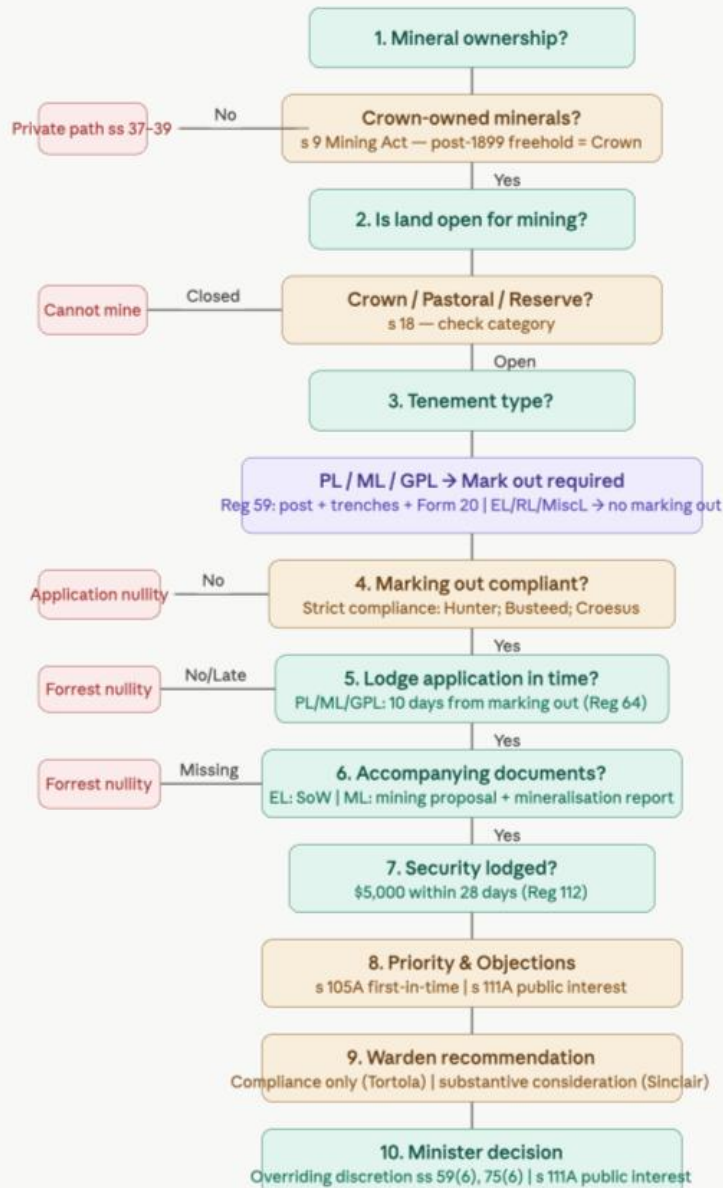


MINING

Marking Out (PL / ML / GPL)

■ Start / Check ■ Action / Step ■ Decision ■ Fail / Refuse ■ Success / Grant



ISSUE

Whether a party has validly marked out land as a precondition to applying for a PL, ML, GPL, and whether any defects in marking out invalidate the application.

RULE

- Marking out is a condition precedent to an application for a PL, ML or GPL — s 105(1) (MA).
- The land must be open during marking out — s 18 MA; Atkins.
- 3 elements must be strictly satisfied - Hunter; Busteded; Croesus:
 - Post projecting at least 1m above ground, fixed firmly (reg 59(1)(a) MR)
 - 2 identifiable trenches OR 2 rows of stones ≥1m long from each post in direction of boundary (reg 59(1)(b) MR)
 - Form 20 affixed to one post (reg 59(1)(c) MR) — insufficient alone: Atkins
- **Freshening up** → Freshening up old marking out is sufficient, provided it is not fraudulent (s 106) (Telstar)
- **If adjoining land** → Common posts/trenches/stones of adjoining land may be used (reg 59(2) MR)
- **Timing** → Form 21 (the application) must be lodged within 10 days of marking out — reg 64(1). Day 1 is NOT counted, day 1 is the NEXT day — s 61(1)(c) Interpretation Act 1984 (WA) (IA).
- **If extension of time** → Minister may grant extension of time (s 162B MA)
- **If overlap** → Overlap in marking out does NOT invalidate PL application (ss 43, 44 MA), AND doesn't invalidate ML or GPL application (Downe)
- **Jumping offences** → Claim jumping offences: removing/damaging/obstructing pegs, notices, posts (s 106(a)-(c) MA)
- **Compliance** → Strict numerical compliance required — Hunter; Busteded; Croesus.
 - Strict compliance is a jurisdictional prerequisite; failure renders application a nullity – Forrest v Forrest

APPLY

Scenario 1: Was every physical element satisfied?

