AUDITOR GENERAL

for

Western Australia

SERVING THE PUBLIC INTEREST

PERFORMANCE EXAMINATION:

Level Pegging:

Managing Mineral Titles in Western Australia

Report No. 1

June 2002

AUDITOR GENERAL
for
Western Australia

THE SPEAKER
LEGISLATIVE ASSEMBLY

THE PRESIDENT
LEGISLATIVE COUNCIL

PERFORMANCE EXAMINATION – Level Pegging: Managing Mineral Titles in Western Australia

This report has been prepared consequent to an examination conducted under section 80 of the *Financial Administration and Audit Act 1985* for submission to Parliament under the provisions of section 95 of the Act.

Performance examinations are an integral part of the overall Performance Auditing program and seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities thereby identifying opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance Parliamentary decision-making to the benefit of all Western Australians.

D D R PEARSON
AUDITOR GENERAL
June 19, 2002

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1. Auditor General's Overview

Under our constitutional system, legislation passed by Parliament establishes the rules for the delivery of public services. Agencies are bound to deliver services according to those rules, report on the outcomes, and, when those rules are no longer relevant or appropriate, advise the Minister who should, in turn, consider appropriate changes to the legislation.

Be it a minor public education program that runs to only a few thousand dollars or a highly-complex, regulatory program, such as the State's minerals title system that underpins an industry worth some $17 billion, the fundamental process remains essentially the same.

Within that framework, it is not acceptable for agencies to ignore the rules or devise strategies "in the spirit" of the legislation. It is incumbent on agency management to ensure appropriate amendments are in place before changing policies and practices. Not to do so has legal ramifications and considerable risks.

There are remedies to such a dilemma, and they need be actively pursued through Ministerial and government channels. It is incumbent then too on legislators to ensure that recommended legislative amendments be promptly enacted or rejected, thereby maintaining relevance and ensuring efficiency and effectiveness in operations.

Whilst pursuing such legislative change, management must also guard against letting the situation drift, by making certain that existing procedures and processes are operating efficiently and effectively. This includes ensuring records and data are of sufficient quality and integrity to enable meaningful monitoring of progress and compliance, and that staff have guidelines and policies to enable them to consistently and equitably apply all rules and regulations.

The contents of this report on the Mineral Titles system of this State go to the heart of such issues, spelling out where the Department of Mineral and Petroleum Resources (DMPR) has fallen short in fulfilling its obligations under the *Mining Act 1978*. It not only contains lessons for the Department but also for all agencies involved in the delivery of public services through programs governed by legislation.

The message is clear and unequivocal and, incidentally, remarkably similar to the one that prefaced my Second Public Sector Performance Report of October 2000.

2. Executive Summary

Background

The mining industry is Western Australia's largest primary industry with exploration and mining activity worth approximately $17b in 2000-01 and returning $686m in mining royalties in the same year[1]. The mineral titles system operated by the State Government plays a key role in regulating the industry. The cost of mineral titles administration is $18m per annum.

The mineral titles system provides a regulatory framework designed to enable exploration and mining by providing fair access to mineral resources, active development of these resources, and payment of mineral royalties to the State, with minimal disruption to the environment and other land use activities. This involves granting mineral titles, monitoring exploration and mining activities, and enforcing compliance with titleholders' responsibilities.

Consultation with the minerals industry and DMPR has indicated agreement that an effective mineral titles system should:

- be transparent;
- be based on formalised administrative processes that are communicated to titleholders and title applicants;
- process title applications promptly;
- treat all title applicants and titleholders equitably; and
- provide titleholders with security of tenure to enable the development of mineral resources.

Native title is a significant issue for the State and the minerals industry. In addition to lengthening the time taken to obtain a mineral title, native title has raised complex legal issues that have, in turn created uncertainty regarding access to land for minerals development. For example, the impact of pastoral leases on native title has yet to be resolved and is currently before the High Court of Australia. In addition, the State Government is currently considering the report of the Technical Taskforce on Mineral Tenements and Land Title Applications, which proposes options for reducing the time taken to consider native title implications of mineral title applications. As the resolution of these issues is being pursued in other forums, they have only been commented on briefly in this report.

How Well Does the State Manage Mineral Titles?

This audit examination reviewed the records of some 8 400 mineral titles in Western Australia to assess the efficiency and effectiveness of the State's mineral titles administration. This included assessment of

- the regulatory and administrative framework;
- the process for considering mineral titles applications;
- procedures for monitoring compliance with titleholders' responsibilities; and
- application for exemption from minimum expenditure conditions.

Regulatory Framework

A regulatory framework should be relevant to the needs of the State, its citizens, and the regulated industry. It should also be internally consistent and provide unequivocal direction for government officials responsible for administering the framework.

The legislation governing the administration of mineral titles – the *Mining Act 1978* – is subject to ongoing review by the Mining Industry Liaison Committee (MILC) which is supported by DMPR. MILC regularly makes recommendations to the Minister for Mineral and Petroleum Resources regarding amendments to the Act.

Despite this process for maintaining the relevance of the Act to current industry needs, many amendments proposed by MILC have not been enacted. Some of these proposals date back as far as 1996. In addition, some administrative policies and procedures, such as accepting late annual tenement operational reports, have been implemented without authority from the governing legislation.

The backlog of outstanding legislative amendments, together with the implementation of policy outside of legislative authority, indicates that the mineral titles regulatory framework requires a more comprehensive review than that currently provided by MILC. This should extend to consideration of the feasibility of placing many of the minor procedural aspects of the framework in the regulations to the Act or even within Departmental policy. This would enable non-contentious or procedural changes to be made without undergoing the complex and time consuming process of altering the Act itself.

Timeliness and Cost

Irrespective of the impact of native title, the mineral titles application process can take as long as 22 months. Significant delays occur in the initial recommendation to grant by the Mining Registrar[1]. Of the 1 798 applications lodged in the first six months of 2000, fifty per cent were still to be referred under the *Native Title Act 1993 (Cth)* at the time of this audit examination.

A significant proportion of these outstanding applications have been cleared for grant under the *Mining Act*. Some applications have been delayed pending the outcome of a High Court appeal in relation to native title, however, others have been delayed because DMPR is waiting for further information from applicants.

This situation is concerning. Stalled applications effectively represent de facto mineral titles as they enable the applicants to retain first rights of the title, but without incurring rental or expenditure requirements. At present, applications that have been cleared under the *Mining Act* but not yet referred under the *Native Title Act* represent in the order of $4.58m in lost rental revenue to the State per year.

Administrative Decision-making

DMPR lacks formal criteria and guidelines to guide staff in their decisions in two key areas reviewed. These were the initial assessment of mineral title applications and in the highly discretionary assessment of applications for exemption from minimum expenditure conditions. Further, DMPR does not retain adequate records detailing how and on what basis administrative decisions are made. Consequently, DMPR is unable to reliably demonstrate that all title applicants and all applicants for expenditure exemptions are treated equitably and on the basis of objective and relevant considerations.

Managing Compliance

Based on an audit sample of exploration licences, indications are that only 11 per cent of titleholders provide DMPR with information sufficient to demonstrate that at least the minimum amount of expenditure is spent on exploration or mining activity each year. Fifty-five per cent of titleholders required to observe reporting and expenditure conditions either fail to report annual expenditure to DMPR or report expenditure that is less than the minimum required by legislation. A further 34 per cent of titleholders report compliance with minimum expenditure conditions, but they provide insufficient information to support claimed expenditure.

Mineral titles that do not comply with reporting or minimum expenditure conditions are subject to forfeiture of title either through private action in the Mining Warden's Court or through DMPR forfeiture proceedings. This examination found, however, that DMPR does not rigorously pursue forfeiture for non-complying titles.

1 The Mining Registrar is an officer of the Department of Mineral and Petroleum Resources and is responsible for making recommendations to the Minister regarding the grant of mineral title applications. There is a Mining Registrar in each of the designated mining districts in Western Australia.

Key Recommendations

The key recommendations contained in the report deal with matters of:

Policy and Procedures

- That DMPR:
  - needs to actively pursue necessary amendments to the *Mining Act* and ensure that operational procedures are reliably authorised by governing legislation and Departmental policy and are consistently applied;
  - determine an appropriate set of criteria for assessing mineral title applications and ensure that these criteria are understood, consistently applied, and assessments recorded; and
  - establish clear guidelines and procedures for assessing expenditure exemption applications.

Operational

- That DMPR:
  - minimise opportunities for title applicants to delay or suspend the application process and thereby creating de facto titles;
  - identify and address avoidable delays in the title application process, including initial consideration of titles by Mining Registrars;
  - monitor and enforce compliance with the reporting requirements for both annual operational and technical reports;
  - initiate procedures to ensure that tenements that do not comply with minimum expenditure requirements and are refused exemptions (and are not the subject of plaint action) are made subject to forfeiture; and
  - monitor annual expenditure claims for compliance with allowable expenditure groups and develop systems and guidelines to assess and verify annual expenditure claims.

Monitoring and Review

- That DMPR:
  - review record-keeping practices to ensure completeness and accuracy of records (in particular the tenement files) and compliance with the new *State Records Act 2000* and Departmental record-keeping policy;
  - make the creation and validation of mineral title records an integral part of operational procedures;
  - strengthen the quality controls on its information systems; and
  - include a review of mineral title records as a routine part of the annual internal audit program.

3. Introduction

Mineral Titles in Western Australia

Under the *Mining Act 1978* all minerals in Western Australia are owned by the Crown[2]. People seeking to explore for, or mine, minerals are required to obtain a lease or licence (a 'mineral title') permitting them to mine or explore in a specified area (a 'tenement'). There are seven different types of mineral titles and these confer different rights on titleholders. The majority of the 16 587 mineral titles in force in Western Australia are:

Prospecting licences which enable a holder to prospect for minerals and extract up to 500 tonnes of mineral from the ground;

Exploration licences which enable a holder to explore for minerals and extract, or disturb, up to 1 000 tonnes of material from the ground; and

Mining leases which enable a holder to take and remove minerals and carry out mining operations.

The grant of a mineral title also confers certain responsibilities on titleholders. These include annual reporting of prospecting, exploration, and mining activity; annual minimum levels of expenditure on tenements; and protection of the environment. Breaches of these responsibilities can lead to action by the State, or private action in the Mining Warden's Court, and can result in fines or forfeiture of a title.

The State's Role in Administering Mineral Titles

Access to the State's mineral resources is regulated through the *Mining Act 1978*. DMPR is responsible for administering the Act. The Department does this by:

- processing and approving mineral title applications;
- maintaining a register of mineral titles;
- monitoring and enforcing compliance with titleholders' responsibilities; and
- collecting mineral royalties.

In addition, the Mining Warden's Court provides an avenue for hearing disputes between competing title applicants and civil litigation against titleholders who breach the conditions and responsibilities of title.

DMPR's regulatory role is crucial to the mining industry in this State as it is designed to enable access to land and provide security of access for titleholders. DMPR also ensures that the community receives prescribed royalties from the use of the State's mineral resources.

2 Apart from basic raw materials on private land, and gold, silver, and precious metals on private land alienated before 1 January 1899.

Consultation with DMPR and industry during the course of this examination indicates agreement that an effective mineral titles system should provide:

- transparent government decisions regarding mineral titles;
- certainty of administrative and regulatory processes;
- efficient, timely administration of title applications;
- equity and fairness; and
- security of tenure.

Examination Scope and Methodology

This examination was undertaken between September 2001 and April 2002 with searches of DMPR databases and files conducted between October 2001 and January 2002. It reviewed the framework and administration for granting and managing mineral titles in Western Australia with a view to assessing the efficiency and effectiveness of DMPR's activities in meeting its objectives and the needs of industry.

