CHAPTER 6

THE GRANTING OF MINING INTERESTS OVER FREEHOLD AND LEASEHOLD LAND

LAND WHICH IS AVAILABLE FOR EXPLORATION AND MINING

6.1 Section 9 of the *Mining Act 1978* provides that, except in the case of land alienated in fee simple before January 1st 1899 (where all minerals other than gold, silver and precious metals were declared in the land grant to be the property of the landholder), all minerals remain the property of the Crown. The Committee notes that a number of such land grants were issued in the South West of the State, and such provisions continue to apply.

6.2 An exception to this general reservation to the Crown occurs where, in the absence of any mineral tenement in existence over the land, the landholder is entitled to *"…use any mineral existing in a natural state on or below the surface of the land for any agricultural, pastoral, household, road making, or building purpose, on that land."*[675] Furthermore, soil, rock, limestone, gravel, and common types of shale, sand and clay are not regulated by the *Mining Act 1978*.[676]

6.3 Section 27 of the *Mining Act 1978* provides that the Crown may, in certain circumstances, grant the right to access its reserved minerals on freehold or leasehold land to third parties:

> *"**Private land open for mining***
>
> *(1) Subject to this Act, a mining tenement may be applied for in respect of any private land (which for the purposes of this Division does not include private land that is the subject of a mining tenement, other than in relation to mining for gold pursuant to a special prospecting licence or mining lease under section 56A, 70 or 85B in which case the land which is the subject of the application for that licence or lease is to be dealt with as private land) and such land is open for mining in accordance with this Act.*
>
> *(2) This Division does not apply to the land specified in* [the Mining on Private Property Act 1898]*."*

6.4 Section 29(2) of the *Mining Act 1978* establishes what has become known as the 'private landowner's veto'. Section 29(2) states the circumstances in which the written permission of the landholder and any occupier is required for the grant of a mining tenement:

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675 Section 9(2), *Mining Act 1978.*

676 *Ibid,* Section 8.

> *"(2) Except with the consent in writing of the owner and the occupier of the private land concerned, a mining tenement shall not be granted in respect of private land —*
>
> > *(a) which is in bona fide and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation;*
> >
> > *(b) which is the site of a cemetery or burial ground;*
> >
> > *(c) which is the site of a dam, bore, well or spring;*
> >
> > *(d) on which there is erected a substantial improvement;*
> >
> > *(e) which is situated within 100 metres of any private land referred to in paragraph (a), (b), (c) or (d); or*
> >
> > *(f) which is a separate parcel of land and has an area of 2000 square metres or less,*
>
> *unless the mining tenement is granted only in respect of that part of that private land which is not less than 30 metres below the lowest part of the natural surface of that private land."*

6.5 In his book *Mining Law in Western Australia*, Michael Hunt observes that:

> *"It is possible for an owner of private land to negotiate substantial payments (making allowance for mineral values) from a miner in respect of an application for a mining tenement notwithstanding that the private landowner does not own the minerals. The reason is that no mining tenement may be granted over the surface of private land that is in use as land under cultivation (which, as noted, is widely defined to include mere grazing of stock on uncleared land) without the consent in writing of the owner and the occupier: s 29(2). These provisions were inserted to protect a farmer's wishes to farm undisturbed by mining. However, they have been used to negotiate substantial payments, even though the compensation to be paid to the owner and occupier in respect of mining is not permitted to take into account any value of minerals on the land: s 123(1) (minerals belong to the Crown and therefore the owner of private land is not entitled to compensation for loss of the minerals). Thus, a landowner has been given a veto over surface mining which can be used to obtain 'compensation' based upon the value of minerals which the landowner does not own; 'compensation' far in excess of the compensation entitlements under the Mining Act."*[677]

[677] Michael W Hunt, *Mining Law in Western Australia*, Third Edition, The Federation Press, Sydney, 2001, p54.