- Check post height ≥ 1m (reg 59(1)(a)) — even 85cm fails: Hunter
- Check 2 trenches or 2 rows of stones ≥ 1m from EACH post in direction of boundary (reg 59(1)(b))
- Check Form 20 is affixed (reg 59(1)(c)) — but Form 20 ALONE without (a) and (b) is not enough: Atkins
- Check land was open for mining at the time: s 18 MA — Atkins

Scenario 2: Form 21 lodged on Day 11 (e.g., marked out 1 May, lodged 12 May)

Day 1 (1 May) is excluded under s 61(1)(c) IA. Days 2–11 = 10 days from 2 May to 11 May. Lodging on 12 May = Day 11 → LATE → invalid under reg 64(1) → application is a nullity per Forrest. Applicant must seek an extension under s 162B before deadline, or start again.

Scenario 3: Post projecting only 85cm above ground

Strict compliance required: Hunter; Busteded; Croesus. A post projecting 85cm does not meet the 1m minimum in reg 59(1)(a). The marking out is INVALID even if Form 20 is attached. The application will be void.

Scenario 4: Freshened-up old marking out (pegs still in place from prior holder)

Permitted under Telstar: freshening up (e.g., re-attaching Form 20, clearing growth from posts) is sufficient as long as it is not done fraudulently. If the original posts genuinely project ≥1m and trenches remain identifiable, the marking out can be valid.

Scenario 5: Overlap with another applicant's marking out

Under ss 43, 44 MA (PL) and Downe (ML/GPL), an overlap in marking out does NOT of itself invalidate either application. Priority is determined by the s 105A first-in-time rule based on the initial requirement (marking out for PL/ML/GPL). The Warden will recommend and the Minister will decide which application has priority.

LIMITS/EXCEPTIONS

Limits

- Marking out only required for PL, ML, GPL — NOT for EL, RL or MiscL.
- Freshening up is only valid if not done fraudulently — s 106 MA.
- Even identical boundaries require Form 20 to be fixed anew.
- Overlap in marking out between two applicants does not invalidate either application.

Exceptions

- s 162B MA: Minister may grant an extension of time for lodging Form 21 — applicant must show grounds.
- reg 59(2) MR: Common posts/trenches of adjoining land may be used to satisfy requirements.

