

Package 1 - Explanatory Document – Mineral Claims

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1. Prospecting or fossicking for minerals

Prospecting or fossicking for minerals as amended by the Statutes Amendment (Mineral Resources) Act 2019

Minerals are the property of the Crown.

The Mining Act defines fossicking to be the gathering of minerals as a recreation and without the intention of selling the minerals or utilising them for any commercial or industrial purposes. Fossicking does not include the gathering of minerals by any means involving disturbance of land or water by machinery or explosives.

The Mining Act does not regulate fossicking. All minerals collected through fossicking may be collected for a person's own collection and cannot be sold. The *Statutes Amendment (Mineral Resources) Act 2019* does not propose any amendments to fossicking or the sale or finds obtained while fossicking.

While the Mining Act does not regulate fossicking, a person undertaking fossicking cannot enter onto private property without obtaining permission from the owner of land as this would constitute trespass.

Fossicking areas have been established on part of the Echunga and Gumeracha Goldfields near Adelaide to allow for recreational fossicking. Fossicking is not permitted within National Parks, Conservation Parks and Forest Reserves. A person should not enter areas held under current mineral claims, mineral or extractive minerals leases, retention leases, miscellaneous purposes licences or private mines to fossick unless they obtain prior approval from the holder.

The Mining Act defines prospecting as operations in the course of exploring for minerals. Prospecting does not include the gathering of minerals by any means involving disturbance of land or water by machinery or explosives.

A person has a general right to prospect for minerals under section 20 subject to compliance with the Act. Prospecting is commonly the activities undertaken to identify an area in order to establish a mineral claim.

The *Statutes Amendment (Mineral Resources) Act 2019* expands the definition of a tenement holder to including a person prospecting under section 20 (s. 6). This change was made to require a prospector to serve a notice of entry on owners of land prior to entering private land (s. 58A).

2. Identification of areas

Identification of areas as amended by the Statutes Amendment (Mineral Resources) Act 2019

When establishing a mineral claim or applying for an exploration licence, retention status, mining lease, retention lease and miscellaneous purposes licence, the respective areas must be identified, delineated or defined in a manner and form determined or approved by the Mining Registrar. The Mining Registrar can prepare a Determination with approved methods or approve methods on a case by case basis. A determination will be prepared and released in due course and is expected to reflect current identification practices.

The boundary of an area may be identified on the ground or by other means whereby the boundaries' location on the ground can be accurately worked out. Where the boundary of a

tenement is identified on the ground (eg by pegs, markers, etc), the tenement holder must take reasonable steps to ensure that the area continues to be identifiable. Failure to do so will result in an administrative penalty.

To rectify the boundary or delineation of a mineral tenement, the Mining Registrar may:

1. vary the boundary or delineation of a mineral tenement;
2. authorise the moving or replacement of any pegs or other items used to identify a mineral tenement; or
3. take or authorise other action to clarify or rectify the area, location or boundary of a mineral tenement (s. 56O).

The Mining Registrar may only vary the boundary or delineation or authorise the moving or replacement of any pegs or other items used to identify a mineral tenement with the consent of the tenement holder, or with the permission of the Warden's Court.

The Mining Registrar may only take or authorise other action to clarify or rectify the area, location or boundary of a mineral tenement after consulting the tenement holder.

4. Establishing a mineral claim

Establishing a mineral claim as amended by the Statutes Amendment (Mineral Resources) Act 2019

A mineral claim is a mineral tenement under the Mining Act that allows you to prospect or explore for minerals in the area of the claim for 12 months and gives you the right to apply for a mining lease or retention lease over the area.

The Mining Act and Regulations prescribe the process and requirements for registering a mineral claim. Mineral claim applications are assessed by the Regulator to ensure the requirements of the Mining Act and Regulations have been met. If the application complies, the claim will be registered.

Prior to establishing a mineral claim, the applicant must identify whether the area is available and if so, identify the area in accordance with section 56E. A mineral claim cannot be established within the area of an existing mineral tenement without the prior written consent of the tenement holder or the approval of the Warden's Court(s. 80). However, the holder of a mineral claim cannot enter into a section 80 agreement to establish another mineral claim over the same ground prior to the expiry or lapse of that mineral claim to circumvent the prohibition on establishing another claim under section 27 of the Act. A consent agreement sets out the arrangements whereby the existing tenement holder and the applicant for the new tenement propose to co-exist on the same area.

It is recommended that the agreement contemplate the full life cycle of the proposed operations, including clearly providing consent under section 80 of the Mining Act for establishing a mineral claim, registering the mineral claim, applying for a mining or retention lease and undertaking mining operations through to rehabilitation and closure. If the negotiation with the existing tenement holder is not successful, the applicant may apply to the Warden's Court for approval to establish a mineral claim.

If there is an existing exploration licence application in the area of interest, a mineral claim for minerals cannot be registered until the application is determined, but a mineral claim for extractive minerals can be registered.

