

Western Australia

## **Offshore Minerals Act 2003**

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## Offshore Minerals Act 2003

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Western Australia

## **Offshore Minerals Act 2003**

**An Act relating to exploration for, and the recovery of, minerals (other than petroleum) in the first 3 nautical miles of the territorial sea in respect of Western Australia, and for related purposes.**

## **Chapter 1 — Introduction**

### **Part 1.1 — Legislative formalities and background**

**1. Short title**

This Act may be cited as the *Offshore Minerals Act 2003*.

**2. Commencement**

This Act comes into operation on a day fixed by proclamation.

**3. Commonwealth-State agreement (the Offshore Constitutional Settlement)**

- (1) The Commonwealth and the States have agreed that —
- (a) Commonwealth offshore mining legislation should be limited to the area that is outside State coastal waters; and
  - (b) the States should share, in the manner provided by the *Offshore Minerals Act 1994* of the Commonwealth, in the administration of the Commonwealth offshore mining legislation; and
  - (c) State offshore mining legislation should apply to State coastal waters beyond the baseline for the territorial sea (that is, the first 3 nautical miles of the territorial sea); and
  - (d) the Commonwealth and the States should try to maintain, as far as practicable, common principles, rules and practices in regulating and controlling offshore mining beyond the baseline of Australia's territorial sea.

Note 1: So far as the agreement relates to petroleum, it is reflected in this State's legislation by the *Petroleum (Submerged Lands) Act 1982*.

Note 2: Some sections of the Commonwealth Act contain provisions that are not relevant to the operation of this Act. To keep uniformity between this Act and the Commonwealth Act the numbers of the sections that are not relevant up to section 423 have not been used in the numbering of this Act. A section of this Act and the corresponding section of the Commonwealth Act up to section 423 will therefore have the same number. From section 424 onwards the two Acts differ significantly and uniformity of numbering has not been maintained.

- (2) Other Acts that provide background in this State to the agreement (commonly referred to as the “Offshore Constitutional Settlement”) are —
- (a) the *Seas and Submerged Lands Act 1973*, the *Coastal Waters (State Powers) Act 1980*, the *Coastal Waters (State Title) Act 1980* and the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth; and
  - (b) the *Petroleum (Submerged Lands) Act 1982* of this State.

Note 1: The *Seas and Submerged Lands Act 1973* —

- declares and enacts that the sovereignty in respect of the territorial sea and the associated airspace, seabed and subsoil is vested in and exercisable by the Crown in right of the Commonwealth;
- gives the Governor-General power to declare, by Proclamation, the limits of the territorial sea;
- declares and enacts that the sovereignty in respect of waters of the sea that are on the landward side of the baseline of the territorial sea (but not within the limits of a State) and in respect of the associated airspace, seabed and subsoil is vested in and exercisable by the Crown in right of the Commonwealth;
- declares and enacts that the sovereign rights of Australia as a coastal State in respect of the Continental Shelf of Australia (for the purpose of exploring it and exploiting its natural resources) are vested in and exercisable by the Crown in right of the Commonwealth;
- gives the Governor-General power to declare, by Proclamation, the limits of the Continental Shelf of Australia.

Note 2: The *Coastal Waters (State Powers) Act 1980* was enacted following a request from the Parliaments of all the States under paragraph 51(xxxviii) of the Constitution of the Commonwealth and provides that the legislative powers exercisable under the Constitution of each State extend to the making of certain laws that would operate offshore.

Note 3: The *Coastal Waters (State Title) Act 1980* vests in each State certain property rights in the seabed beneath the coastal waters of the State.

***Offshore Minerals Act 2003***

**Chapter 1** Introduction

**Part 1.1** Legislative formalities and background

**s. 3**

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Note 4: The *Petroleum (Submerged Lands) Act 1967* of the Commonwealth and the *Petroleum (Submerged Lands) Act 1982* of this State make provision, based on the agreement referred to in subsection (1), for the licensing regime that applies to the exploration for and recovery of petroleum in coastal waters and offshore areas of this State.



## **Part 1.2 — Interpretation**

### Division 1 — General

**4. Notes in the text**

Notes and diagrams in this Act are provided to assist understanding and do not form part of the Act.

