

## Land Open For Mining

The topic is dealt with primarily in Part 3 and Part 3A of the Mining Act. Part 4 talks about the tenements themselves.

### General Principles

- All Land in State is open to mining upon payment of compensation – with significant exceptions.
  - All land in State open to marking out (s104(1)) with some special conditions:
    - Reserves (s24)  
24(1)(b) any land comprised within:
      - (i) a national park, being land to which section 6(3) of the *Conservation and Land Management Act 1984* applies
      - (ii) a nature reserve being land to which section 6(5) of the *Conservation and Land Management Act 1984* applies and which is reserved under Part 4 of the *Land Administration Act 1997* and classified as a class A reserve pursuant to that Part or so classified pursuant to any other Act.
      - (iii) a nature reserve, not being land to which section 6(5) of the *Conservation and Land Management Act 1984* applies but which is reserved under Part 4 of the *Land Administration Act*.
    - Private land (s104(3))  
A person shall not enter on any private land for any purpose referred to in subsection (1) unless he does so pursuant to a permit issued under section 30.
    - Native Title subject to Native Title Act 1993
  - Mining Tenement: there is a binary distinction between exploration and/or production.
    - Exploration: looking and sampling: prospecting on a small scale to exploration of the largest scale.
    - Production: removal of minerals and selling: mining lease then attaches a general-purpose lease and miscellaneous license for the easements.
1. **Can the miner get onto the land?**
    - surface rights require land access
    - subsurface rights, and access to the minerals doesn't always require land access. This is used to access land below 30m without requiring landowners permission.
  2. **General proposition: all land is open to mining** (s18, 23, 27)  
s18 All Crown Land, not being Crown land that is the subject of a mining tenement, is open for mining and as such is land
    - (a) where any person may set up pegs or otherwise mark out the land pursuant to s104 in connection with an application for a mining tenement and
    - (b) where the holder of a miners right may do the things authorized under s40D
    - (c) which may be made the subject of an application for a mining tenement.