REGISTRATION OF MINING INTERESTS

6.6 As the following table shows, as at June 30 2003 there were 16,009 mineral tenements in force in Western Australia over a total area of 26,777,578ha:

Table 6.1

Mineral Tenements in Force in Western Australia as at June 30 2003[678]

Tenement Type	Number	Area (hectares)
Mining Act 1978		
Prospecting Licences	4,567	574,956
Exploration Licences	2,858	21,119,930
Mining Leases	4,769	1,762,255
Other	3,629	3,298,868
Mining Act 1904		
Mineral Claims and Others	186	21,569
TOTAL	**16,009**	**26,777,578**

6.7 The Committee notes that mining tenements and petroleum rights are not included in DOLA's registration system, but are maintained in a separate register administered by the Department of Industry and Resources (**DoIR**).[679]

6.8 The Urban Development Institute of Australia (Western Australian Division Incorporated) expressed the view that consideration should be given to notifying mining tenements on certificates of title.[680]

6.9 DoIR advised the Committee that the opportunity for establishing an incorporated mineral tenement and land title system was raised during the State Government's 2001-02 functional review process.[681] During that process it was recognized that future benefits may be obtained from developing a spatial data base common to both the DoIR and DOLA systems, and this option was being further examined by both agencies. DoIR, however, advised that integration of the two systems at a higher level than that would not be practical:

> "[T]*he principles of the two title systems are such that there would appear to be very few synergies to be gained in establishing a single land title registry system because the DoIR and DOLA "registration"*

678 Department of Industry and Resources, *Annual Report 2002-03*, p15.

679 Department of Land Administration, *Government Land Administration in Western Australia*, 2001, p11.

680 Submission No 107 from Urban Development Institute of Australia (Western Australian Division Incorporated), February 20 2002, p4.

681 Letter from Dr Jim Limerick, Director General, Department of Industry and Resources, May 2 2003, p1.

> *functions are fundamentally and markedly different, involve very different systems and skill sets and are based on separate legislation."*[682]

6.10 DoIR pointed out that one of the key differences between the DOLA land title system and the mineral tenement regime established under the *Mining Act 1978* was the latter system's 'use it or lose it' principle in which the activity on a mineral tenement is constantly monitored to ensure that the titleholder maintains active exploration or development of a title and meets any environmental responsibilities.[683] DoIR noted that the boundaries of mineral tenements are constantly changing as portions of titles are surrendered or forfeited. It was argued that it would be impractical to record such mineral titles on the certificate of title for the land as it may necessitate alterations to that certificate of title (which may be in the hands of a third party such as a bank) as often as every few months.[684]

THE ADMINISTRATION OF MINERAL TENEMENTS IN WESTERN AUSTRALIA

6.11 The system of granting and recording mineral tenements in Western Australia is administered by DoIR, formerly DMPR, in accordance with the provisions of the *Mining Act 1978.*

6.12 In its 2002 review of the administration of the *Mining Act 1978*, the Office of the Auditor General summarized the process for the granting of mineral tenements in Western Australia as follows:

> *"Mineral titles in Western Australia are granted on a first-come-first-served basis. This differs from petroleum titles, which are granted through a public release and tender system. … . Mineral titles applications can be lodged at any one of the Mining Registrar's Offices throughout Western Australia or at DMPR in Perth. Title applicants are required to make applications public by posting a copy of the application form on the Datum Peg, the noticeboard of the Mining Registrar, and lodging an advertisement in the newspaper. Applicants are also required to serve a copy of the application on pastoral lessees (in the case of Crown Land) and, where the application is over private property, the local government authority, the owner/occupier of the land, and any mortgagee of the land within 14 days of lodgement. In addition, DMPR consults with relevant Ministers in relation to all title applications over Reserved Land. Any person has a right to object to a title application within 35 days of lodgement of the application.*

682 *Ibid.*

683 *Ibid,* pp1-2.

684 *Ibid,* p2.

> *At the close of the 35 day objections period, all applications are assessed by the Mining Registrar for compliance with the provisions of the Mining Act. The Registrar then prepares a recommendation for the Minister to approve or refuse the application. Applications that are the subject of lodged objections are forwarded to the Mining Warden's Court for consideration."*[685]

6.13 The number of objections lodged against mineral title applications are few, but they can lead to long, drawn-out, proceedings in the Mining Warden's Court. The Office of the Auditor General noted that:

> *"When an objection to a title application is lodged, the resulting action in the Mining Warden's Court can add considerable time to the application process. However, this is the case for a relatively small percentage of title applications. Of the 1 798 title applications that were lodged in the first half of 2000, objections were lodged against 76 (four per cent). It is difficult to confidently assess the amount of time these objections added to the applications process as a result of incomplete DMPR records regarding the dates of referral to, and outcomes in, the Warden's Court. However, of the 76 applications that incurred objections, 12 were still before the Court at the time of this examination, 22 months after the date of lodgement."*[686]

6.14 As at March 31 2003, approximately 1,190 mineral tenements were located either wholly or partly over freehold land.[687] The approximate number of objections lodged by freehold landholders under the *Mining Act 1978* between the financial years 1997-98 and 2001-02 are set out in the table below (noting that multiple objections may have been laid against a single mineral tenement):

Table 6.2

Objections Lodged by Freehold Landholders under the *Mining Act 1978* (1997-98 to 2001-02) [688]

Year	No of Objections
2001-02	35
2000-01	30
1999-00	60
1998-99	70

685 Office of the Auditor General, *Level Pegging: Managing Mineral Titles in Western Australia*, Report No 1, June 2002, at Internet site: http://www.audit.wa.gov.au/reports/report2002_01.pdf , pp19-20.

686 *Ibid*, p25.

687 Letter from Dr Jim Limerick, Director General, Department of Industry and Resources, May 2 2003, p2.

688 *Ibid*.

Year	No of Objections
1997-98	70

The Issuing of Mineral Tenements Over Freehold Land

6.15 A mining tenement can be granted over freehold land in the following two ways:

a) Where the landholder and occupier provide written consent, the natural surface and land to a depth of 30 metres is included in the grant of the mineral tenement. It is common for the parties to enter into a written agreement dealing with issues such as compensation, rehabilitation of the land, duration of the agreement, and the right of a party to transfer the land or the tenement. Compensation must be agreed prior to mining operations commencing, and any disputes as to compensation are heard in the Warden's Court.[689]

b) A mineral tenement can be granted without the consent of the landholder and occupier in respect of land below a depth of 30 metres from the natural surface. Such a grant is usually sought for exploration licences over a number of freehold properties, with a view to seeking a landholder's consent for a grant over the natural surface in the event that mineral deposits are discovered at a particular site.[690]

6.16 Pursuant to regulation 67(2) of the *Mining Regulations 1981*, any person (including a landholder, occupier, or any mortgagee) may object to the initial granting of a mineral tenement over private land, and have their objection heard by the Warden's Court. The Committee understands that, administratively, such objections are dealt with prior to coming before the Warden's Court by the landholder's attention being drawn to the requirements of s 29 of the *Mining Act 1978* and to the so called 'private landowner's veto'.[691]

6.17 A mineral tenement that covers private land will usually be granted subject to an endorsement preventing access to land within 30 metres of the surface of any private land where the consent of the landowner has not been obtained. The endorsement may be removed on the DoIR being supplied with a *Consent and Compensation Agreement* signed by the tenement holder and the landholder granting surface access rights.[692]

6.18 Compensation for any damage caused to private property by a mining tenement holder is dealt with under s 35(1) (by agreement between the parties) or Part VII (by determination of the Warden's Court) of the *Mining Act 1978*. Section 35(1) states:

689 *Ibid*, p3.

690 *Ibid*.

691 Stuart House, *Cultivating Exploration: Land Use Conflict - Mining v Farming in Western Australia*, University of Notre Dame Australia (Honours Programme), November 2002, p11.

692 *Ibid*.

> *"**Compensation to be agreed upon or determined before mining operation commences***
>
> *(1) The holder of a mining tenement shall not commence any mining on the natural surface or within a depth of 30 metres from the lowest part of the natural surface of any private land unless and until he has paid or tendered to the owner and the occupier thereof the amount of compensation, if any, that he is required to pay under and as ascertained in accordance with this Act, or he has made an agreement with the owner and occupier as to the amount, times and mode of the compensation, if any."*

The need to access a valuable resource

6.19 The Chamber of Minerals and Energy of Western Australia (Inc) (**CME**) stated the following in its submission to the Committee:

> *"The development of minerals and petroleum resources is a specialised and capital intensive exercise that is generally beyond the reach of individual land holders. As such, it is important that the grant of mineral rights to third parties has an associated right of access to the land to allow for exploration and, if feasible, development of these resources."*[693]