**5. Interpretation**

In this Act, unless the contrary intention appears —

*approved* means approved by the Minister under section 41;

*associate* has the meaning given by section 26(1);

*associated agent of an associated contractor* has the meaning given by section 26(4);

*associated agent of the holder* has the meaning given by section 26(3);

*associated contractor of the holder* has the meaning given by section 26(2);

*associated employee of an associated contractor* has the meaning given by section 26(6);

*associated employee of the holder* has the meaning given by section 26(5);

*block* means a portion of the coastal waters constituted according to section 17;

*caveat* on a licence means a caveat against —

- (a) the registration of dealings in relation to the licence; or
- (b) the registration of a person as a holder of the licence under section 340;

*coastal waters* has the meaning given by section 16(1) and (2);

*Commonwealth Act* means the *Offshore Minerals Act 1994* of the Commonwealth;

**Commonwealth Minister** means a Minister of State for the Commonwealth;

**compliance inspection** has the meaning given by section 377;

**confidential information** has the meaning given by section 27;

**confidential sample** has the meaning given by section 28;

**consent area** means the block or blocks specified in a special purpose consent;

**dealing** in a licence means a transaction that creates, transfers, affects or otherwise deals with an interest in the licence and includes —

- (a) a transfer of the licence; and
- (b) a transfer of a share in the licence,

but does not include a document that comes within section 337(1) other than a document by which a block or a licence is surrendered;

**discrete area** has the meaning given by section 21;

**document file** means a document file kept for the purposes of Part 3.1;

**exploration** has the meaning given by section 23;

**holder of a licence** has the meaning given by section 25(1);

**hydrocarbon** means a hydrocarbon whether in a gaseous, liquid or solid state;

**inspector** means an inspector appointed under section 421;

**interest**, in relation to a licence, includes —

- (a) an equitable interest in the licence; and
- (b) a security interest in the licence;

**licence** means —

- (a) an exploration licence; or
- (b) a retention licence; or
- (c) a mining licence; or
- (d) a works licence;

**licence area** means the block or blocks covered by a licence;

**licence holder** has the meaning given by section 25(1);

**mineral** has the meaning given by section 22;

**offshore exploration or mining activities** means —

- (a) the exploration for minerals in coastal waters; or
- (b) the recovery of minerals from coastal waters; or
- (c) activities carried out in coastal waters under a works licence;

**offshore mining register** means a register kept for the purposes of Part 3.1;

**petroleum** means —

- (a) a hydrocarbon or a mixture of hydrocarbons; or
- (b) a mixture of one or more hydrocarbons and one or more of the following —
  - (i) hydrogen sulphide;
  - (ii) nitrogen;
  - (iii) helium;
  - (iv) carbon dioxide;

**primary payment period** for the provisional grant or provisional renewal of a licence means the period of 30 days after the day on which the applicant is given a written notice —

- (a) in the case of the grant of an exploration licence, under section 66; and
- (b) in the case of the renewal of an exploration licence, under section 110; and
- (c) in the case of the grant of a retention licence, under section 147; and
- (d) in the case of the renewal of a retention licence, under section 169; and
- (e) in the case of the grant of a mining licence, under section 210; and

- (f) in the case of the renewal of a mining licence, under section 246; and
- (g) in the case of the grant of a works licence, under section 279; and
- (h) in the case of the renewal of a works licence, under section 296;

**provisional holder** means a person who has been provisionally granted a licence;

**recovery** has the meaning given by section 24;

**registered** means registered in an offshore mining register;

**Registration Fees Act** means the *Offshore Minerals (Registration Fees) Act 2003*;

**reserved block** means a block that is declared to be reserved under section 18;

**responsible Commonwealth Minister** means the Commonwealth Minister who is responsible for the administration of the Commonwealth Act;

**sample** of the seabed or subsoil includes a core or cutting from the seabed or subsoil;

**secondary payment period** for the provisional grant or provisional renewal of a licence means the period of 30 days after the day on which an extension of the primary payment period for the grant or renewal concerned ends;

**share** in a licence has the meaning given by section 6(1), (2) and (3);

**special purpose consent** means a consent granted under Part 2.6;

**standard block** has the meaning given by section 19;

**State Minister** means —

- (a) a Minister of State for a State; or
- (b) a Minister of State for the Northern Territory;