An application for a mineral claim must be in a manner and form determined by the Mining Registrar, and that application must be accompanied by (s. 21):

- (a) a plan delineating the location and area of the mineral claim that complies with any requirements determined or approved under section 56E;
- (b) information concerning the ownership of the land;
- (c) a copy of any notice of entry provided under this Act;
- (d) a copy of any agreement that is relevant to a mineral claim under this Act;
- (e) a copy of any waiver obtained under this Act;
- (f) such other information as may be prescribed by the regulations or as a Mining Registrar may require;
- (g) a statement of the proposed operations to be carried out within the area of the mineral claim (r. 18);
- (h) a plan delineating any exempt land within the area of the mineral claim (r. 18); and
- (i) the prescribed application fee.

The Mining Registrar may require an applicant to provide such additional documents or information as the Mining Registrar may reasonably require to deal with the application and may require the applicant to remedy any defect or deficiency in an application or in any accompanying document or information. Any information required by the Registrar must be provided in a manner and form determined by the Minister or approved by the Mining Registrar.

An application for a mineral claim must be made within the prescribed period after the claim has been identified in accordance with section 56E.

The area of a mineral claim cannot exceed the maximum area prescribed by the regulations unless approved by the Minister. The maximum size prescribed is 250 hectares (r. 19). An application for approval to establish a mineral claim over an area larger requires the following information:

- proposed size and reason for exceeding the maximum size of 250 hectares
- plan of the proposed area
- definition of the resource, and details of the proposed infrastructure and mining method
- details of parties who have an existing interest in the area (e.g. landowners, existing tenement holders) and status of engagement or access negotiations with the parties
- any authorisations obtained with interested parties (e.g. s. 75 or s. 80 agreements or Warden's Court orders approving pegging)
- any other supporting information.

The Mining Registrar will assess the application to ensure all of the requirements of the Mining Act and Regulations have been met. Only a mineral claim that has been established correctly, with all the relevant authorisations, consents, notices, approvals can be registered.

Upon lodgement, the application and supporting documents are reviewed to ensure compliance with the Mining Act and Regulations. Applications that meet these requirements will result in the registration of a mineral claim. A mineral claim for non-extractive minerals cannot be registered if there is a pending exploration licence application in the area of interest (e.g. exploration licence application received prior to the pegging of the claim).

Without limiting any other provision or law, a mining registrar may cancel the registration of a mineral claim on a ground prescribed by the regulations. Regulation 21 specifies that the Registrar may cancel a mineral claim if the Registrar discovers or determine, after the registration of the mineral claim that, the claim is non-compliant. The Registrar must notify the claim holder that the

claim has been cancelled, and the claim holder has the right to apply to the Warden's court for review of that decision.

5. Nature and lapse of a mineral claim

Nature and lapse of a mineral claim as amended by the Statutes Amendment (Mineral Resources) Act 2019

A mineral claim grants the tenement holder the exclusive right to prospect and explore for minerals in accordance with an approved PEPR and to apply for a mining lease or a retention lease in respect of the whole or part of the land comprised in the claim.

The *Statute Amendment (Mineral Resources) Act 2019* expands the application criteria for mining leases and retention leases to include the holder of an exploration licence. Therefore, the transition from exploration licence to mining lease will no longer require the explorer to establish a mineral claim before applying for the mining lease.

The tenement holder cannot remove soil and minerals, exceeding a mass of 1 tonne unless authorised to do so by the Director of Mines and the tenement holder cannot sell or dispose of any minerals.

A mineral claim can not be transferred from one party to another.

A mineral claim lapses if a valid application for a mining or retention lease is not made within 12 months of the registration date. If a mining or retention lease application is made but is not valid or is subsequently withdrawn after this period the mineral claim will lapse. If an application for a mining or retention lease is refused, the mineral claim will lapse. If a mineral claim lapses, the area cannot be re-pegged by the same person within 2 years without authorisation.

If an application for a mining or retention lease application is made over all or part of the mineral claim, the claim will be in place until the Minister makes a decision on whether to grant or refuse the application (r. 22). After which time the claim will cease.

Where a mineral claim lapses or is surrendered, cancelled or forfeited, no claim covering any of the areas of that previous claim or a related body corporate shall, without the authority of the Minister or the Warden's Court, be made by, or on behalf of, the person who held the previous claim within 2 years of its lapse, surrender cancellation or forfeiture.

If the Minister receives an application to establish a subsequent mineral claim before the claim lapses, the Minister may (in the Minister's absolute discretion), determine that no other mineral claim covering any of the area of the claim may be made pending the Minister's decision on the application (and if the Minister decides to grant the authority to establish a subsequent claim then the applicant may make a new mineral claim within a period specified by the Minister (and no other claim may be made in relation to the relevant area during that period)).