Four aspects of the mineral titles system were examined:

- the regulatory and administrative framework;
- mineral titles applications;
- procedures for monitoring compliance with titleholders' responsibilities; and
- application for exemption from minimum expenditure conditions.

The review was limited to DMPR's mineral title administration activities. It did not extend to processes for agreeing and collecting mining royalties. Neither did it incorporate the activities of the Mining Warden's Court or detailed examination of processes established under the *Native Title Act*. The impact of native title processes has recently been reviewed by the Technical Taskforce on Mineral Tenements and Land Title Applications[3]. The Taskforce recommendations are currently being considered by the State Government and, accordingly, will not be commented on in this report.

The examination methodology included:

- review of the mineral titles legislative and policy framework;
- analysis of data covering some 8 400 tenements held in DMPR registers and databases;
- testing of 265 tenement files held by DMPR; and
- consultation with DMPR, industry, and the Perth Mining Warden.

3 Technical Taskforce on Mineral Tenements and Land Title Applications, Final Report, November 2001.

The examination included assessment of the quality of administrative decisions made in relation to mineral titles, including decisions to grant or refuse mineral title applications and applications for exemption from minimum expenditure conditions. The merits of individual decisions were not reviewed.

The framework used to review the quality of administrative decisions is illustrated in Figure 1. This framework was developed after reviewing various standards and guidelines for making administrative decisions. These included publications by the Western Australian Public Sector Standards Commissioner, private legal firms, and in particular a publication by the New South Wales Ombudsman describing the elements of good administrative decisions[4]. The Crown Solicitor's Office was also consulted.

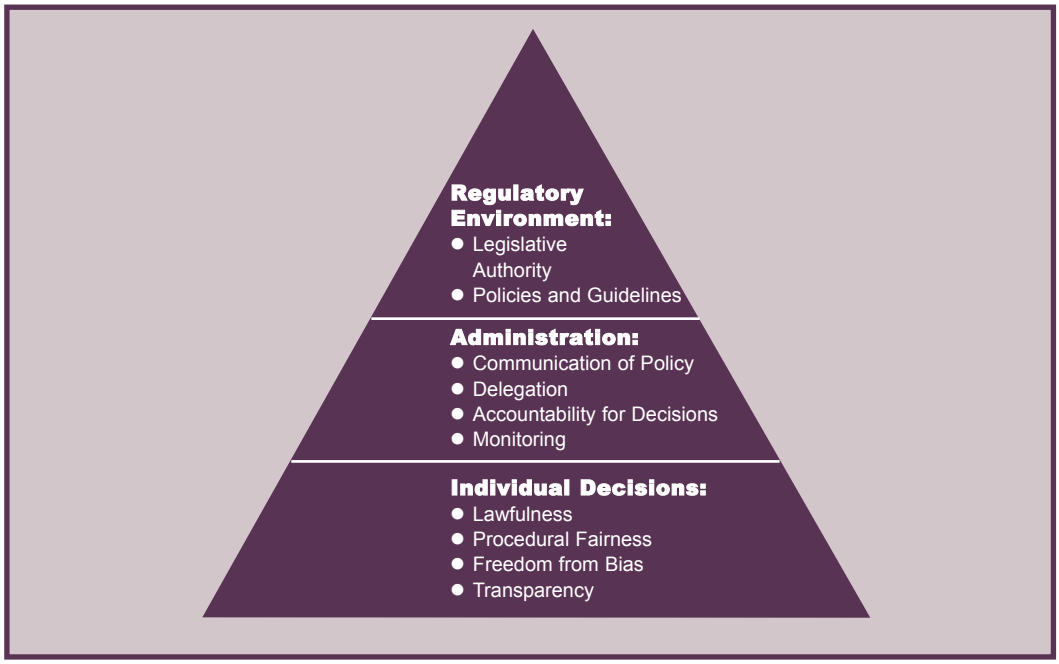

Figure 1: Framework for assessing administrative decision-making.

Source: OAG

4 Good Conduct and Administrative Practice, NSW Ombudsman, 1995.

4. Regulatory and Administrative Framework

- *A large backlog of proposed amendments to the Mining Act has limited the ability of DMPR to provide mineral titles administration that meets the current needs of the industry and the State.*
- *DMPR's practice of allowing the submission of late operational reports is not authorised by the Mining Act.*
- *DMPR has not consistently applied penalties for the late submission of operational reports.*
- *Records for more than half of an audit test sample of tenements were either inconsistent, not current, or lacked key documentation.*

Introduction

The legislative, policy and administrative framework for the management of mineral titles is broadly intended to promote the development of the State's mineral resources by facilitating access to land and providing security of title for mineral exploration and development. The *Mining Act* is the principal legislative instrument in this framework.

DMPR administers the Act. To this end, it aims:

to provide a legislative framework, information systems, and administrative processes for the [minerals industry] in order to:

- *promote the potential for resource exploration;*
- *facilitate access to land and provide secure title for resource exploration and development;*
- *meet community standards for environmental management and health and safety; and*
- *ensure the community receives appropriate resource royalties.*[5]

The regulatory framework must be unambiguous and internally consistent if it is to provide a reliable basis for granting and managing mineral titles. Policies need to be consistent with legislation and both policy and legislation need to provide clear direction for establishing administrative procedures and guiding administrative decision-making.

Initial assessment indicated that a lack of clarity and internal consistency within the regulatory framework might be impacting on the effective management of mineral titles. For example, concerns raised by industry representatives included:

- the backlog of proposed amendments to the *Mining Act* and its regulations; and
- the extent to which policy has been implemented outside the authority of the Act.

The examination reviewed the regulatory framework with a view to pursuing these concerns and determining the extent to which legislation, policy, and administrative structures facilitate the effective administration of mineral titles. This included a review of Departmental policies and records, and consultation with representatives from DMPR.

5 Source: DMPR Annual Report 2000-01.

Mineral Titles Legislation

The *Mining Act*, among other things:

- vests the ownership of all minerals in the State[6];
- establishes which land is open for mining;
- imposes conditions, rights and responsibilities for mining activities;
- provides for an administrative structure, including public officers and delegation of regulatory decision-making; and
- establishes the position, jurisdiction, and powers of the Mining Warden and the authority to establish Mining Wardens' Courts.

The *Mining Regulations 1981* include other details in relation to the establishment and operation of a mineral title including, for example, application procedures, expenditure conditions, and reporting obligations for all seven different types of licences and leases.

The authority to administer the Act is vested in the Minister. The Minister can and does delegate this authority to specified DMPR officers. These delegations do not enable Departmental officers to further delegate their authority (for example, to other officers) and require them to give full consideration to decisions they make under the delegated authority.

The Backlog in Legislative Amendments

Acts of Parliament are updated from time to time to give effect to new government policy directions or clarify the intent and scope of existing legislation. Timely legislative amendments are needed for Acts of Parliament to remain relevant, unambiguous, and reflect the needs of the community.

DMPR endeavours to ensure the continued relevance of the *Mining Act* and its regulations by working with industry through the Mining Industry Liaison Committee (MILC) to monitor and review the impact of the Act on mineral titles administration and the industry. During the past five years, MILC has proposed 29 amendments to the Act. All of these have been approved by Cabinet and six have been enacted by Parliament. Of the 23 proposals that have not been enacted, 15 are included in the *Mining Amendment Bill 2001*, which is currently before Parliament, and eight are included in the *Mining Amendment Bill 2002* which is currently being drafted (Table 1).

The long delay and outstanding nature of these proposed amendments has inhibited DMPR from addressing administrative problems that arise in the day to day operation of the *Mining Act* for as long as six years and warrant urgent attention.

6 See Footnote 2.

Amendment	Date First Proposed	Current Status
1. Change of Mining Registrar position for certain mineral fields.	20/11/96	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
2. Standardise "stand-off" protection zones.	12/3/96	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
3. Service of warrant of execution.	11/6/96	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
4. Confirm that "meteorites" are not minerals under the Act.	11/6/96	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
5. Related parties regarded as same party in certain circumstances.	17/9/96	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01
6. One exemption for Multiple Tenements.	6/5/97	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
7. Standard service requirement for all applications.	6/5/97	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
8. Amalgamation of ground into an exploration licence.	10/6/97	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
9. Surrender of Part Blocks.	10/6/97	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
10. Increased level of monetary penalties under the Act.	9/9/97	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
11. Special Prospecting Licence – application valid despite expiry of "primary tenement".	9/12/97	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
12. Overlapping tenements applications.	9/6/98	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
13. Change to plaint provisions.	9/6/98	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
14. Availability of land the subject of compulsory partial surrender of exploration licences.	1/12/98	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
15. Evidence of financial resources not required for small Exploration Licences.	1/12/98	Cabinet approval obtained on 2/8/99. Introduced to Parliament 18/10/01.
16. Special Prospecting Licence provisions.	7/3/00	Cabinet approval obtained on 5/11/01. Currently being drafted.
17. Provision for lodgement of drill core.	13/6/00	Cabinet approval obtained on 5/11/01. Currently being drafted.
18. Security required for all tenements and discharge procedure.	12/9/00	Cabinet approval obtained on 5/11/01. Currently being drafted.
19. Prospectors' activities to be allowable expenditure.	12/9/00	Cabinet approval obtained on 5/11/01. Currently being drafted.
20. Tenement holders' liabilities to continue when tenement forfeited.	13/3/01	Cabinet approval obtained on 5/11/01. Currently being drafted.
21. Need for past tenement holder to have access to ground.	13/3/01	Cabinet approval obtained on 5/11/01. Currently being drafted.
22. The powers and jurisdiction of the Warden and Warden's Court.	13/3/01	Cabinet approval obtained on 5/11/01. Currently being drafted.
23. Exemption from expenditure commitments on "project" grounds.	12/6/01	Cabinet approval obtained on 5/11/01. Currently being drafted.

Table 1: Outstanding amendments to the *Mining Act* as of April 2002.

Some proposed legislative amendments have been outstanding for as long as six years.

Source: DMPR

Policy

Internal policies and procedures governing the administration of mineral tenements include:

- Divisional Procedural Directives;
- List of Standard Conditions/Endorsements;
- Dealings Entries Guide;
- Dealings Processing Manual;
- flowcharts for processing different types of title applications;
- legend sheets that accompany all title applications during processing; and
- recommendation form for grant of mineral titles.

During the course of the examination, representatives from the mining industry asserted that Departmental policy has pre-empted the enactment of enabling legislation, giving rise to policy and administrative procedures that are not authorised by the governing legislation. In addition, Departmental procedures that lack legislative authority have been the subject of successful plaint[7] action in the Warden's Court.

For example, a key strategy of the Act is to monitor compliance with titleholders' responsibilities, with titleholders submitting annual operational reports (Form 5s) describing tenement operations and expenditure. These must be submitted within 60 days of the anniversary of the grant of title. Extensions of reporting time can be approved by the Minister, but these approvals must be sought and granted within the 60 day period. Failure to submit a report within the 60 day period is an offence under the Act and is subject to forfeiture proceedings by DMPR. DMPR's current practice, however, is to accept and record late reports and not pursue forfeiture. Recently, several Wardens have ruled that this practice does not have legislative authority and have had several Form 5 reports struck from the Register as a result of court action by third parties.

During the first half of 2001, eighteen per cent of the 6 228 Form 5 reports received by DMPR were lodged late. Of these, fewer than two per cent (16 reports) were supported by a valid approval for extension of time. As of November 2001, DMPR had initiated and enacted forfeiture of title in relation to only one of the remaining late reports. A further three per cent of titles were subject to proceedings in the Warden's Court initiated by a third party.

