

Mining and Energy Law

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Constitutional and Regulatory Framework

Commercial Context – why is mineral and petroleum ownership important

- Cable Sands Project – Wonerup, WA
 - Involves extraction of heavy mineral (Titanium) concentrate, then transported to a dry separation plant in Bunbury
 - All of the land is in private ownership and all of the minerals beneath the subsurface are also in private ownership
- Ownership is relevant because it dictates:
 - Who you pay royalties to:
 - If public ownership, pay royalties to the State
 - If private ownership, pay to land owner
 - You can have a private royalty arrangement
 - Regulations
 - If public ownership, land is regulated by Mining Act 1978
 - You will have to seek and apply for a mining tenement from the DMP
 - If private ownership, it is unregulated and is outside the scope of the Act
 - Also tells you who you need to negotiate with
 - Private ownership, negotiate with owner themselves
 - Public ownership, deal with the State
 - What you can buy/sell and how to structure a transaction
 - If it's a state owned resource, w/n Mining Act and talking about buying/selling or farming into the mining tenement
 - If private ownership, you're looking at selling the land and the mineral rights attached to that land
 - You can sublease the land and the miner can have rights to enter the land to extract minerals
 - No substantive difference between lease agreement and Mining Rights Agreement
- How to determine whether it is in public/private ownership?
 - Check the title via Landgate to see who owns the land
 - Title will say what point in time the land is granted
 - Tenement Search - DMP won't bring up anything if your land is in private ownership because not governed by Mining Act
 - If land granted prior to 1 Jan 1899, then there will be potential issue wrt private ownership of minerals beneath that land
 - If post 1 Jan 1899, more likely the case that you're within the public ownership sphere and context of Mining Act

Common law position on mineral and petroleum ownership

- What is the starting position at common law? *Cejus est solum ejus est usque as coleum, et ad inferos*.
 - He or she who knows the land owns everything down to centre and everything up to the sky
- Are there any exceptions? The common law recognises royal prerogatives over gold and silver: See *R v Earl of Northumberland* (1568) 1 Plowden 310; 75 ER 472 (also known as the *Case of Mines 1568*).
 - R made grants to Northumberland
 - Queen was running low on revenue
 - At the time Spanish had access to exp gold holdings because they had invaded the New Americas
 - Queen wanted to equalise financial position
 - Earl was mining copper and as they extracted the Cu, they found extensive Au deposits intermingled with Cu
 - Court upheld Queen's argument and said she had royal prerogatives right to take the Au
 - "The common law ... appropriates every thing to the persons whom it best suits ... and because gold and silver are the most excellent things ... the law has appointed them to the person who is most excellent, and this is the King"
 - Exception: where those rights may be defeated is through the use of act and precise words
- Do the royal prerogatives over gold and silver apply in Australia? See *Woolley v Attorney General of Victoria* (1877) 2 App Cas 163; see also *Cadia Holdings Pty Ltd v State of New South Wales* [2010] HCA 27.
 - Crown explicitly reserved itself certain rights, the Crown land grant didn't involve any mineral reservations
 - On an adjoining land, Crown granted mining rights to Iron Stone Co