6.20 CME also noted that the amount of land actually utilised for minerals extraction is minimal compared with the amount of land held in mineral titles. As at January 2004, 138,000ha were disturbed by mining activities, which comprises only 0.4 per cent of the area of all mining tenements held (or only 0.05 per cent of the total area of the State). The CEO of CME stated that, based on these figures, *"…the needs of the minerals industry and of individual landholders can be accommodated."*[694]

6.21 CME also stressed, in response to a specific issue raised by the Committee, that:

> *"…the investment of companies who are prepared to undertake such activities needs to be protected by maintaining the security of tenure that is afforded with 21 year renewable mining tenements. In order to ensure business sustainability, which is a prerequisite for sustained environmental management and social contributions, a company must be able to hold ore reserves for future access to facilitate effective succession planning for mining operations."*[695]

6.22 It was further emphasized by CME that mining tenements are generally issued subject to a number of associated conditions related to protecting the rights of the landholder,

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693 Submission No 104 from The Chamber of Minerals and Energy of Western Australia (Inc), February 15 2002, p2.

694 Letter from Mr Tim Shanahan, Chief Executive, The Chamber of Minerals and Energy of Western Australia (Inc), January 29 2004, p1.

695 *Ibid*.

and mining companies negotiate with landholders when mining activities may affect a landholder's right of amenity to part of their land.[696]

The Impact on Landholders of the Grant of a Mineral Tenement Over Freehold or Leasehold Land

Restrictions on further dealings with the land

6.23 The Water Corporation, in its capacity as a significant landholder, expressed concern at the possible restrictions that may be placed on landholders who may wish to develop land that is subject to a mineral tenement:

> *"The ability of a holder of Mineral Rights to restrict the use and enjoyment of land, of which the holder has no legal ownership, should be addressed. The Water Corporation has had experience whereby the Corporation made a request to the Department of Land Administration (DOLA) to transfer an estate in fee simple, which had previously been resumed under the Public Works Act for Collie Irrigation.*
>
> *The request was subsequently rejected as the Mineral Rights holder objected on the grounds that the property is adjacent to the beneficiary of the Mining Leases' open pit and requires the lot for access. Access to the open pit should not be an issue for land transfers but rather a negotiation of leasing."*[697]

6.24 DOLA advised the Committee in April 2003 that there is no express provision in the *Land Administration Act 1997* to allow a mineral tenement holder to prevent or delay a transfer of freehold land, or to record a mineral tenement on a certificate of title. DOLA advised, however, that it has in the past accepted the lodgement of a caveat seeking to protect the access rights of a mineral tenement holder, as long as the caveat is correct in form and expressly states the nature of the estate or interest claimed:

> *"It is for the courts to decide whether or not the particular estate or interest claimed is a caveatable interest in land."*[698]

6.25 Concerns similar to those noted by the Water Corporation above were expressed by private landholders:

> "[A]*s a farmer, if I decide to sell my farm and it has a mining and exploration lease over it - that is, a caveat on my land - the way red*

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696 Letter from Mr Tim Shanahan, Chief Executive, The Chamber of Minerals and Energy of Western Australia (Inc), January 29 2004, p2.

697 Submission No 86 from Water Corporation, February 4 2002, pp4-5.

698 Letter from Mr Grahame Searle, Acting Chief Executive, Department of Land Administration, April 24 2003, p9.

> *tape is today, not too many farmers will come and buy it. They will buy it, but at a reduced value."*[699]

6.26 The view was also expressed in private hearings by affected landholders that miners are able to maintain exploration licences over freehold and leasehold land for many years without undertaking any significant mining activities, thereby tying that land up and preventing development without any detrimental impact on the miners (who can wait *"…until the death of the landholder…"* before attempting to extract the minerals sought):

> *"I had planned to subdivide part of my land for my superannuation. Those plans have been totally frozen for the past seven years. There has been a definite loss of income because, as a private individual, I have not been allowed to exercise my rights. This has occurred because of an application for a mining licence.*
>
> …
>
> *If you are trying to do a development, you have no way of progressing that while there is an interest from the Department of Mineral and Petroleum Resources that is impacting on your area. If it has any hint or suggestion that there may be some mineral deposit there that is effectively state property, regardless of whether it has been tested or mined, you cannot address your development application while there is that interest. Although you may have the right of veto from the surface to a 30-metre range, that is of absolutely no use to you because they have already stopped you from having any opportunity for development."*[700]