DMPR's implementation of administrative procedures outside of the authority of the Act and Regulations has been the subject of plaints lodged in the Warden's Court. In excess of 100 plaints lodged by a single company in 2001 sought a determination on the unlawful acceptance of annual operational reports outside of the specified lodgement period.

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7 Section 98 of the *Mining Act* provides for any person to make an application for forfeiture of an exploration licence or mining lease. Regulation 48 of the *Mining Regulations 1981* requires these applications to be made on Form No 33 (Plaint Form). The applications are commonly referred to as "plaints".

In the wake of these plaints, DMPR has sought to amend the *Mining Act Regulations* to enable acceptance of late reports and entry of the details in the Mining Register in the absence of approval for late lodgement. Under the proposed amendments, late lodgement will remain a technical breach of the Act and will be subject to forfeiture of title. The proposed amendments were approved for drafting by the Minister on May 18, 2001, but have not yet been finalised.

Record-keeping

The maintenance of accurate records of mineral title applications and activity is integral to the effective management of the mineral titles system. Complete and accurate records provide assurance that applications are granted according to law and that mineral tenements are managed in accordance with titleholders' rights and responsibilities. The integrity of DMPR's records is also critical to the quality of tenement information that DMPR provides to the public on a fee for service basis.

The various records, databases, and logs that underpin the mineral titles system are illustrated in Figure 2. All documents generated during the life of a title, with the exception of original application documents and annual technical reports, are retained in a dedicated tenement file. These files, which are identified with the tenement number, are the complete hard copy records of all transactions and activity in relation to the tenement. The key milestones in the life of all titles are recorded in the Mining Register. The Mining Register is the principal reference point for DMPR to obtain information regarding the current status and history of a mineral tenement and is the primary source of public information regarding individual mineral tenements.

Mineral tenement information is also entered into various electronic databases and manual logs to assist in managing titles and facilitate public access to tenement information. Electronic databases include:

WAMEX: a database of all technical reports submitted to DMPR. Report information is publicly available after a tenement is surrendered or forfeited;

Fantm: a database tracking progress of mineral titles referred through the expedited procedure process under the *Native Title Act*;

Tengraph: a publicly available database providing the position of mining tenements in relation to other land information, other information on mineral tenements, land tenure and topography;

Tendex (Tenement Index System Information): a publicly available and electronic version of the Mining Register, recording details of tenement holders, tenement description, rent and expenditure, and key milestones; and

MiTiS: currently being introduced to replace Tendex and enable electronic lodgement of mineral title applications.

The retention of tenement records in various different formats and locations can impact on the efficient and effective management of mineral titles in two ways. First, multiple records can compromise the integrity of the record by creating the need for additional data entry and the opportunity for gaps and redundancies in data. Second, the absence of a single complete account of all transactions on a mineral title affects the efficiency, and potentially the completeness, of data retrieval.

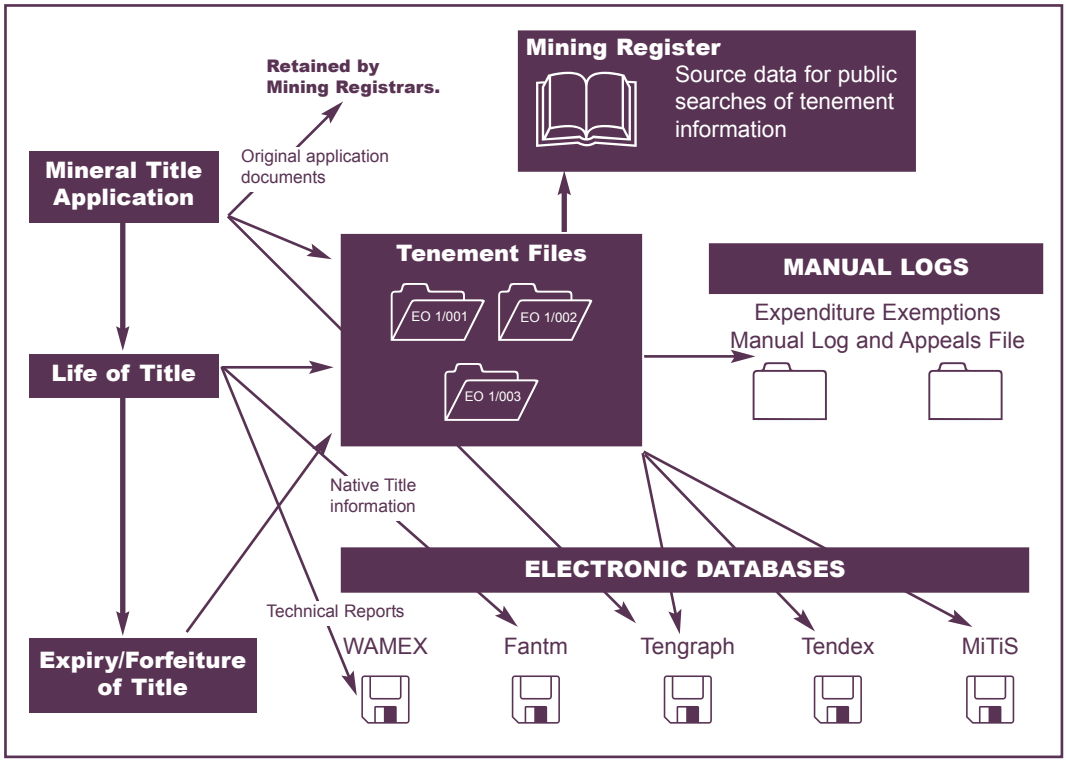


Figure 2: Mineral Titles Records.

Source: OAG

The information obtained during this examination was sourced from the tenement files, the Mining Register, WAMEX, Fantm, Tendex, and the manual log of expenditure exemption applications.

File testing conducted throughout the examination indicated that the information contained in Departmental records and management information systems, including the Mining Register and Tendex, was inconsistent with the tenement files in 19 per cent of the files tested. Examples of inconsistent records included:

- the Mining Registrar's recommendation to grant an application was recorded in the tenement file but not in the Mining Register;
- the title application had been referred for consideration under the *Native Title Act* and cleared for grant, but not recorded in Fantm;

- the tenement file indicated that the application had been approved for grant but there was no corresponding record of further progress on Fantm, Tendex, or the Mining Register; and
- the tenement file indicated that an objection to a title application had been lodged and subsequently withdrawn, but there was no corresponding record in the Mining Register and no record of any further progress of the application either on file or in the Mining Register.

In addition, the tenement files were either not up-to-date or lacked documentation supporting key points in the life of a tenement in 36 per cent of the files tested. These included:

- no record of a formal assessment or recommendation to grant despite written correspondence to the applicant that the application had been cleared under the *Mining Act*; and
- files where the most recent action was almost 12 months old and there was no indication of current progress of the title application.

Incomplete and inconsistent records compromise the integrity of the mineral titles system, including the Department's ability to provide assurance that mineral titles have been properly granted and the ability to effectively track and monitor title applications and compliance with titleholders' responsibilities. By not providing a complete record of the grant and administration of a mineral title, many of the reviewed tenement files did not comply with the Department's own policies on record-keeping which require that there is "an auditable trail enabling decisions to be recorded and linked to the documents or other source material relating to how a decision was arrived at". Further, Parliament has recently reiterated the importance of effective records management by government agencies in its passage of the *State Records Act 2000*. The incomplete and inconsistent nature of the files reviewed also indicates that the Department cannot be confident of the accuracy and completeness of tenement information.

Recommendations

It is recommended that DMPR:

- actively pursue necessary amendments to the *Mining Act*;
- ensure that operational procedures impacting on titleholders rights and responsibilities are reliably authorised by governing legislation and Departmental policy and are consistently applied;
- review record-keeping practices to ensure completeness and accuracy of records (in particular the tenement files) and compliance with the new *State Records Act 2000* and Departmental record-keeping policy;
- make the creation and validation of mineral title records an integral part of operational procedures;
- strengthen the quality controls on its information systems; and
- include a review of mineral title records as a routine part of the annual internal audit program.

5. Mineral Titles Applications

- *Some Mining Registrars' recommendations to grant mineral titles do not confirm that applicants have complied with application procedures or state the reasons for the recommendations.*
- *DMPR officers with delegated authority to grant mineral titles operate without documented criteria for consistently assessing applications.*
- *DMPR has inadequate records describing the basis for decisions to grant or refuse title applications.*
- *Information submitted by title applicants and accepted by DMPR often does not contain sufficient detail to enable applications to be reliably assessed.*
- *Of the 1 798 exploration, mining, and prospecting title applications lodged in the first half of 2000, fewer than 20 per cent had been granted at October 2001.*
- *Fifty per cent of these 1 798 applications had yet to be referred under the Native Title Act.*
- *Many outstanding applications have been stalled by a failure of title applicants to respond to requests for further information, some for over one year.*
- *Initial assessment of title applications by a Mining Registrar usually takes between two to eight months.*
- *Native title affects approximately 95 per cent of mineral title applications and can add four to 19 months to the time it takes to grant a mineral title.*
- *DMPR records and databases used to track title applications have limited capacity to produce management information, do not record information in a consistent way, and are not checked for accuracy.*
- *The major application fees charged by DMPR recover only a small proportion of administration costs, for example, mining and prospecting title fees recover four to six per cent of costs.*

Introduction

Mineral titles in Western Australia are granted on a first-come-first-served basis. This differs from petroleum titles, which are granted through a public release and tender system. The process of applying for mineral titles is summarised in Figure 3.

Mineral titles applications can be lodged at any one of the Mining Registrar's Offices throughout Western Australia or at DMPR in Perth.[8] Title applicants are required to make applications public by posting a copy of the application form on the Datum Peg, the noticeboard of the Mining Registrar, and lodging an advertisement in the newspaper. Applicants are also required to serve a copy of the application on pastoral lessees (in the case of Crown Land) and, where the application is over private property, the local government authority, the owner/occupier of the land, and any mortgagee of the land

8 Electronic lodgement of applications is currently being trialed in the Kalgoorlie Mining Registrar's office.

within 14 days of lodgement. In addition, DMPR consults with relevant Ministers in relation to all title applications over Reserved Land. Any person has a right to object to a title application within 35 days of lodgement of the application.

At the close of the 35 day objections period, all applications are assessed by the Mining Registrar for compliance with the provisions of the *Mining Act*. The Registrar then prepares a recommendation for the Minister to approve or refuse the application. Applications that are the subject of lodged objections are forwarded to the Mining Warden's Court for consideration.

