mining leases). Ministerial Consent required for any access/exploration on certain Crown Reserves. Permits for entry required for any access/exploration on certain Aboriginal Reserves	- In a location where any significant improvement has been made, except with the written consent of the owner. If a dispute arises, either party may apply to the Land and Environment Court for a determination at the expense of the explorer. Crown The following land is restricted (exempt areas): - State Forests, - State Conservation Areas, and - most other public lands Ministerial approval required for exploration in these areas.	field, plantation, orchard, vineyard, or as an airfield, - land that is situated within 400m of a building or structure used as a place of residence, - land that is situated within 150m of a building or structure with a value of \$200 or more used for an industrial or commercial purpose, or - a spring, well, reservoir or dam. A two-step process must be undertaken by the explorer who must firstly serve a <u>Waiver of exemption (Form 23)</u>. Secondly, an agreement to waive the exemption must be entered into prior to entering land classed as 'exempt land'. If an agreement cannot be reached between the explorer and the exempt owner, the explorer may apply to the Wardens Court for an order waiving the exemption.²² Crown Wilderness Protected Areas are protected under the <i>Wilderness Protection Act 1992</i>. Exploration and mining are not permitted in these areas.²³ Mining operations or regulated activities are prohibited within the Arkaroola protection area established under the <i>Arkaroola Protection Act 2012</i>.²⁴ Referral/approval and other additional requirements and restrictions may apply to applications over and activities within certain reserves and other sensitive areas.	childcare centre, hospital, library, or place of worship - A permanent building used for recreational purpose; or school - for 'environmentally relevant activities' that are aquaculture, intensive animal feed lotting. Restricted land is also the area within 50 metres of a well, water storage facility, stockyard; or cemetery.²⁵ Crown The following land is restricted: - national parks - conservation parks - restricted areas where an exploration permit application may be prohibited - Commonwealth land where an Act excludes mining - high preservation areas and nominated waterways including declared wild rivers.²⁶	mineral title for any part of the special reserved land. Minister may reserve land (<i>general reserved land</i>) from exploration for minerals generally or specific minerals under section 113 of the <i>Mineral Titles Act</i>. Certain applications may be lodged over this land, but restrictions or conditions may apply. Ministerial consent required to include declared fossicking area in a proposed title area.²⁷ The Minister may only grant an application in a declared park or reserve after consulting with the Minister administering the <i>Territory Parks and Wildlife Conservation Act</i> and taking into account the opinion of the relevant Minister.²⁸ Aboriginal Freehold Land If an application has previously been made over Aboriginal Freehold Land, and the landholders did not consent to grant, the Exploration Licence area is "vetoed" and placed in moratorium for five years.²⁹ Aboriginal community living area Applications cannot be made for any excluded land in an Aboriginal community living area unless the applicant has written consent to do so given by the landowner for the area.³⁰	unless the holder of the licence has the written consent of the owner.³¹ Crown Exempt land includes National Parks, State Parks, wilderness areas, regional parks and most reserves. Consent of the Minister is required. For work on other Crown land, only an approved work plan is required. Where the proposed licence covers public highways, roads and streets, then the manager of those roadways must be given 21 days' notice of the proposed work.
Compensation	Compensation in respect of mining is payable in accordance with Part VII of the <i>Mining Act</i> to any owner of private land or to an occupier of Crown land or private land for all "loss and damage suffered or likely to be suffered by them resulting or arising from the mining". In the absence of agreement between the parties, compensation can be determined by the Warden's Court.	The Landholder is entitled to compensation for 'compensable loss' suffered or likely to be suffered as a result of the exploration activities - 'compensable loss' is defined in section 262 of the <i>Mining Act 1992</i>. 'Reasonable costs of the landholder... in participating in negotiating the access arrangement' - The maximum amount of reasonable costs was set out by the Minister by order published in the NSW Gazette on 1 December 2016 as \$1,500	Section 61 of the Mining Act provides for compensation to a landowner (including pastoral leaseholders) for economic loss, hardship and inconvenience caused by mining operations on land. ³² Compensation may be negotiated directly between the owner and operator or determined by either the Warden's Court or the Environment Resources and Development Court if agreement cannot be reached.³³	Conduct and Compensation Agreement may be required for advanced activities.	If damage is caused by exploration activities, a person is entitled to compensation only in relation to damage in excess of what is reasonably necessary to conduct activities as per s107 <i>Minerals Titles Act 2010</i>.	Compensation is payable only for loss or damage to the landholder's interests in the land as a direct, natural and reasonable consequence of the exploration or mining activities.³⁴. Advanced activities may also require a consent/compensation agreement with private landholder. Compensation for mineral activities is paid subject to Part 8 of the MRSDA.