**successor licence** to a licence has the meaning given by section 8;

**surrender day** for an exploration licence means —

- (a) the day on which the initial term of the licence ends; or
- (b) a day on which the term of a renewal of the licence ends;

**tender block** has the meaning given by section 20;

**transfer** —

- (a) when used in relation to a licence, has the meaning given by section 7(1); and
- (b) when used in relation to a share in a licence, has the meaning given by section 7(2) and (3);

**vary** a licence condition includes revoke or suspend.

**5A. Relationship with *Environmental Protection Act 1986***

This Act is to be read and construed subject to the *Environmental Protection Act 1986*, so that if a provision of this Act is inconsistent with a provision of that Act, the provision of this Act is, to the extent of the inconsistency, taken to be inoperative.

**6. Shares in a licence**

- (1) A person has a share in a licence if the person is the holder, or one of the holders, of the licence.
- (2) If a holder is entitled to a particular percentage of the value of the rights conferred by a licence, that percentage is the holder's share in the licence.

Note: A sole holder has a 100% share in the licence.

- (3) If —
  - (a) a person is a registered holder of a licence; and
  - (b) the person is shown in an offshore mining register as being entitled to a specified percentage of the value of the rights conferred by the licence,

the person's share in the licence is taken to be the percentage specified in the register.

**7. Transfer of a licence**

(1) For the purposes of this Act, a licence is transferred if —

- (a) the licence has only one holder and the holder transfers the whole of the licensee's interest in the licence to another person or other persons; or
- (b) the licence has 2 or more holders and the holders all transfer the whole of their interests in the licence to another person or other persons.

(2) For the purposes of this Act, a share in a licence is transferred if —

- (a) the licence has only one holder and the holder transfers a part of the holder's share in the licence to another person or other persons; or
- (b) the licence has 2 or more holders and —
  - (i) some, but not all, of the holders transfer the whole of their shares in the licence to another person; or
  - (ii) some or all of the holders transfer a part of their shares in the licence to another person.

(3) The other person referred to in subsection (2)(b) may be an existing licence holder.

**8. Successor licences**

(1) If —

- (a) a mining licence takes effect immediately after an exploration licence expires; and
- (b) the holder of the mining licence immediately after it takes effect was the holder of the exploration licence immediately before it expired,

the mining licence is a successor licence to the exploration licence.

- (2) If —
- (a) a retention licence takes effect immediately after an exploration licence expires; and
  - (b) the holder of the retention licence immediately after it takes effect was the holder of the exploration licence immediately before it expired,

the retention licence is a successor licence to the exploration licence.

- (3) If —
- (a) a mining licence takes effect immediately after a retention licence expires; and
  - (b) the retention licence took effect immediately after an exploration licence expired; and
  - (c) the holder of the mining licence immediately after it takes effect was the holder of the retention licence immediately before it expired; and
  - (d) the holder of the retention licence immediately after it took effect was the holder of the exploration licence immediately before it expired,

the mining licence is a successor licence to the exploration licence and the retention licence.

**9. Section number not used**

See note 2 to section 3(1).

**10. Position on the Earth's surface**

- (1) Where, for the purposes of this Act or a subordinate instrument, it is necessary to determine the position on the surface of the Earth of a point, line or area, that position is to be determined by reference to the prescribed Australian datum.
- (2) In subsection (1) —
- subordinate instrument*** means —
- (a) the regulations; or

- (b) an instrument under this Act or the regulations.
- (3) A datum may be prescribed for all or some of the purposes referred to in subsection (1), and different datums may be prescribed for different purposes.
- (4) Regulations that prescribe a datum for a purpose referred to in subsection (1), or amend that datum or prescribe another datum to replace that datum, may make any transitional or savings provisions that are necessary or convenient to be made —
  - (a) in relation to licences granted before the regulations take effect (including licences referred to in Schedule 2); or
  - (b) in relation to applications for licences pending when the regulations take effect (including applications referred to in Schedule 2); or
  - (c) for any other purpose.
- (5) Regulations referred to in subsection (4) may modify or otherwise affect the operation of this Act.

**11. Section number not used**

See note 2 to section 3(1).