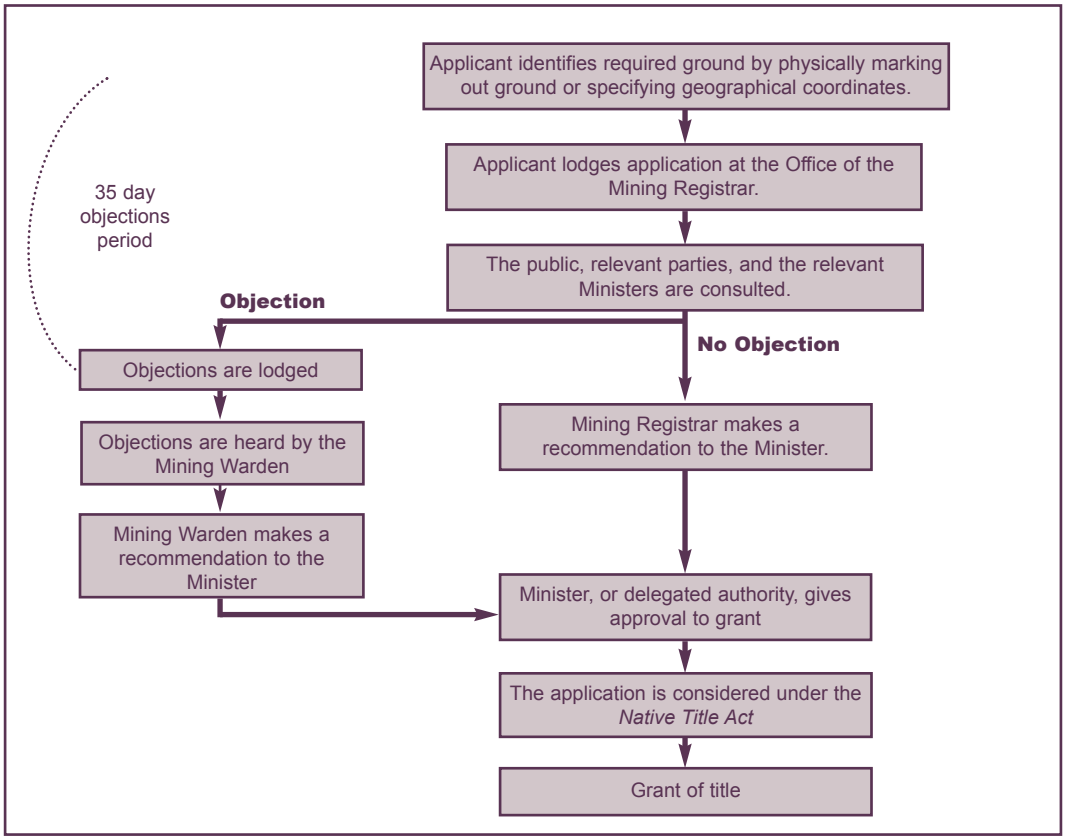


Figure 3: Summarised mineral title applications process.

Source: OAG

When an application has been approved for grant under the provisions of the *Mining Act* and the application covers Crown or Reserved Land, the State government is required under the *Native Title Act* to publish a notice that it intends to grant an application for a mineral title (see Figure 3). This commences a mandatory four month objections period under the *Native Title Act*. Native title objections can be resolved through negotiation and arbitration through the National Native Title Tribunal. Applications that are likely to have minimal impact on native title rights can be "fast-tracked".

To ensure the integrity of the mineral titles system and the consequent security of mineral titles, it is important that titles are granted in a way that is lawful, relevant, fair and transparent. Timely and cost effective consideration of mineral titles also assists in facilitating access to the State's mineral resources and minimises the cost of administration to the State.

This chapter describes how mineral titles are assessed, how many are granted and refused, the time it takes to grant a mineral title, and the cost of granting mineral titles.

How Are Mineral Title Applications Assessed?

Under the *Mining Act*, the Minister is responsible for making decisions to grant or refuse title applications. This responsibility is delegated to a variety of DMPR officers. In practice, it is the Departmental Tenure Officers who exercise this authority following an initial assessment of the title application at the Mining Registrar's Office when a title application is lodged (see Figure 3).

A sample of 67 of the 479 exploration licence applications lodged between January and June 2000 was examined to determine how title applications are assessed in practice[9]. The sample included applications lodged at all Registrar's offices.

The Mining Registrar's Recommendation

The Mining Registrar checks each application for compliance with the *Mining Act*. When the application has been cleared through the objections period, the Registrar makes a recommendation to approve or refuse the application on the basis of compliance with the *Mining Act* and forwards the recommendation to the relevant Tenure Officer. This recommendation notwithstanding, it is the responsibility of the Tenure Officer, as the delegated authority to grant the title, to ensure that the recommendation is based on proper consideration of compliance with the Act.

It is important that Registrars' recommendations contain sufficient supporting information to enable the Tenure Officer, as the delegated Ministerial authority, to be confident that a recommendation is based on proper consideration of an application, and to ensure there is a transparent record of the assessment of title applications.

Acceptance of a Registrar's recommendation to grant a title without first considering the basis for the recommendation is effectively a further delegation of the Tenure Officer's authority that is not authorised by law[10]. The documentation of reasons for a Registrar's recommendation to grant or refuse a title application also provides a transparent record of the assessment of title applications and is consistent with the *Mining Act*, which requires Registrars to give reasons for their recommendations to grant or refuse title applications, and with the Department's policy on record-keeping.

9 This did not include consideration of applications that are contested and subsequently brought before the Warden's Court.

10 The *Mining Act* allows the Minister to delegate authority, except the authority to delegate, to Departmental officers. This means that officers with delegated authority must give full consideration to all decisions.

In the sample of files examined, there was considerable variation in the amount of supporting information provided with Registrars' recommendations to grant or refuse mineral titles. A minority of Registrars' Offices provide a comprehensive schedule of compliance, endorsements, and conditions as part of the recommendation to grant. This schedule includes a checklist confirming that all required documentation has been submitted and action undertaken. Other Offices include a statement that the applicant has complied with the provisions of the *Mining Act* as well as a schedule of conditions and endorsements. Some Registrars' Offices, however, provide only a recommendation to approve an application with no supporting information. In these cases, the Tenure Officer is left to assume that the recommendation has been made on the basis of confirmation of compliance with the *Mining Act*.

Following this finding being drawn to the attention of DMPR as part of this audit examination, DMPR has advised that it will now ensure that all Mining Registrars provide:

- a comprehensive schedule of compliance as part of each recommendation to grant; and
- sufficient information to properly explain and support each recommendation for refusal of an application.

Tenure Officers' Assessment of Work Program, Technical Capability, and Financial Capacity

In making the decision to grant or refuse a mineral title application, the Tenure Officer (among other things) considers the Registrar's recommendation. In the case of applications for exploration licences, the Tenure Officer also assesses title applicants' proposed work program and technical and financial resources.

There are no documented criteria or procedures to ensure that the assessment is made on the basis of relevant and consistent considerations by the 11 different Tenure Officers. Interviews with DMPR staff indicate that, in practice, the basis for assessment is at the discretion of each Tenure Officer.

In addition, all of the tenement files reviewed contained limited information regarding the assessment of applicants' proposed work programs, technical capacity, and financial capability. The assessments only referenced the documents used to support the assessment. No indication was given on file of how the documents were assessed or on what grounds the information was considered to be acceptable.

In the absence of a reliable and transparent record of title application decisions it is not possible to determine whether applications are being assessed in a way that is consistent, fair, and on the basis of relevant facts. Indeed, it is not possible to determine whether the merits of the information submitted has any bearing on the final decision to grant an application.

In addition, review of tenement files indicates that, in many cases, the information submitted in support of applicants' technical and financial capability had questionable relevance and reliability as a basis for assessing applications. For example, information supporting the technical capacity of applicants was

generally indicated in the tenement files as having been supplied within company annual reports, where these were submitted in support of an application. No files contained more specific references, such as page numbers or type of information sourced from the annual reports. In these instances, it is difficult to determine what information was considered by the Tenure Officer to be relevant support for the application. Further, a number of applications contained no reference to technical capacity. In at least two of these cases, file documentation incorrectly claimed that this information had been submitted.

A number of applications included a letter from an accountant confirming the applicants' financial capability. Many of these letters submitted in support of the applications were not specific to the application, making no reference to either the application number, proposed expenditure amount, or period of time over which the expenditure would be committed. For example, one letter used to support an applicant's claim to financial capability stated only:

> *"This letter serves to confirm that we are the accountants for Company X and it is our opinion that Company X will be sufficiently funded to undertake exploration and meet its commitments in this regard."*

This letter was confirmed in the tenement file as an acceptable financial statement supporting the application.

The quality of the record supporting title applications and their assessment affects the integrity of the titles application process in two ways. First, the minimal documentation of decision-making means that the Department is unable to demonstrate that only relevant considerations have been used to grant titles. This leaves decisions to grant or refuse titles open to challenge and potentially compromises the security of titles that have been granted without sufficient supporting documentation. Second, the Department risks granting tenements to titleholders who may not have the technical and financial resources to develop the tenement or meet annual expenditure requirements.

DMPR has advised that guidelines for assessing an applicant's work program, technical capability and financial capacity will be developed for Tenure Officers to follow when considering title applications.

How Long Does it Take to Grant a Mineral Title?

Timely grant of mineral titles enables titleholders to commence developing tenements, resulting in economic activity that returns rental and royalty income to the State. Timely processing of mineral titles is used by DMPR to indicate the effectiveness of the titles administration system. It has also been cited by industry as important to effective mineral titles administration.

DMPR has developed timeliness targets for processing mineral titles to the point of referral under the *Native Title Act*. These are reproduced in Table 2.

The performance reported in Table 2 shows the percentage of applications processed within the target times.

Type of Title Application	Target Elapsed Time	% of applications processed within target time						
		Target	95/96	96/97	97/98	98/99	99/00	00/01
Prospecting Licence	**4 months** (lodgement to determination or referral under the *Native Title Act*)	75	59	64	69	76	63	48
Exploration Licence	**7 months** (lodgement to determination or referral under the *Native Title Act*)	75	71	74	76	77	64	55
Mining Lease	**7 months** (lodgement to grant or determination on the right to grant)	75	66	71	84	90	68	57

Table 2: Target and actual performance for processing title applications.
The Department is not meeting target deadlines for processing title applications.

Source: DMPR

For the purposes of the current examination, timeliness of mineral titles administration was examined in further depth in relation to all prospecting, exploration, and mining title applications that were lodged between January 1, 2000 and June 30, 2000. Review of these 1 798 applications in October 2001 (ie, between 16 and 22 months after lodgement) indicated that 18 per cent (333) had been granted or refused at that point in time. A further 16 per cent had been withdrawn. Almost two-thirds of the applications were outstanding (see Figure 4).

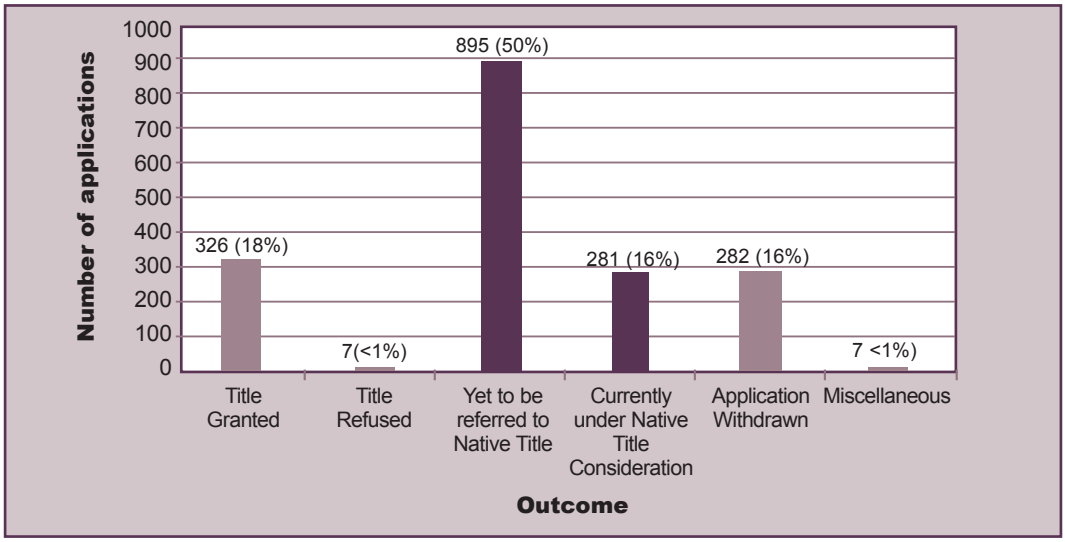


Figure 4: Outcomes of title applications lodged 1/1/2000 – 30/6/2000.
Fifty per cent of the title applications lodged in the first half of 2000 had yet to be referred under native title at October 2001.