²² Page 4-5_M05 Mineral exploration licences - General conditions, procedures and information (<https://sariqbasis.pir.sa.gov.au/WebtopEw/ws/samref/sariq1/image/DDD/ISM05.pdf>)

²³ http://www.energymining.sa.gov.au/minerals/land_access/conservation_land

²⁴ http://www.energymining.sa.gov.au/minerals/land_access/conservation_land

²⁵ <https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/accessing-private-land/land-access-code>

²⁶ <https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/land-constraints>

²⁷ Section 60 *Mineral Titles Act*

²⁸ Section 73 *Mineral Titles Act*

²⁹ <https://nt.gov.au/industry/mining-and-petroleum/land-tenure-and-availability/aboriginal-freehold-land/exploration>

³⁰ Section 61 *Mineral Titles Act*

³¹ <https://www.legislation.vic.gov.au/in-force/acts/mineral-resources-sustainable-development-act-1990/126>

³² For further information on compensation please refer to Minerals Regulatory Guidelines MG4, *Guidelines: landowner rights and access arrangements in relation to mineral exploration and mining in South Australia*, and Earth Resources Information Sheet M54, *Landowner frequently asked questions about mineral exploration in South Australia*.

³³ Page 5_M05 Mineral exploration licences - General conditions, procedures and information (<https://sariqbasis.pir.sa.gov.au/WebtopEw/ws/samref/sariq1/image/DDD/ISM05.pdf>)

³⁴ <http://earthresources.vic.gov.au/earth-resources-regulation/information-for-community-and-landholders/mining-and-extractives>

	Western Australia	New South Wales	South Australia	Queensland	Northern Territory	Victoria
		(ex. GST) for exempt or low impact prospecting operations and \$2,500 (ex. GST) for assessable prospecting operations.				
Dispute resolution / negotiation options including timelines, costs and who bears the costs	Disputes go before the Warden's Court constituted under the <i>Mining Act</i> . An objection can be lodged at any of the department's Mining Registrar offices within 35 days of the application being made. However, if the objection is by a private land holder then the objection can be lodged within 21 days of the day on which the person was served with a copy of notice given by the applicant - section 33(1), Regulation 146. Costs may be awarded by the Warden. See Regulation 165. ³⁵	Disputes on land access (including compensation) go to Land Access Arbitration Procedure that includes mediation and arbitration and then NSW Land and Environment Court, with all 'reasonable costs' payable by the explorer. <i>Mining Act 1992</i> sections 138 - 158, 262 – 3 details the process and timeframes (where applicable).	An application can be made to the Office of the Small Business Commissioner (in writing) to mediate land access matters as per the Mining and Resources Industry Land Access Dispute Resolution Code ³⁶ . The Commissioner will endeavor to complete the mediation process within the three month objection period of the mining act. The Commissioner does not have the power of the Environment, Resources and Development or Warden's Courts and cannot make determinations on preventing entry (only the Court can make that determination), nor can the Commissioner extend the right to object. The landowner must also lodge an objection to a notice of entry with the relevant court. Exempt Land: If a miner or explorer is seeking access to exempt land, the landowner may claim up to \$2500 from the explorer or miner for legal assistance in considering the request.	Disputes on landowner compensation for mining activities are referred to the Land Court or the Land Access Ombudsman for determination. Ombudsman used for breach of CCA. ³⁷ There are several other avenues for dispute resolution without a hearing. ³⁸	Must negotiate land access with the pastoralist/land manager and come to an agreement within 60 days of starting negotiations. An objection can be lodged by affected landowners within 30 days of the application notification date. Any other person may make written submissions about the application within 30 days of the application notification date. Applicant is given a copy of each objection/submission and has 21 days to respond. If objection/submission not withdrawn, delegate will consider objection and determine if application may proceed. ³⁹ If an agreement cannot be reached agreement within the 60 days, the Department for Primary Industry and Resources may be notified and can issue a referral to the Land Area Access Panel. The Panel will review the application within 21 days. If no agreement the matter can be referred to the civil courts.	Disputes as to the EL application can be referred to the Mining Warden. Where parties have failed to negotiate a satisfactory settlement, the disputed compensation claim may be referred to the Victorian Civil and Administrative Tribunal (VCAT) in accordance with Part 10 of the Land Acquisition and Compensation Act 1986. If the amount of compensation in dispute exceeds \$50,000, either party may refer the matter to the Supreme Court.
Government website	https://www.dmp.wa.gov.au/	https://www.regional.nsw.gov.au/our-work/meg	https://www.energymining.sa.gov.au/minerals	https://www.resources.qld.gov.au/	https://industry.nt.gov.au/publications/mining-and-energy	https://earthresources.vic.gov.au/

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³⁵ <http://www.dmp.wa.gov.au/Minerals/Exploration-Licence-4592.aspx>

³⁶ https://energymining.sa.gov.au/minerals/land_access/small_business_commissioner_and_the_mining_and_resources_industry_land_access_dispute_resolution_code

³⁷ <https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/landholder-compensation>

³⁸ <https://www.courts.qld.gov.au/courts/land-court/resolving-disputes-without-a-hearing>

³⁹ https://nt.gov.au/_data/assets/pdf_file/0011/181586/objections-and-submissions-process.pdf