**12. Power to vary and revoke instruments**

- (1) A provision of this Act that confers a power to do something in writing is also taken to confer the power to revoke or amend the written document by which that thing is done.
- (2) The power to revoke or amend —
  - (a) must also be exercised in writing; and
  - (b) is subject to the same procedural requirements as the original power; and
  - (c) is subject to the same conditions as those that governed the exercise of the original power.



Division 2 — Basic concepts

**13. – 15. Section numbers not used**

See note 2 to section 3(1).

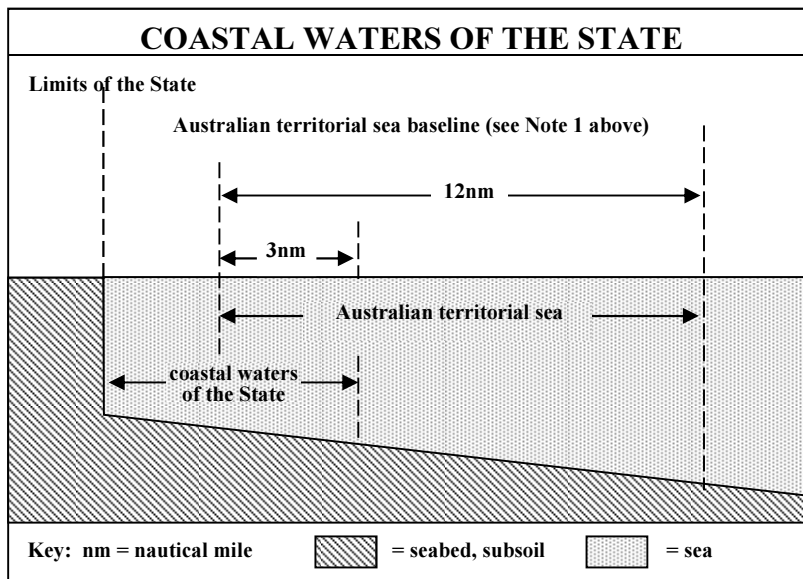
**16. Coastal waters, and effect of change in baseline**

- (1) Subject to this section, the coastal waters of the State are so much of the area described in Schedule 1 as is constituted by the first 3 nautical miles of the territorial sea from the baseline.
- (2) The coastal waters do not include any waters that are inside the baseline.
- (3) If —
  - (a) a licence has been granted on the basis that an area is within coastal waters; and
  - (b) there is a change to the baseline or, because new data is obtained or existing data is reconsidered, the location of the baseline is reassessed; and
  - (c) as a result of the change to, or reassessment of the location of, the baseline, the area ceases to be within coastal waters,this Act applies as if the area were still within coastal waters.
- (4) Subsection (3) continues to apply to the area only while the licence (and any successor licence) remains in force.
- (5) If —
  - (a) a licence under the Commonwealth Act has been granted on the basis that an area is within the offshore area under the Commonwealth Act; and
  - (b) there is a change to the baseline or, because new data is obtained or existing data is reconsidered, the location of the baseline is reassessed; and
  - (c) as a result of the change to, or reassessment of the location of, the baseline, the area —

- (i) ceases to be within the offshore area under the Commonwealth Act; and
    - (ii) falls within coastal waters,
- this Act does not apply to the area.
- (6) Subsection (5) continues to apply to the area only while the licence under the Commonwealth Act (and any successor licence within the meaning in that Act) remains in force.
  - (7) This Act has effect subject to section 9A of the *Mining Act 1978*.
  - (8) In this section —  
**baseline** means the baseline adjacent to the coast of the State (including the coast of any island forming part of the State) as for the time being determined under section 7(1)(b) of the *Seas and Submerged Lands Act 1973* of the Commonwealth.

Note 1: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast. See *Australia's territorial sea baseline* published 1988 by the Australian Government Printing Service.