6.27 The Committee was advised that private landowners are required to challenge in the Mining Warden's Court any mining and exploration licence applications which have been lodged over their properties, with no recompense if successful, and with the likelihood that further applications will likely be made in the future over the same land by the same or different mining companies.[701]

Disruption of agricultural operations

6.28 The Committee was advised by farmers during a private hearing that significant disruption to normal agricultural operations occurs when exploration and mining activities are carried out on their properties by mineral tenement holders.[702] The most visible impacts are the disruption to stock and the damage to pasture by heavy vehicles and drilling equipment.[703]

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699 Private hearing, *Transcript of Evidence*, p6.

700 *Ibid*, pp2-3.

701 *Ibid*.

702 *Ibid*, p6.

703 *Ibid*.

6.29 A farmer who gave evidence to the Committee in relation to his difficulties obtaining permission to clear his land for agricultural activities (See Chapter 7), advised the Committee that a significant contributing factor to his not being able to clear land prior to the introduction of more restrictive land clearing regulations in the early 1990s was that between 1988 and 1995, he was unable to complete his previously approved clearing plan due to the uncertainty surrounding mining activities proposed by a third party on his property.[704]

Case study - Abba Plains, Busselton

6.30 One of the current landholders of an 800 acre property on the Abba Plains in the Shire of Busselton advised the Committee that they had recently inherited the property from their late parents and were seeking to subdivide the property in two in accordance with their late parents' wishes.[705] The property had been owned by their parents for approximately 45 years.

6.31 Upon applying for the subdivision, the then DMPR raised an objection to the proposal.[706] The landholders understand that the objection of DMPR was subsequently withdrawn subject to it being a condition of the subdivision being approved that a memorial be placed on each of the two newly created certificates of title in accordance with s 12A of the *Town Planning and Development Act 1928* in the following terms:[707]

> *"This lot is partly underlain by titanium mineralisation and mining of this may be proposed in the future".*

6.32 It is noted by one of the current landholders that this action was taken despite the fact that there are already two notices on the existing certificate of title indicating an interest in the land lodged by mining companies which, it is assumed, would also pass over onto the two new titles.[708] The concern over these actions of DMPR, and the mining industry generally, stem from a series of alleged problems and disputes that their family has had with a succession of mining companies since a mineral sands mining company obtained a 21 year standard mining lease over 280ha of the family property in 1988.[709] When consenting to the mining lease being issued in 1988, the then landholders (the parents of the current landholders), aware of the possible impact of mining on agricultural activities on the property, entered into an agreement with the mining leaseholder, according to the current landholders, in the following terms:

> *"To ensure that the farm was not unavailable for agriculture purposes for any longer than necessary, our parents negotiated in the*

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704 Mr Dennis Martin, *Transcript of Evidence,* at Dandaragan, October 2 2002, p2.

705 Submission No 197 from Ms E Clayton, February 26 2003, p1.

706 *Ibid.*

707 *Ibid.*

708 *Ibid,* p2.

709 *Ibid,* p3.

> *Agreement that mining the farm would commence in 1988 and be completed in six years. To further ensure that agriculture pursuits would always continue, a clause was also included in the Agreement that allowed only 40 Hectares to be disturbed at any one time."*[710]

6.33 It is claimed that verbal consent was given by the then landholders to the mining company to construct buildings, treatment plants, roads and infrastructure on a small section of the property for the processing of ore from the property and, subject to further agreement at some time in the future, also from other properties in the South West.[711] In 1990, however, after 200 acres of the property had been disturbed by machinery and construction works, the activities of the mining company came to a sudden halt and the mining company sold its interest in the mining lease to another mineral sands mining company. The then landholders consented to the transfer of the mining lease and the agreement with the first mining company. In 1992, allegedly without consultation with the then landholders, the mining lease was transferred to a third mining company.[712]