Source: OAG

Of the 326 title applications that had been granted, most were granted within eight to 15 months of lodgement of the application. However the application process can take as long as 22 months from lodgement to grant of title.

It is difficult to determine the length of time each stage contributes to the overall application process because of incomplete records in the Mining Register. For example, of the 326 applications that had been granted at the time of this examination, the date of the initial recommendation of the Mining Registrar was not recorded for just over half of the applications. Where this information was recorded, the period from lodgement to the Mining Registrar's recommendations was, on average, just under five months with the majority of applications receiving a recommendation within two to eight months. It can, however, take as long as 19 months to obtain an initial recommendation from the Mining Registrar.

DMPR has advised that some Mining Registrars will not recommend an application if an earlier and unresolved application covers all or part of the same ground, preferring to wait until the earlier application has been resolved. This can cause delays while the first application is considered under the *Mining Act* and the *Native Title Act*.

When an objection to a title application is lodged, the resulting action in the Mining Warden's Court can add considerable time to the application process. However, this is the case for a relatively small percentage of title applications. Of the 1 798 title applications that were lodged in the first half of 2000, objections were lodged against 76 (four per cent). It is difficult to confidently assess the amount of time these objections added to the applications process as a result of incomplete DMPR records regarding the dates of referral to, and outcomes in, the Warden's Court. However, of the 76 applications that incurred objections, 12 were still before the Court at the time of this examination, 22 months after the date of lodgement.

The Impact of Native Title

All title applications except those situated on private land (less than five per cent) are referred under the *Native Title Act*. In addition, a small number (seven per cent) of the applications lodged in the first half of 2000 were granted without native title referral. These titles are situated 100 per cent over pastoral leases and were granted under the previous government's policy of processing mineral title applications on the basis that pastoral leases extinguish native title[11]. The current government has ceased this practice with the effect that any application situated 100 per cent over a pastoral lease will not be referred under the *Native Title Act* until the High Court has delivered its decision regarding extinguishment in the case of *State of Western Australia v Ward.*

The referral process can considerably lengthen the time from lodgement to grant. Of the 1 798 title applications lodged in the first half of 2000, approximately one-third had been referred for consideration under the *Native Title Act* at the time of this examination. Fewer than half of these had been granted. The

11 State of Western Australia v Ward [2000]FCA 611.

majority of those granted were granted within four to eight months of referral and the balance within 12 months. Of the applications that have yet to be granted, all have been within the native title process for in excess of 12 months and some have been under consideration for as long as 19 months.

The options available to facilitate the progress of mineral titles through native title have recently been examined by a State Government appointed Technical Taskforce on Mineral Tenements and Land Title Applications[12]. The Taskforce recommended a number of options for reducing the impact of native title procedures on mineral title applications. These are currently being considered by the State Government.

Outstanding Applications

Applications that remain outstanding for long periods of time prevent DMPR from achieving its aim of facilitating access to land by preventing other prospective titleholders from gaining access to tenements. Outstanding applications can also effectively serve as de facto titles whereby applicants cannot develop the tenement, but still retain the rights to the ground without incurring rental fees or minimum expenditure requirements. This is of particular concern when applications are stalled due to an applicant's inaction, for example, by failing to respond to requests for information. In addition, stalled applications represent foregone revenue to the State in the form of rental income.

As of October 2001, 895 (approximately 50 per cent) of the 1 798 applications lodged in the first half of 2000 had not been referred under the *Native Title Act*. A further 281 (approximately 16 per cent) had been referred but had not yet been dealt with under the *Native Title Act*. In total, this means that 1 176 (approximately 66 per cent) of the 1 798 applications lodged in the first half of 2000 were still outstanding, some 16-22 months after the applications were lodged (see Figure 4).

DMPR has estimated that, in total, there are approximately 11 200 mineral title applications awaiting approval. Of these, 6 056 applications have cleared *Mining Ac*t approval and are awaiting referral under the *Native Title Act*. DMPR estimates that some 4 000 (66 per cent) of these have cleared *Mining Act* approval but have not been referred under the *Native Title Act* pending the result of a High Court appeal in relation to the Ward decision. A further 2 056 have not yet been referred under the *Native Title Ac*t for a number of reasons including:

- 1 000 applications that have not been referred under the *Native Title Act* "on the basis that the Native Title Representative Bodies would not be able to process the volume of applications";
- 400 applications that have been suspended awaiting policy changes in relation to mining in the conservation estate; and
- an undetermined number of applications awaiting confirmation from applicants that they wish to proceed with the application.

12 Technical Taskforce on Mineral Titles and Land Title Applications, Final Report, November 2001.

At present, the 2 056 applications that have been cleared under the *Mining Act* but have not yet been referred under the *Native Title Act* (for reasons other than awaiting the Ward appeal) represent $4.58m in lost rental revenue to the State per year.

DMPR has limited capacity to determine the number and status of outstanding applications. Manual and electronic information systems and records are not designed to produce summary information describing, for example, the number of current applications that have not received approval under the *Mining Act*. In addition, electronic information used to track the progress of individual applications is recorded differently by different Departmental officers and is not subject to quality control or audit. This affects DMPR's ability to actively assess and manage the timeliness of processing mineral titles applications.

How Much Does it Cost to Grant a Mineral Title?

DMPR charges application fees to recover part of the cost of administering the mineral titles system. Fees for Prospecting Licences and Mining Leases were increased and Exploration Licences decreased in the 2002-2003 State Budget. The new fees, which are to apply from July 1, 2002, are summarised in Table 3.

These fee increases were based on a review of the costs of processing of the major leases and licences (plus an allowance for overheads) undertaken by DMPR in 2001. The results of the DMPR analysis for mining, exploration, and prospecting leases and licences are provided in Table 3.

These increases were the first since 1994 to be based on an analysis of costs. Other increases were based only on an increase in the Consumer Price Index.

However, the costing approach undertaken by DMPR in 2001 was not consistent with the Treasury Costing Guidelines[13]. Consequently, the examination estimated the full cost of the major application fees based on the Treasury Costing Guidelines to provide an indication of the extent to which the new fees recover the cost to DMPR. The results of this analysis are also provided in Table 3.

13 Costing and Pricing Government Outputs, Department of Treasury, October 2001.

Type of Licence or Lease	Application Fee			
	2002-2003 Fee	2001 Cost Estimates (DMPR)	Cost per Licence*	Recovery of full costs
Prospecting Licence	$100	$634	$2 617	4%
Exploration Licence (Graticular[14] – 70 block max)	$800	$813	$3 789	21%
Mining Lease	$200	$1 321	$3 199	6%

*Based on1990-2000 financial information and the Treasury Costing Guidelines.

Table 3: Mineral title application fees.
Application fees recover only a small percentage of the costs of administration.

Recommendations

It is recommended that DMPR:

- determine the appropriate type and amount of information needed to accompany title applications and communicate this to prospective applicants;
- determine an appropriate set of criteria for assessing mineral title applications and ensure that these criteria are understood, consistently applied, and assessments recorded by officers with delegated authority to assess and grant titles on behalf of the Minister;
- identify and address avoidable delays in the title application process, including initial consideration of titles by Mining Registrars;
- determine what information is required to support Registrars' recommendations and ensure that this information is supplied to Tenure Officers with delegated responsibility to grant titles;
- minimise opportunities for title applicants to delay or suspend the application process and create de facto titles. This should include instituting appropriate follow-up procedures to requests for information from applicants (and, if necessary, appropriate penalties should be authorised and enforced) to minimise delays in relation these requests;
- ensure that records and databases are capable of providing consistent and accurate information to track the progress of individual applications as well as Departmental efficiency;
- identify and resolve languishing mineral title applications; and
- review fees against the actual costs of administration annually.

14 The boundaries of Exploration Licences can be defined by graticular blocks or by map coordinates of boundary pegs.

6. Annual Reporting

- *Although, overall, 92 per cent of annual operational reports are submitted by titleholders, only 25 per cent of the sample of reports reviewed by audit complied with reporting requirements.*
- *The Department does not check annual operational reports for compliance with reporting requirements.*
- *Only 20 per cent of annual technical reports are submitted by the due date.*
- *More than one-third of tenements reviewed had not submitted a technical report as claimed by the titleholders in their operational reports.*
- *DMPR has not systematically enforced compliance with technical reporting.*

Introduction

The grant of a mineral title imposes certain responsibilities and conditions on titleholders. These are designed to ensure that tenements are actively developed. They include requirements such as the submission of annual operational and technical reports.

The responsibility for submitting annual operational and technical reports is imposed on titleholders for two reasons. First, the reports serve to support claimed annual levels of expenditure. Second, the reports contribute to a public record of mineral exploration and mining activity in the State. This record is used by the State and industry for geological mapping and to indicate the prospectivity of potential future tenement holdings.

Compliance with reporting and other obligations is enforced through DMPR compliance monitoring and industry self-regulation. DMPR aims to provide surety that titleholders will meet these reporting obligations. This involves monitoring compliance at key milestones in the life of a tenement.

In addition to Departmental monitoring, the *Mining Act* establishes an industry self-regulation mechanism that enables anyone to apply to the Mining Warden for the forfeiture of a mineral title on the grounds that the titleholder has not complied with the Act. The Mining Warden hears these complaints and makes recommendations to the Minister who may impose penalties or declare the title to be forfeited[15].

The operation of the Mining Warden's Court was not reviewed as part of this examination. During the course of the examination, however, consultation with industry suggested that the effectiveness of the industry self-regulatory function may be limited by a number of factors including:

- the relatively small total number of plaints that are lodged each year (approximately 380 compared to the 16 587 titles in force);
- long lead times in obtaining hearings in the Warden's Courts;

15 Except in the case of Prospecting Licences, where the Mining Warden determines the plaints.

- vexatious complaints which are withdrawn prior to Court hearings and have the sole effect of delaying business operations; and
- lack of formalisation and inconsistent application of Court procedures.

Current proposed amendments to the *Mining Act* will address concerns regarding Court procedures and are expected to have an impact on lead times and the incidence of vexatious complaints.

This chapter examines the role of DMPR in managing compliance with titleholders' responsibilities to provide annual operational and technical reports.

Annual Operational Reports

The Department monitors the lodgement of annual operational reports. The reports, which are commonly called "Form 5s", include:

- a summary of any activities carried out during the reporting period;
- expenditure incurred on each type of activity including total expenditure on the tenement; and
- reference to an associated technical report.

Operational reports are required to be lodged at the DMPR offices in Perth within 60 days of the anniversary of the grant of the tenement. Lodged reports are recorded on Tendex. This database is then used to generate monthly lists of all tenements that have not had operational reports lodged. Titleholders that have not lodged operational reports are forwarded a notice of intent to forfeit the title and are given the opportunity to avoid forfeiture by lodging the required report (see Figure 5). Operational reports are subsequently returned for approximately 92 per cent of tenements.

Titleholders who submit the reports outside the 60 day deadline are in breach of the provisions of the *Mining Act*. However, as discussed in Chapter 4 of this report, the Department does not pursue these titleholders for forfeiture.