Note 2: The following diagram illustrates the coastal waters of the State —



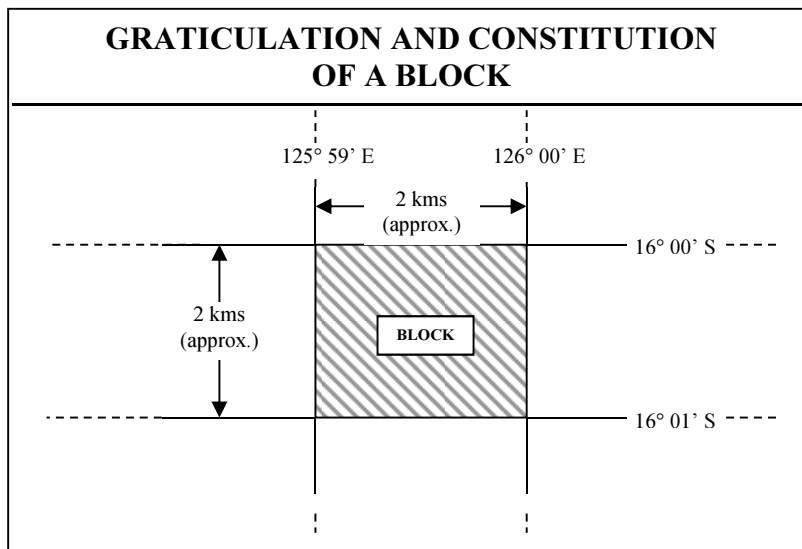
## 17. Blocks

This is how a block is constituted in coastal waters —

- (a) assume that there is laid over the coastal waters a grid constituted by —
  - (i) lines running along meridians drawn through each degree of longitude and the minutes between those degrees; and
  - (ii) lines running along parallels drawn through each degree of latitude and the minutes between those degrees;
- (b) take a bounded space defined by the grid;
- (c) the seabed and subsoil within the coastal waters that is under that space is a block.

Note: The following diagram shows how a block is constituted.

Each block is identified by giving the name of the plan in the 1:1 000 000 map series, an identifying number of the 5 minute primary block and a letter identifying the one minute block. The block in the diagram is 72 (e) on the Broome sheet.



**18. Reserved block**

- (1) Subject to subsection (2), the Minister may declare that a block in coastal waters is a reserved block.

Note 1: A reserved block may be put up for tender by the Minister publishing in the *Gazette* a tender block licence notice (see sections 74 and 218).

Note 2: Section 10(c) of the *Interpretation Act 1984* allows a single declaration under this subsection to be made in respect of 2 or more blocks.

- (2) A declaration under subsection (1) must not be made in relation to a block if —
- (a) a licence over that block is in force; or
  - (b) an application for a licence over that block has been made and has not been determined.
- (3) A declaration under subsection (1) must be made by notice published in the *Gazette*.

**19. Standard block**

A standard block is a block that is not the subject of a declaration under section 18(1).

**20. Tender block**

A tender block is a block that is the subject of a tender block licence notice published by the Minister under section 74 or section 218.

**21. Discrete area**

- (1) A group of blocks forms a discrete area if the area formed by the blocks is continuous.
- (2) Two blocks that are joined at one point only do not form a continuous area.

**22. Minerals**

- (1) A mineral is a naturally occurring substance or a naturally occurring mixture of substances.

Note: This Act does not apply to petroleum (see section 35).

- (2) Without limiting subsection (1), a mineral may be in the form of sand, gravel, clay, limestone, rock, evaporites, shale, oil-shale or coal.

**23. Exploration**

- (1) For the purposes of this Act, exploration for minerals includes any activity that is directly related to the exploration for minerals.
- (2) For the purposes of this Act, exploration does not include the exploration for minerals of the subsoil of coastal waters that is carried out by means of underground mining from land in the State if that exploration is carried out in accordance with the *Mining Act 1978*.

**24. Recovery**

- (1) For the purposes of this Act, recovery of minerals includes any activity that is directly related to the recovery of minerals.

- (2) For the purposes of this Act, recovery does not include the recovery of minerals from the subsoil of coastal waters that is carried out by means of underground mining from land in the State if that exploration is carried out in accordance with the *Mining Act 1978*.

**25. Licence holder**

- (1) References in this Act to the holder of a licence or the licence holder are references to the person whose name is entered in the offshore mining register as the person who holds the licence.

Note 1: This Act is based upon the grant and registration of licences.

Note 2: If a licence is granted to a person, that person's name is entered in the register (see section 333).

Note 3: The entry in the register in relation to a licence will be varied if there is a change in the holder of the licence (see section 338(4)).

- (2) A licence may be held by more than one person.