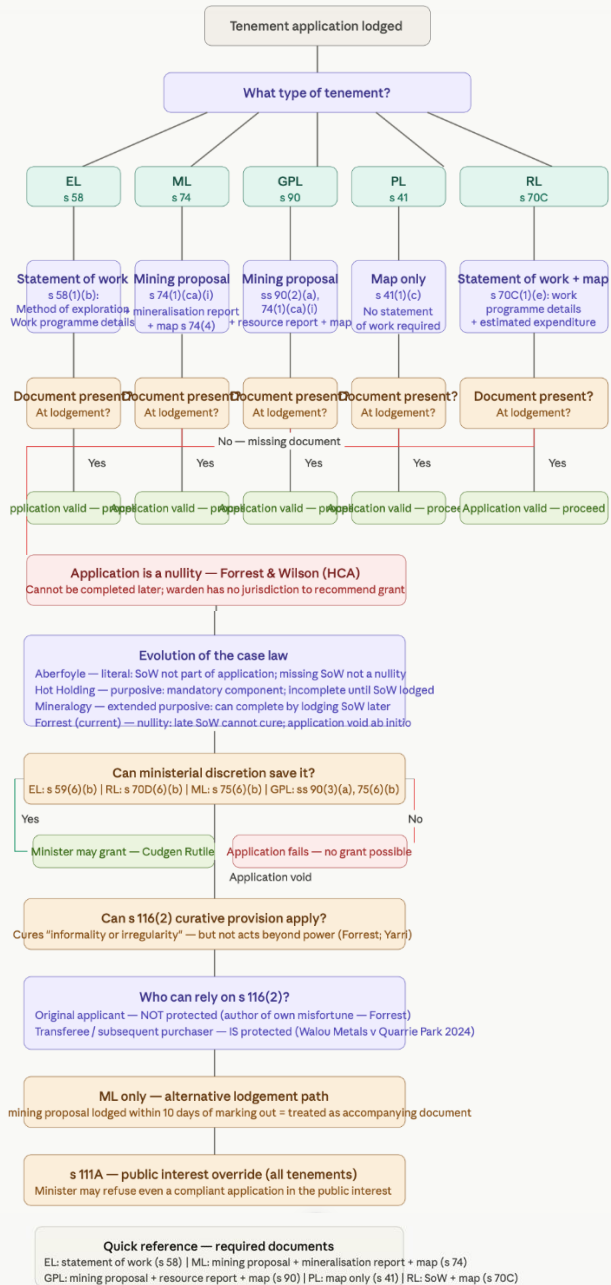
CONCLUSION

FIRM CONCLUSION

A valid application requires: (1) open land at time of marking out; (2) strict compliance with reg 59(1)(a), (b) and (c); and (3) Form 21 lodged within 10 days of marking out (excluding Day 1). Any failure is a jurisdictional defect rendering the application a nullity (Forrest). Extension under s 162B is the only remedy before the deadline.

Practical Note: Always calculate the 10-day period carefully in exam problems — Day 1 is the day AFTER marking out. A 14-day gap between marking out and lodgement (a common exam trap) will always be fatal.

Accompanying Documents — Validity of Application (EL/ML/GPL/PL/RL)



ISSUE

Whether an application is valid where required accompanying documents (e.g., statement of work for EL; mineralisation report for ML) were not lodged contemporaneously with the application, or were lodged late.

ISSUE-SPOTTING:

- An EL application with no statement of work, or one with budget below \$1,000/block/year
- An ML application where the mineralisation or resource report is lodged days/weeks later
- Any fact pattern where 'the document was lodged shortly after' the application
- A question about whether a subsequent purchaser/transferee is protected
- Any reference to s 116(2) as a potential cure

RULE

- **EL** must be accompanied by a statement of work specifying: (i) method of exploration; (ii) work programme details; (iii) estimated expenditure; (iv) available resources — s 58(1)(b) MA.
- **ML** must be accompanied by: mining proposal (s 74(1)(ca)(i)); operations statement + mineralisation report (s 74(1)(ca)(ii)); operations statement + resource report (s 74(1)(ca)(iii)); and map (s 74(4)).
 - ML proposal lodged within 10 days after marking out treated as accompanying application (s 74(1AA) MA).
- **RL** must be accompanied by: statement of work (s 70C(1)(e)) and map (s 70C(5)).
- **PL** must be accompanied by: map — s 41(1)(c).
- **MiscL:** map — s 93(2).

APPLY: Forrest + s 116(2) original applicant rule

Failure to lodge a required accompanying document at the time of lodgement renders the application a NULLITY.

The original applicant CANNOT rely on s 116(2) (Walou Metals v Quarrie Park (2024)). Later lodgement does NOT cure the defect (overruling Mineralogy).

The s 116(2) Curative Provision — Scope Post-Forrest

Section 116(2) MA states that a tenement is not defeasible by reason of 'informality or irregularity' in the application. After Forrest, this provision is interpreted narrowly:

- It covers informalities/irregularities in HOW power is exercised — not acts entirely beyond power
- A completely absent required document = beyond power → s 116(2) does NOT apply
- Applies only to protect TRANSFEREES (innocent third parties), not the original applicant: Walou Metals (2024)

The One Safe Exception — s 74(1AA) MA for ML

For Mining Lease applications ONLY: a mining proposal lodged within 10 days after marking out is treated as if it accompanied the application: s 74(1AA) MA. This is the ONLY permitted gap between application and document lodgement.

IF non-compliance → Minister's overriding discretion to grant despite non-compliance - ss 59(6), 75(6) MA

Minister/Warden discretion

Senior tenements (EL, RL, ML, GPL)

Warden must refuse to recommend granting the tenement – compliance role only [Tortola]