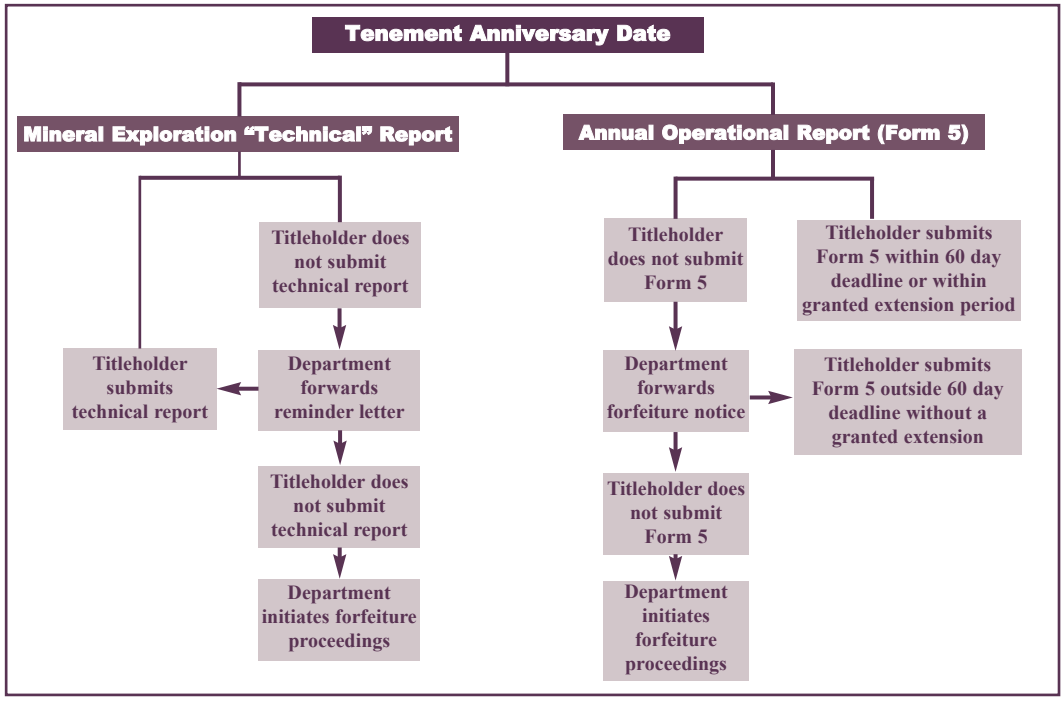


Figure 5: Departmental management of compliance with annual tenement reporting.

Source: OAG

A sample of 105 exploration licence files with reporting dates between January 1, 2000 and June 30, 2000 was reviewed in January 2002 for compliance with operational reporting requirements. Of these, eight did not contain an operational report for the reporting period. For three of these files, TENDEX records indicated that a report had been lodged, contrary to the evidence on file. The remaining five were subject to plaint proceedings in the Warden's Court on the basis of failure to lodge an operational report.

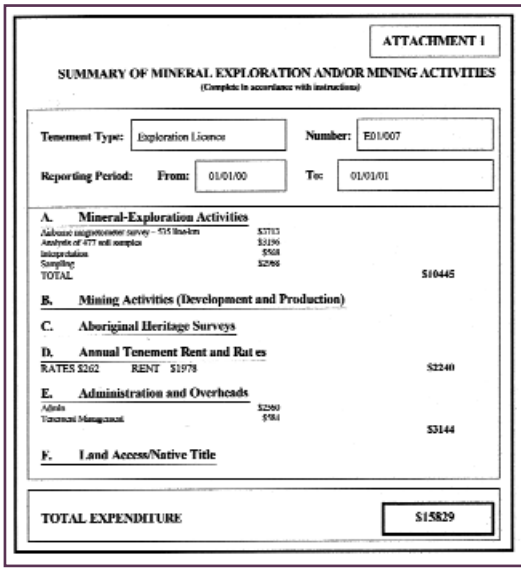
The Department monitors the lodgement of operational reports only, it does not check that all of the required information has been reported. Feedback from industry during this examination indicated that the content of operational reports might vary considerably in terms of:

- the adequacy of detail provided to support expenditure claims; and
- the extent to which reports reflect actual operational expenditure on the tenement.

To determine the completeness of submitted reports, the residual sample of 97 reports was reviewed to assess the comprehensiveness of information describing tenement activities. This information should include details of the cost and description for each mineral exploration or mining activity conducted during the reporting period. These might incorporate, for example, geological mapping, geochemical sampling and analysis, and aerial geophysical surveys.

Only 25 per cent of the files reviewed contained detailed information describing the exploration activities conducted on the tenement during the reporting period (see Figure 6). Many reports contained insufficient information to determine what activity had been conducted during the reporting period. These included reports containing:

- blank attachments;
- only total expenditure; or
- expenditure itemised in broad expenditure groups rather than by exploration activity (See Figure 7).



ATTACHMENT 1

SUMMARY OF MINERAL EXPLORATION AND/OR MINING ACTIVITIES

(Complete in accordance with instructions)

Tenement Type: Exploration Licence Number: E01/007

Reporting Period: From: 01/01/00 To: 01/01/01

A. Mineral-Exploration Activities

Airborne magnetometer survey – 515 line-km $3783
Analysis of 477 soil samples $3196
Interpretation $568
Sampling $2998
TOTAL $10445

B. Mining Activities (Development and Production)

C. Aboriginal Heritage Surveys

D. Annual Tenement Rent and Rates

RATES $262 RENT $1978 $2240

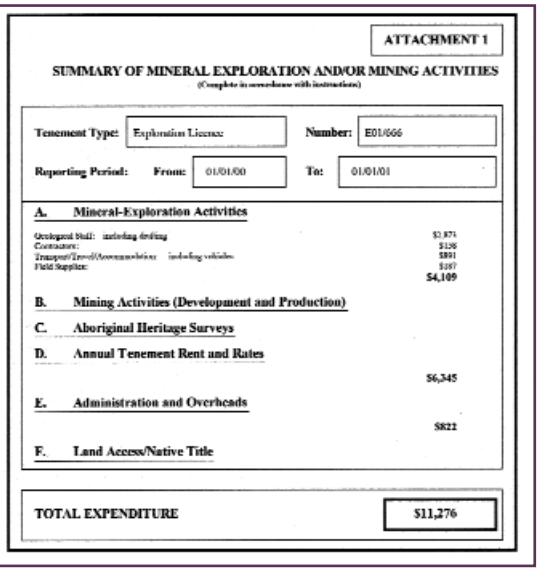
E. Administration and Overheads

Admin $2960
Tenement Management $984
$3144

F. Land Access/Native Title

TOTAL EXPENDITURE $15829

Figure 6: Example Form 5 containing detailed exploration activity.



ATTACHMENT 1

SUMMARY OF MINERAL EXPLORATION AND/OR MINING ACTIVITIES

(Complete in accordance with instructions)

Tenement Type: Exploration Licence Number: E01/666

Reporting Period: From: 01/01/00 To: 01/01/01

A. Mineral-Exploration Activities

Geological field: including drilling $3,871
Contractors: $128
Transport/Travel/Accommodation: including vehicles $891
Field Supplies: $287
$4,109

B. Mining Activities (Development and Production)

C. Aboriginal Heritage Surveys

D. Annual Tenement Rent and Rates

$6,345

E. Administration and Overheads

$822

F. Land Access/Native Title

TOTAL EXPENDITURE $11,276

Figure 7: Example Form 5 containing broad expenditure groups only.

Some operational reports do not provide details of the cost and description of tenement mining or exploration activities.

Source: DMPR

Mineral Exploration – "Technical" - Reports

Annual operational reports are required to include a reference to the associated mineral exploration (or "technical") report for the reporting period. Technical reports record all geoscientific activities carried out during the reporting period. This includes all information generated by tenement activity including, for example, geological maps, geochemical assays, and drill logs. Comprehensive guidelines for preparing technical reports are made available to titleholders.

Technical reports are required to be lodged with DMPR's Geological Survey Division within 60 days of a tenement's anniversary date[16]. DMPR estimates that approximately 20 per cent of technical reports are submitted by the due date and a further 60 per cent within the ensuing 12 months, resulting in 80 per cent of technical reports being received within 12 months of the reporting date.

About two-thirds of the tenement files reviewed for this examination contained a reference to the associated technical report. However, cross-checking to the WAMEX database of submitted technical reports indicated that more than one-third of these reports had not been provided as claimed. Action had been taken by DMPR in relation to only six of these outstanding reports.

DMPR forwards forfeiture notices to titleholders who fail to submit technical reports by the due date (see Figure 5). Failure to respond to a notice results in forfeiture proceedings. To date, however, DMPR has only sent forfeiture notices twice and by batch. The first batch was sent to 400 titleholders in 1997. This resulted in submitted technical reports for all but two of the outstanding tenements.

Despite this successful response rate, forfeiture notices were not forwarded again until July 2001, when a batch of 1 383 notices was sent to titleholders with outstanding technical reports. To date, this second batch has prompted 1 231 responses resulting in either submitted reports or Departmental acknowledgement that a report is not required due to the nature of the tenement activity conducted during the year. Forfeiture proceedings may now be initiated against the remaining 152 tenements. However DMPR has not yet proceeded with forfeiture for any of the outstanding tenements.

DMPR also checks all technical reports for compliance with the Departmental guidelines for preparing the reports and contacts titleholders to obtain required information where it has not already been supplied. DMPR estimates that follow-up contact needs to be made in relation to approximately 20 per cent of submitted reports. Technical reports are not currently checked for accuracy, either by cross-reference to Form 5 reports or by sighting original supporting documentation.

Electronic recording of technical reports on the DMPR database WAMEX is expected to facilitate more rigorous monitoring and enforcement of technical reporting in the future. Notably, however, this is not currently planned to extend to checking report accuracy.

Recommendations

It is recommended that DMPR:

- monitor and enforce compliance with the reporting requirements for annual operational reports; and
- systematically monitor and enforce compliance with annual technical reporting.

16 In some cases, titleholders are granted combined-reporting status where they hold a group of tenements that form part of a larger project, enabling the submission of one report annually for the project.

7. Minimum Expenditure Conditions

- *Fifty-five per cent of the tenements reviewed did not meet minimum expenditure requirements.*
- *Tenements that have not met minimum expenditure conditions and were refused exemptions are still operating.*
- *The Department does not check expenditure claims against allowable expenditure groups or verify claims against evidence of actual expenditure.*
- *Guidelines for applying for, and granting, expenditure exemptions are not sufficient to ensure that the exemptions process is consistent and equitably applied to all applicants.*
- *Opportunities for appealing against expenditure exemption decisions are not well understood, or made known, to all applicants.*

Introduction

Holders of prospecting licences, exploration licences, and mining leases are required to spend a minimum amount each year on each tenement (see Table 4).

Minimum Annual Expenditure	
Prospecting Licence	$40 per hectare (minimum $2 000)
Exploration Licence (Graticular) (Non-Graticular)	$900 per block (minimum $10 000 for one block; minimum $15 000 for two blocks; minimum $20 000 for more than two blocks) Extensions: years six and seven $50 000 per annum.; thereafter $100 000 per annum $300 per km^2 (minimum $20 000)
Mining Lease	$100 per hectare (minimum $5 000 if five hectares or less otherwise $10 000)

Table 4: Minimum annual expenditure for prospecting, exploration, and mining titles.

Source: DMPR

These minimum expenditure conditions are intended to ensure that land allocated for mineral development is actively developed and not left idle. Idle tenements represent lost development of a potential mineral resource and lost revenue to the industry and State. Idle tenements also represent lost opportunity to other potential titleholders who are willing and resourced to develop the tenement. DMPR monitors compliance with minimum expenditure conditions and grants expenditure exemptions when exceptional circumstances prevent titleholders from meeting minimum expenditure conditions.