**26. Associates**

- (1) For the purposes of this Act, the following are the associates of a licence holder —

- (a) associated contractors of the holder;
- (b) associated agents of the holder;
- (c) associated agents of associated contractors;
- (d) associated employees of the holder;
- (e) associated employees of associated contractors.

- (2) A person is an associated contractor of the holder if —

- (a) the person enters into an agreement with the holder for carrying out activities under the licence; or
- (b) the person enters into an agreement with a person who is an associated contractor under paragraph (a) or this paragraph for carrying out activities under the licence.

- (3) A person is an associated agent of the holder if the person is the agent of, or acts on behalf of, the holder in relation to carrying out activities under the licence.
- (4) A person is an associated agent of an associated contractor if the person is the agent of, or acts on behalf of, the associated contractor in relation to carrying out activities under the licence.
- (5) A person is an associated employee of the holder if the person is employed by the holder and, in the course of that employment, carries out activities under the licence.
- (6) A person is an associated employee of an associated contractor if the person is employed by the associated contractor and, in the course of that employment, carries out activities under the licence.

**27. Confidential information**

- (1) For the purposes of this Act, information is confidential information if —
  - (a) a licence holder has given it to the Minister; and
  - (b) it is in a record, return, report or document; and
  - (c) it relates to activities authorised by the licence; and
  - (d) it relates to an area of the seabed or subsoil that is covered by the licence or a successor licence to the licence.
- (2) However, if —
  - (a) a person is required to give the Minister a report in relation to particular blocks; and
  - (b) the person gives the Minister a report that relates not only to those blocks but also to other blocks; and
  - (c) the Minister is required to make the report available under section 376,

the information that relates to those other blocks is not confidential information.

**28. Confidential sample**

For the purposes of this Act, a sample is a confidential sample if —

- (a) a licence holder has given it to the Minister; and
- (b) it was recovered in the course of activities authorised by the licence; and
- (c) it was recovered from an area of the seabed or subsoil that is covered by the licence or a successor licence to the licence.



**Part 1.3 — Administration of the  
Commonwealth-State offshore area**

**29. Definitions**

In this Part —

*associated revenue Act* has the same meaning as in the Commonwealth Act;

*Commonwealth-State offshore area* means the Commonwealth-State offshore area in respect of the State within the meaning of section 13 of the Commonwealth Act.

**30. Minister as member of Joint Authority, or as Designated Authority**

- (1) The Minister may perform any function that the Minister has under the Commonwealth Act or an associated revenue Act —
  - (a) as a member of the Joint Authority for the Commonwealth-State offshore area provided for by section 32(2) of the Commonwealth Act; or
  - (b) as the Designated Authority for that area provided for by section 29(2) of that Act.
- (2) The Minister must perform any such function that the Minister is required to perform by the Commonwealth Act or an associated revenue Act.

**31. State officer acting under delegation**

A public service officer within the meaning of the *Public Sector Management Act 1994* to whom a delegation is made under section 419 of the Commonwealth Act may perform any function that the officer has under that delegation and must perform any such function that the officer is required to perform under the Commonwealth Act.

***Offshore Minerals Act 2003***

**Chapter 1** Introduction

**Part 1.3** Administration of the Commonwealth-State offshore area

**s. 32**

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**32. – 34. Section numbers not used**

See note 2 to section 3(1).

### **Part 1.4 — Application of this Act**

**35. Act does not apply to exploration for or recovery of petroleum**

This Act does not apply to the exploration for or recovery of petroleum.

Note 1: For “petroleum” see section 5.

Note 2: Offshore petroleum exploration and mining are regulated by the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth and the *Petroleum (Submerged Lands) Act 1982* of this State.

**36. Section number not used**

See note 2 to section 3(1).

**37. Act applies to all individuals and corporations**

- (1) This Act applies to all individuals, including —
  - (a) individuals who are not Australian citizens; and
  - (b) individuals who are not resident in Western Australia.
- (2) This Act applies to all corporations, including —
  - (a) corporations that are not taken to be registered under the *Corporations Act 2001* of the Commonwealth in Western Australia; and
  - (b) corporations that do not carry on business in Western Australia.

