



ACCESS TO JUSTICE AND THE WARDENS COURT



LANDOWNER AND COURT PROCESSES UNDER THE *MINING ACT 1971*

Unless there is some other agreement or right to access, an explorer or operator intending to enter land must provide an owner of land with a notice of entry outlining the nature of operations proposed on the land at least 21 days before entering. Landowners who hold a right of exclusive possession (other than pastoral lessees or petroleum or geothermal licence holders) have the right to formally object to entry in an appropriate court after a notice of entry is served.

An appropriate court under the Mining Act is the Warden's Court, the Environment, Resources and Development Court, or the Supreme Court. A court may uphold a landowner's objection to entry if the court is satisfied that the conduct of the operations on land would likely result in 'substantial hardship' or 'substantial damage.' If a court makes that finding, it then may impose conditions on access, or prevent access. The Department is of the view that this court process should be retained because it provides landowners with an important right to object to operations being undertaken on their land where it is clear that there may be substantial impacts.

There are also court processes relating to 'exempt land' (for further information on 'exempt land,' see *Policy Direction 8: Restricted Access Land*). These areas of land are given greater protection because they are the places where we live, or rely on, from day to day such as the area around our homes, cultivated fields, sources of water, orchards etc etc. A landowner or court must 'waive' their exemption before an operator can access that land. Unlike the 'objection to entry' process outlined above, landowners have never had a right to commence court proceedings relating to 'exempt land' and so landowners have to wait for operators to commence those proceedings before they can put forward evidence about why the 'adverse effects of the proposed operations cannot be addressed by the imposition of conditions (including compensation).'

WHAT YOU SAID

Your submissions called for the Environment, Resources and Development Court to be retained as the key jurisdiction, or the Wardens Court to be reinstated to hear all exploration and mining matters. Some submissions noted the expense of attending court and recommended that mining companies should provide further financial assistance or cover all landowner court costs.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is considering amendments that will allow land matters to be heard in low-cost, faster courts as well as the Environment Resources and Development Court and the Supreme Court. The mandated minimum payment of fees for 'exempt land' legal advice will be increased over five times to \$2,500, and indexed annually via the Regulations. The Department is also considering establishing an independent landowner advice service (to be housed in an appropriate liaison body) and giving landowners the right to initiate exempt land proceedings if an agreement hasn't been reached by the close of public submissions on a lease application. The close of public submissions is an appropriate time to consider these landowner rights because until that time, the scope, location and likely impacts of the proposed operations are likely to be known.

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