6.34 The Committee was informed by one of the current landholders that the uncertainty and delays caused by not knowing when or if mining activities would commence on the property had a significant effect on the productivity of the agricultural operations on the property:

> *"Each year during the ensuing period, this third mining company informed our parents that it intended to start mining the farm within 18 months. … Our parents were frustrated by the delays - Notwithstanding they always bent over backwards to assist this company out. Over a period they had allowed topsoil from the adjoining property to be piled on our land and access to facilities on our property - roads, water, power, and the previously constructed infrastructure."*[713]

6.35 In July 1999, as a result of a merger of mining companies, the mining lease was again transferred, allegedly without consultation with the then landholder.[714] The Committee was informed that after an attempt to negotiate an end to the mining lease, the then landholder was advised the following by the mining company:

> *"The company was unable to say whether or not it would mine the farm. Only that it is not on the company's ten-year plan of operations. It was made very clear to us that the company will be seeking a renewal of the Mining Lease that runs out in 2009. And, it*

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710 *Ibid*.

711 *Ibid*.

712 *Ibid*, p4.

713 *Ibid*.

714 *Ibid*, p5.

> *was also suggested that there is nothing in the Act that gives us the right to object to the extension of Lease for another 21 years."*[715]

6.36 Some fifteen years after the mining lease was first issued, and after four mining companies have successively held the lease - no actual mining has taken place on the property according to the current landholders. One of the current landholders now claims that they find themselves *"…bound indefinitely to the whims and fancies of who knows how many mining companies in the future."*[716] It was submitted to the Committee that, with each new mining company, the paperwork relating to previous written and verbal agreements between the mining lessees and the landholders would disappear.[717] Valuations undertaken upon the deaths of the previous landholders in recent years have, according to one of the current landholders, shown a significant reduction in the value of the property over time with the mining lease encumbrance.[718]

6.37 The area of the property covered by the mining lease remains, according to one of the current landholders, unutilised and unproductive. Agreement from the mining company is required before crops can be grown or agricultural infrastructure constructed on the land covered by the mining lease:

> *"We have been advised that it would be wise that the proposed mining area be excluded from any future development, tree planting, new buildings, infrastructure etc. And, if we are not smart and take heed of this advice, the Wardens Court would be mediating when and if mining takes place."*[719]

6.38 One of the current landholders notes that her situation is not unique, and claims that there are approximately eight other farming families in the district facing similar problems with mining leases:

> *"What farmer is prepared to reinvest large amounts of money back into their property while they are unsure which year their farm will be mined. Many are now handing run-down properties over to the next generation who are also being frustrated with the uncertainty. Mining leases discourage freehold farmers from exploring other opportunities and undertaking better farm management practices."*[720]

6.39 It was submitted to the Committee that the *Mining Act 1978* should be amended so that farmers have a right to object against existing mining leases on their property which have remained unworked for a certain number of years.[721]

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715 *Ibid.*

716 *Ibid*, p6.

717 *Ibid.*

718 *Ibid.*

719 *Ibid.*

720 *Ibid*, p8.

721 *Ibid.*

6.40 The Committee sought a response to the matters raised above from DoIR, which provided the following information:[722]

a) There is no ability for a freehold landholder to object to the **renewal** of a mining lease over their property.

b) Any objection to the transfer of a mineral tenement would be subject to the terms of the agreement between the parties - that is, it would take the form of a contractual dispute.

c) An objection can be lodged to an application for exemption from expenditure and plaint action for forfeiture of a tenement can be commenced if the landholder considered that expenditure commitments were not being met by the mineral tenement holder without good reason.

d) Rehabilitation and protection of the environment on freehold land is *"generally only as good as the terms of the agreement between the parties"*. DoIR notes that:

> *"Where productive mining is proposed a plan of mining proposals is required, specific conditions requiring adherence with the rehabilitation component of that plan are imposed. The level of input or ability to comment on mining proposals by the landowner is dependent on the agreement between the parties."*

e) The State Planning Strategy requires the planning process to protect mineral resources in the same way as water resources and conservation values.

f) In cases where known mineral deposits exist on freehold land and subdivision of that land is sought, DoIR requests that a memorial be endorsed on any new certificate of title created so as to put any interested person on notice that the property could be subject to mining in the future, and to meet a State obligation regarding disclosure of information.

