



PERSONAL USE



LANDOWNER 'PERSONAL USE' OF EXTRACTIVES UNDER THE CURRENT ACT

Landowner rights to use extractive minerals are preserved under the *Mining Act 1971*. 'Extractive minerals' are sand, gravel, stone, shell, shale and clay, but not minerals used for 'prescribed purposes' or fire clay, bentonite or kaolin. The Act states that claims and leases cannot be granted over land held in fee simple or land where there are exclusive possession native title rights without the written consent of those 'owners of that land.'

The Act also outlines that all owners of land (which is defined as a person holding the registered estate, native title, care and control under legislation, in lawful occupation or a right of immediate possession) can use extractives for their own 'personal use' eg. for infrastructure such as dams, tracks and access roads.

These 'personal use' rights are, of course, restricted by other legislation such as the *Development Act 1993* in some circumstances (depending on the nature and size of the proposed 'personal use').

The key policy behind these usage rights is to protect landowners' rights to use these important minerals (especially in the agricultural sector), while not allowing landowners to extract, use and or sell these minerals as a competitor with companies duly authorised to extract and sell these minerals under the Act.

WHAT YOU SAID

Some submissions recommended that personal use should include gardening, road construction, art, pottery, footpaths, building, walls, ramps, lining drains or dams with clay or material for the construction of a place of residence. Other recommendations suggested that:

- personal use should include all on-site use by the relevant landowner (or mining operator) for any purpose;
- no unregulated personal use of extractive materials should occur where that use is or ultimately serves any commercial purpose; and
- no personal use should occur on freehold land unless the landowner is subject to reporting, rehabilitation and royalties where appropriate.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is proposing to recommend amendments that will ensure that there is equitable and practical permitted use, and that landowner rights are clearly protected. Any proposed amendments will also ensure that royalties cannot be levied on any 'personal use.' The Review Team will also recommend amendments that clarify the inter-operation of the *Development Act 1993*, *Local Government Act 1999* and the *Highways Act 1926*, among others.

Leading Practice Mining Acts Review — June 2017