This chapter examines the extent of compliance with minimum expenditure conditions and DMPR processes for monitoring compliance and granting expenditure exemptions.

Compliance with Minimum Expenditure Conditions

Actual expenditure on tenements is reported by titleholders in the annual operational reports. DMPR checks reported expenditure and issues forfeiture notices to titleholders when the reported expenditure is less than the required minimum and the tenement is not subject to a current plaint or application for exemption (see Figure 8).

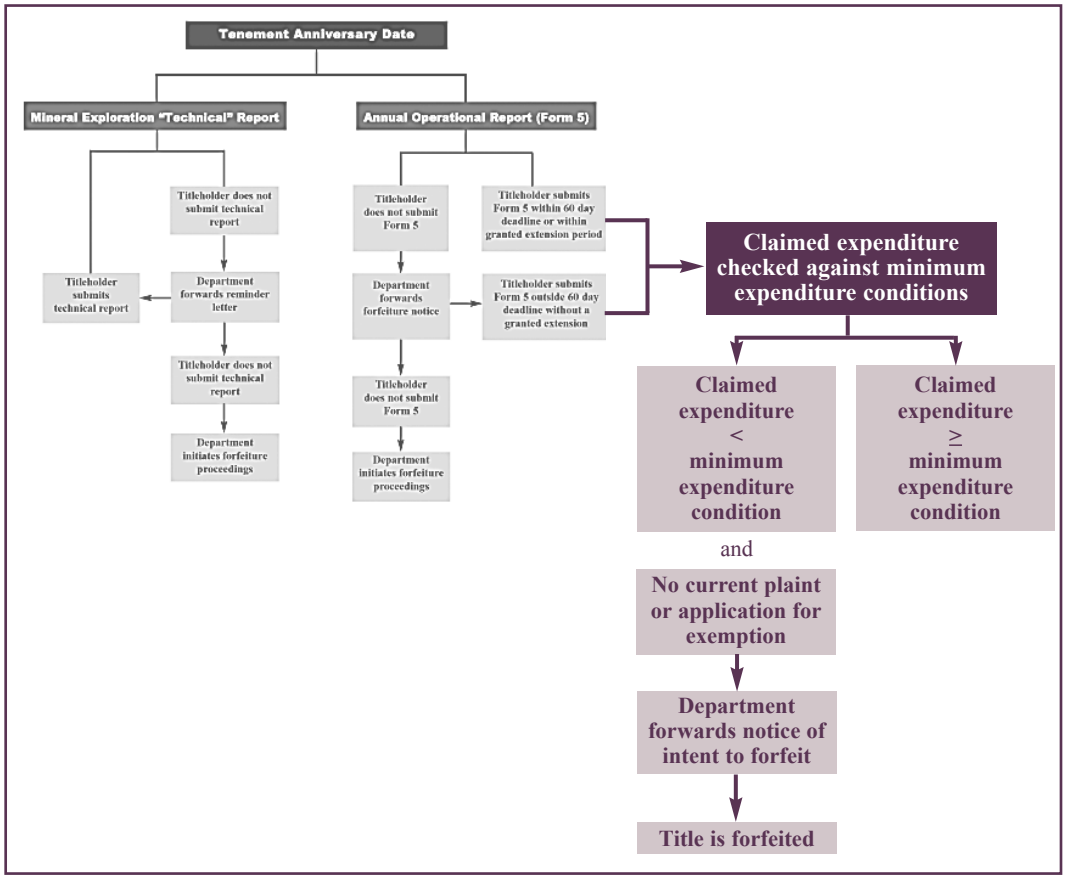


Figure 8: Departmental monitoring of minimum expenditure conditions.
DMPR commences forfeiture action when titleholders do not meet minimum expenditure conditions.

Source: OAG

The sample of 105 exploration licence files used in the previous chapter was reviewed for compliance with minimum expenditure conditions and to test DMPR compliance monitoring procedures. Seventy-seven per cent of the titles reviewed had either met or exceeded minimum expenditure requirements or had been granted an exemption. Despite this level of compliance with the Act, it remains that 55 per cent of the titles reviewed did not meet minimum expenditure conditions (see Figure 10).

DMPR had served forfeiture notices on the 23 per cent (25) non-complying titleholders consistent with the procedure described in Figure 8. However, three titleholders that had not met the minimum expenditure conditions and had been refused exemptions were still operating over one year after failing to comply with minimum expenditure conditions.

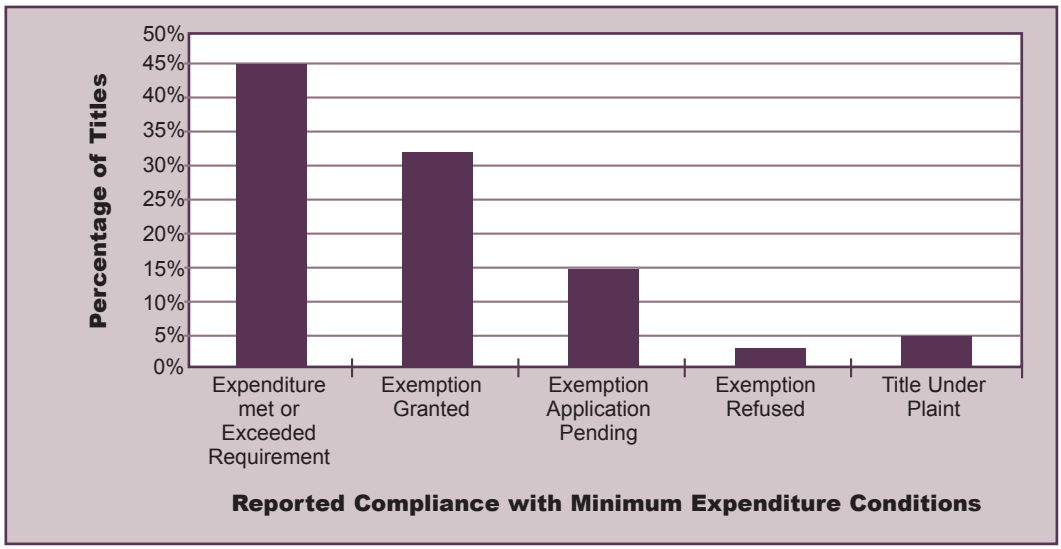


Figure 9: Percentage of reviewed tenements reporting compliance with minimum expenditure conditions.

Fewer than half of the tenements reviewed reported compliance with annual minimum expenditure conditions.

Source: OAG

Monitoring of tenement expenditure levels extends to checking reported expenditure only. DMPR does not confirm whether the reported expenditure includes only allowable expenses as detailed in the reporting guidelines. Neither is the claimed expenditure amount verified, for example, by checking consistency of claimed expenditure with reported activities or the technical reports, or by independent audit[17].

The current practice of accepting claimed expenditure without verification does not encourage titleholders to provide complete and accurate information on their expenditure on the tenement. Consequently, titles can be held with little assurance that the appropriate exploration or development is being undertaken. This was borne out by consultation with industry during the course of this examination that indicated that falsification of claimed expenditure levels in the annual operational reports is an alleged widespread practice. This included anecdotal evidence of over-the-counter completion of operational reports that involved the titleholder requesting confirmation of the minimum expenditure conditions and then transcribing that amount into the report.

DMPR is unable to verify or dispute assertions of falsification of annual operational reports.

17 DMPR's position in this regard is to rely on industry self-regulation to ensure compliance with minimum expenditure requirements. This examination did not extend to industry self-regulation, however concerns raised by industry during the course of the examination suggest that a review of the effectiveness of this mechanism is warranted.

Expenditure Exemptions

The *Mining Act* allows titleholders to apply for exemptions from expenditure conditions. Approximately 7 000 expenditure exemption applications are received each year. DMPR does not collate management information describing the rate of approval but estimates that approximately 97 per cent of applications are approved. This means that in practice effectively one in every two tenements in force that are required to comply with minimum levels of expenditure are granted exemptions. Although it is recognised that many titleholders spend well in excess of their minimum expenditure requirements the large number that spend less than the minimum suggests a problem with the integrity of the regulatory system (see Figure 10).

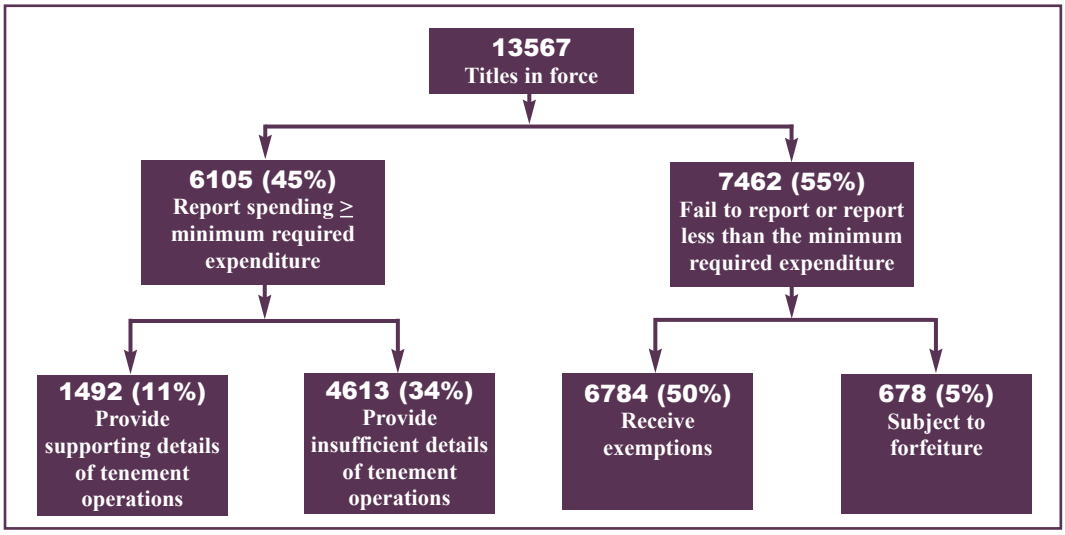


Figure 10: Compliance with reporting and expenditure conditions.
Only 11 per cent of titles reliably report compliance with minimum expenditure conditions.

Source: OAG.

The process for lodging and considering expenditure exemption applications is summarised in Figure 11 below.