6.41 The critical issue in this case study, according to DoIR, is the terms and rights between the landholder and the mineral tenement holder as contained in the agreement entered into upon the landholder giving consent to the granting of the mineral tenement, and whether that agreement is legally binding and enforceable.[723]

6.42 CME was also consulted by the Committee with respect to this case study. CME noted that:

> *"All business agreements come with a degree of risk to both parties and while the circumstances that prevailed in this case may be unfortunate, CME believes that the* [Abba Plains, Busselton] *issue*

722 Letter from Dr Jim Limerick, Director General, Department of Industry and Resources, May 2 2003, pp4-5.

723 *Ibid*, p4.

> *results from a breakdown in a specific business arrangement rather than issues stemming from the 21 year tenure of mining leases.*
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> *The submission states that the author knows of eight other land owners in a similar situation regarding mining leases. It should be noted that in reality there are thousands of cases of mining tenements interacting with freehold landowners in the South West alone suggesting that in the great majority of cases this interaction is harmonious."*[724]

6.43 As the Committee did not seek the views of the individual mining companies involved in this matter, it makes no comment as to the validity of the claims made above.

Codes of Conduct

6.44 The Committee was advised that, due to continuing problems between farmers/pastoralists and mining companies over the exploitation of mineral resources on freehold and leasehold land, codes of conduct have been drafted with respect to mining and exploration tenements on pastoral leases and agricultural land. These codes of conduct were drawn up with input from the mining industry and the pastoral and agricultural industries respectively.[725]

6.45 The *Code of Conduct for the Owners of Farming Properties and Persons Exploring or Mining on Private (Agricultural) Land in the Central Great Southern* (September 1999) (attached at Appendix 9) and its accompanying *Guide for the Owners of Farming Properties in Relation to Exploring and Mining on Private (Agricultural) Land in the Central Great Southern* (attached at Appendix 10), provides an excellent step-by-step, plain English, explanation of the mining application and access agreement negotiation process leading up to the conduct of mining activities on agricultural properties.[726] The rights and obligations, and appropriate behaviour, of both landholder and mining company are clearly set out. The Code of Conduct also includes as appendices a summary of the relevant provisions of the *Mining Act 1978* with respect to mining on private land, and a model agreement which covers compensation matters and provides that both parties will observe the Code of Conduct. The creation of both the Code of Conduct and Farmer's Guide were funded by the then Department of Workplace Relations and Small Business, and the Great Southern Development Commission.

6.46 The Committee is not convinced that, on the evidence that it has received, there is a significant problem with conflict between mining companies and freehold landholders in the South West of the State. The issues identified appear to the Committee to stem primarily from changing expectations as to land use from parties locked into long-

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724 Letter from Mr Tim Shanahan, Chief Executive, The Chamber of Minerals and Energy of Western Australia (Inc), January 29 2004, p2.

725 Mrs Susan Walker, Chair, Natural Resources Management Committee, The Pastoralists and Graziers Association of Western Australia, *Transcript of Evidence*, August 19 2002, p5.

726 At Internet site: http://www.gsdc.wa.gov.au/, (current at February 27 2004).

term contractual agreements. While this is essentially a legal, contractual, issue to be negotiated between the parties, the Committee is of the view that the DoIR could assist landholders by providing information and advice to landholders prior to them entering into such agreements with mining companies.

6.47 The preparation of a 'Code of Conduct' and 'Landholder's Guide' for all private landholders in Western Australia, along the lines of those prepared for farmers in the Central Great Southern region, should be seriously considered by the DoIR. Such documentation, if provided to all landholders at the time that a mineral tenement was applied for over their property, would be an invaluable resource and could serve as a prompt for the landholder to seek professional advice on an access agreement with a mining company prior to any such agreement being finalized.

Recommendation 23: The Committee recommends that the Department of Industry and Resources publish an updated version of the Great Southern Development Corporation's *Code of Conduct for the Owners of Farming Properties and Persons Exploring or Mining on Private (Agricultural) Land in the Central Great Southern* and *Guide for the Owners of Farming Properties in Relation to Exploring and Mining on Private (Agricultural) Land in the Central Great Southern* incorporating mining issues affecting all Western Australian landholders.