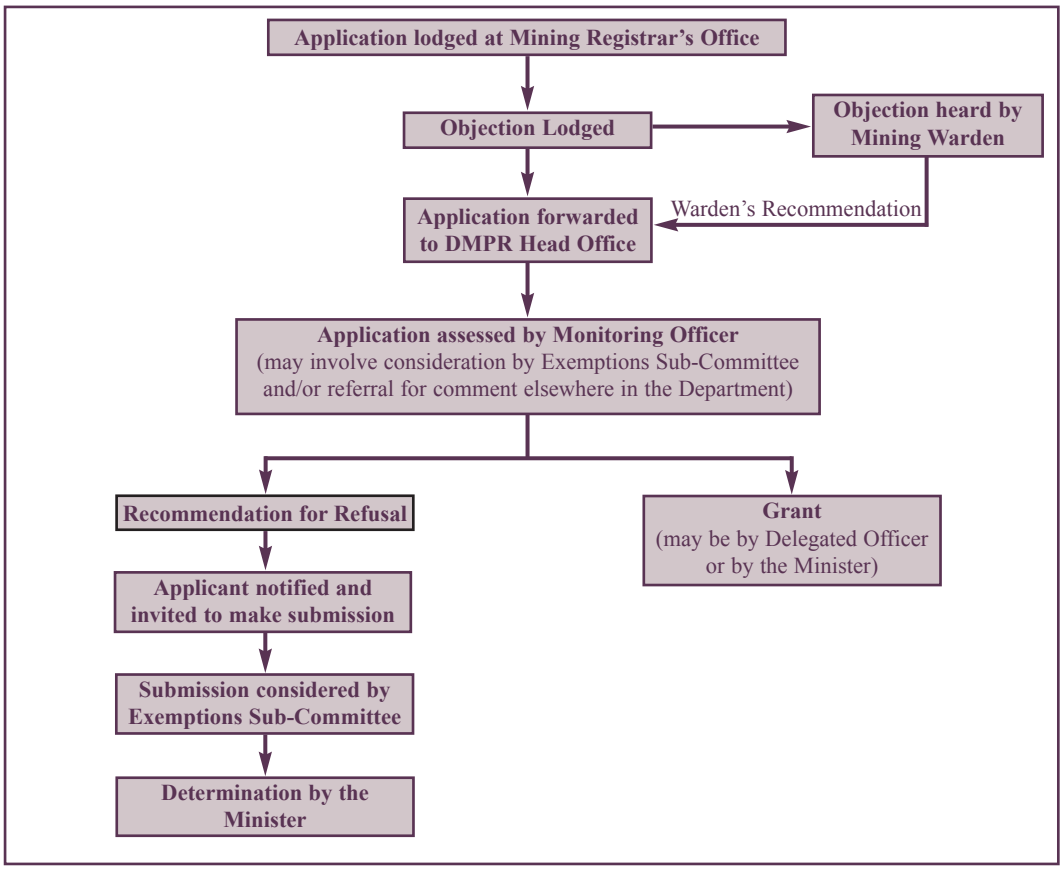


Figure 11: Summarised expenditure exemption applications process.

Source: OAG

Applications are lodged at the relevant Mining Registrar's office using a standard DMPR form and supported by a statutory declaration. They are held by the Mining Registrar's Office for the duration of an initial objections period. Those incurring objections (approximately one-fifth of applications) are referred directly to the Warden's Court where they are heard and a recommendation is prepared for consideration by the Department.

All applications are forwarded to Head Office for assessment by the Monitoring Officer. The merits of each application are assessed under the exemptions categories detailed in the *Mining Act* and using a guiding principle that an application shall be granted if there are compelling reasons to do so (see Figure 12). The majority of exemptions are granted on the basis that more time is needed to evaluate work done or for other reasons determined by the Minister (see Figure 13).

s102(2)

a) Title in dispute
b) Time required to evaluate work done/plan future exploration or mining/raise capital;
c) Time to purchase and erect plan and machinery;
d) Ground unworkable;
e) Uneconomic mineral deposit;
f) Mineral deposit for future operations;
g) Mining prevented or restricted by political or environmental difficulties;
h) Group expenditure for tenements in a project.

s102(3)

Any other reason not set out in s102(2) which the Minister determines is sufficient to justify exemption.

Figure 12: Categories for granting expenditure exemptions.

Source: *Mining Act*

Where there are no compelling reasons to grant an exemption, the Monitoring Officer advises the applicant in writing of an intention to deny the application and inviting the applicant to make a further submission appealing against the decision. Applications and appeal documents are then considered by the Exemptions Sub-committee, which either grants the exemption or makes a recommendation to the Minister to refuse the application.

There is no formal opportunity for applicants to lodge appeals after the Sub-committee has considered the application. However, some applicants, particularly those experienced in tenement management, have met with Departmental officers to successfully influence decisions made after this point.

Information describing the process for consideration of expenditure exemptions is not made available to prospective applicants.

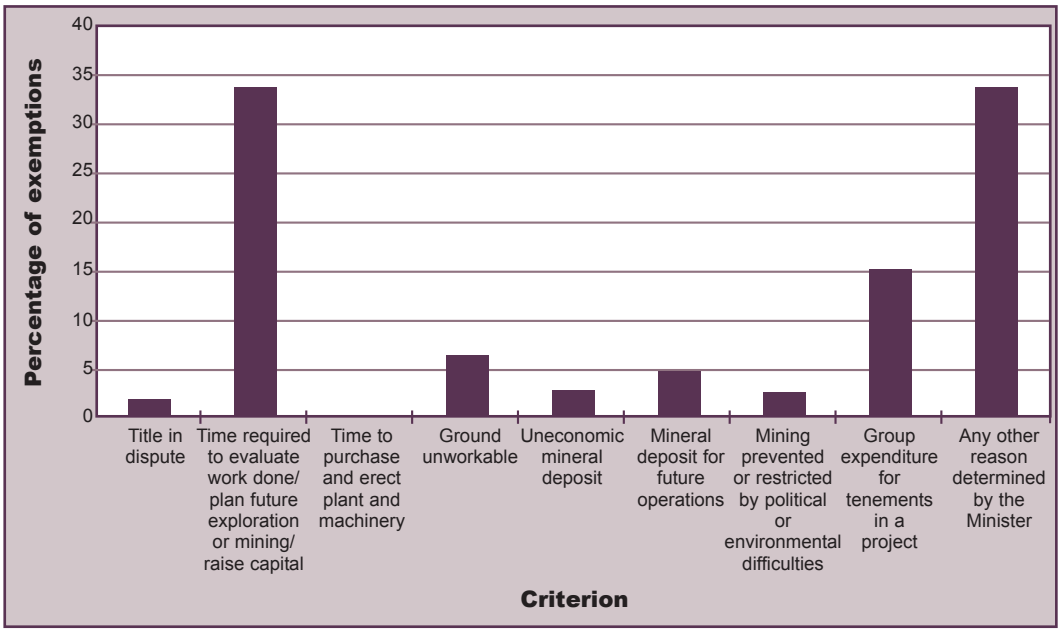


Figure 13: Categories for granting expenditure exemptions.

Most expenditure exemptions are granted on the basis that more time is required to evaluate previous work or for other reasons determined by the Minister.

Source: OAG

Criteria for Granting Expenditure Exemptions

The reasons for expenditure exemptions set out in s102(2) and s102(3) of the Act provide broad categories for granting expenditure exemptions. At present, there are no policy guidelines for assessing applications against these categories. Until 2000, applications were assessed according to the document "Policy Guidelines: Exemption from Expenditure Conditions". This document was withdrawn in March 2000 following a decision in the Supreme Court that called the lawfulness of the Guidelines into question. DMPR is currently redeveloping the Guidelines.

Despite the formal withdrawal of the Policy Guidelines, they continue to be loosely applied when assessing applications. In addition, DMPR has advised that assessment decisions are based on the principle that applicants must present a case for exemption that is "compelling" to a "reasonable person".

Despite these informal parameters, there are insufficient formal policies and guidelines to ensure that:

- decisions are based only on relevant facts;
- reasons are applied consistently; and
- unambiguous decision-making criteria and information requirements are communicated to applicants.

For example, the second category for expenditure exemption (s102(2)(b)) allows an applicant time to evaluate previous work conducted on a tenement before commencing new activity. Exemptions are currently granted for one full year if:

- there is evidence that past work exists to be evaluated; and
- the applicant has spent a "reasonable amount" on the tenement at the time of the application.

DMPR has no formal policy, however, on what is considered to be a "reasonable amount" of existing expenditure. It cannot, therefore, ensure that s102(2)(b) is consistently applied or give clear advice to intending applicants regarding how different levels of existing expenditure will be treated in the assessment of their applications.

The absence of clear and lawful policy to guide expenditure exemption decisions has also effectively reduced two of the expenditure exemption categories to channels for automatic exemptions. Sections 102(2)(e) and 102(2)(h) allow for exemptions on the basis that a mineral deposit is uneconomic and the expenditure forms part of a project of grouped tenements respectively. At present, exemptions are granted in both categories by accepting applicants' assertions that mineral deposits are uneconomic or that tenements form part of a larger project.

The final category for granting expenditure exemptions (s102(3)) allows for the Minister to grant an exemption for any reason believed sufficient to justify exemption. Exemptions granted in this category are not personally considered by the Minister, but are made under delegation similar to applications for exemption in other categories. Reasons for exemptions granted under Ministerial discretion range from companies unable to meet expenditure commitments as a result of liquidation or takeover proceedings, and individual titleholders who are unable to personally work a tenement as a result of incapacitation or ill health.

There are currently no policy guidelines for the exercise of Ministerial discretion in relation to expenditure exemptions. DMPR believes that the Minister's powers in this regard are such that the Minister may make any decision in relation to an expenditure exemption irrespective of any consideration and without giving reasons. This belief was specifically challenged in a recent decision in the Supreme Court. In relation to a Ministerial decision regarding an expenditure exemption, the Court observed that the Minister was obliged to apply the rules of procedural fairness, including giving reasons, and take into account relevant considerations when making a decision.

Information Supporting Exemption Applications

Documentation supporting expenditure exemption applications for a sample of 26 tenement files was reviewed as part of the examination. Of these, six files were referred to the Warden's Court after objections were lodged. For over one-third of the remaining 20 files, DMPR needed to request additional supporting information prior to making a recommendation. Just under half of these requests were for information identified by Departmental staff as "the usual information" and made on a standard letter used for this purpose.

Requests for information additional to the initial application add time and resources to the processing of expenditure exemption applications. The prevalence and standardised nature of the requirement for additional information suggests that there is scope for DMPR to streamline the consideration of expenditure exemption applications by providing prospective applicants with more specific advice regarding the information required to support applications, prior to applications being submitted. This would enable sufficient information to be provided with the initial application and avoid delays associated with requesting, preparing, and reviewing additional submissions.

The provision of guidelines for information supporting expenditure exemption applications can also help to ensure consistent treatment of applications. There is evidence to suggest that, at present, the amount of information considered acceptable to support an application varies arbitrarily across applications and that this may affect decisions to grant or refuse exemption applications.

For example, an application was lodged in November 2000 seeking an expenditure exemption on the grounds that "unseasonal, intermittent heavy rain has occurred in this region over the last twelve months severing roads and during this time the tenements have not been workable". The application was referred to the Geological Survey Division, which observed "The weather "excuse" [sic] is too general to be acceptable." The application was subsequently recommended for refusal. Another application lodged in November 2000 by a different applicant also sought an exemption arguing that planned work was postponed due to "extensive and unseasonal rainfall". No additional information was requested from the applicant and the exemption was granted.

Opportunity to Appeal

Applicants are given the opportunity to appeal against recommendations for refusal. In the case outlined in the previous section, this gave the applicant the opportunity to provide more information regarding the weather conditions and the subsequent impact on the workability of the tenements. The Department's advice to the applicant regarding the recommendation and the applicant's right to appeal did not, however, indicate the type of additional information (for example, number of days of rainfall or number of days of road closures during the planned works) that would be considered sufficient to support an appeal against the decision.

In addition, industry members and DMPR staff have commented that, as a general rule, the intent of the appeals process is unclear and confusing. For example, industry members have expressed confusion regarding the nature of the information to be submitted at appeal and have indicated that they invariably simply resubmit their original statutory declaration. Departmental staff have also indicated that industry members often do not understand that a failure to submit an appeal results in an automatic recommendation to refuse the application.

Recommendations

It is recommended that DMPR:

- initiate procedures to ensure that tenements that do not comply with minimum expenditure requirements and are refused exemptions (and are not the subject of plaint action) are made subject to forfeiture;
- monitor annual expenditure claims for compliance with allowable expenditure groups;
- develop systems to verify annual expenditure claims;
- establish clear guidelines for assessing expenditure exemptions, including guidelines for the provision of acceptable supporting information and provide this information to applicants; and
- review the process for making appeals against expenditure exemptions decisions, particularly the clarity of intent and the equity of access to any opportunity to appeal.

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