## **Chapter 2 — Regulation of offshore exploration and mining**

### **Part 2.1 — General**

#### **38. General prohibition on exploring and mining without appropriate authorisation**

A person must not —

- (a) explore for minerals in coastal waters; or
- (b) recover minerals from coastal waters,

unless the exploration or recovery is authorised by a licence or special purpose consent granted under this Act.

Maximum penalty: \$30 000.

Note 1: A works licence may be necessary because “exploration” includes activities that are directly related to exploration (see section 23(1)) and “recovery” includes activities that are directly related to recovery (see section 24(1)).

Note 2: Section 38A(2) requires the consent of Parliament to be obtained to the provisional grant under section 206, 225 or 231 of a mining licence over a marine nature reserve or a marine park.

#### **38A. Exploration and mining in marine reserves and fish habitat protection areas**

- (1) Nothing in section 13A, 13B or 13C of the *Conservation and Land Management Act 1984* —
  - (a) prevents a licence or special purpose consent from being applied for, granted, held or renewed; or
  - (b) affects the validity or effect of a licence or special purpose consent,

over an area in a marine nature reserve, marine park or marine management area.

- (2) Despite sections 206, 225 and 231, a mining licence over a marine nature reserve or marine park, or part of such a reserve or park, may be provisionally granted under those sections —

- (a) only if both Houses of Parliament by resolution consent to the provisional grant; and
  - (b) on such terms and conditions as are specified in the resolution.
- (3) Despite —
- (a) the grant of a licence or special purpose consent; or
  - (b) any provision of this Act,
- offshore exploration or mining activities may be carried out under the licence or consent in a marine nature reserve or marine park only with the written consent of the Minister who may —
- (c) refuse consent; or
  - (d) give consent subject to such terms and conditions as he or she specifies in the consent.
- (4) Before giving consent under subsection (3), whether conditionally or unconditionally, the Minister must —
- (a) consult, and obtain the concurrence of, the conservation Minister; and
  - (b) consult and obtain the recommendations of the fisheries Minister and the marine Minister.
- (5) Despite —
- (a) the grant of a licence or special purpose consent; or
  - (b) any provision of this Act,
- offshore exploration or mining activities may be carried out under the licence or consent in a marine management area only with the written consent of the Minister who may —
- (c) refuse consent; or
  - (d) give consent subject to such terms and conditions as he or she specifies in the consent.
- (6) Before giving consent under subsection (5), whether conditionally or unconditionally, the Minister must consult and

obtain the recommendations of the conservation Minister, the fisheries Minister and the marine Minister.

- (7) Nothing in this Act authorises, or enables the Minister to authorise or consent to, the disturbance of —
- (a) the seabed; or
  - (b) subsoil below the seabed to a depth of 200 metres,
- in a marine nature reserve or a restricted area in respect of which a licence or special purpose consent is in force.
- (8) Subsection (7) applies only if the marine nature reserve or restricted area was in existence when the licence or special purpose consent was granted.
- (9) Despite —
- (a) the grant of a licence or special purpose consent; or
  - (b) any provision of this Act,
- offshore exploration or mining activities may be carried out under the licence or consent in a fish habitat protection area only with the written consent of the Minister who may —
- (c) refuse consent; or
  - (d) give consent subject to such terms and conditions as he or she specifies in the consent.
- (10) Before giving consent under subsection (5), whether conditionally or unconditionally, the Minister must consult and obtain the recommendations of the fisheries Minister and the marine Minister.
- (11) In this section —
- conservation Minister** means the Minister for the time being administering the *Conservation and Land Management Act 1984*;
- fish habitat protection area** has the meaning given to it by the *Fish Resources Management Act 1994*;

**s. 38B.      Consultation with other Ministers**

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**fisheries Minister** means the Minister for the time being administering the *Fish Resources Management Act 1994*;

**marine management area, marine nature reserve and marine park** have the meanings given to them by the *Conservation and Land Management Act 1984*;

**marine Minister** means the Minister for the time being administering the *Marine and Harbours Act 1981*;

**restricted area** means any area of a marine park which is classified by notice under section 62 of the *Conservation and Land Management Act 1984* as —

- (a) a sanctuary area; or
- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the conservation Minister has declared in the classification notice to be an area where disturbance of the seabed or subsoil would be incompatible with a conservation purpose specified in the classification notice.

**38B.      Consultation with other Ministers**

Before granting a licence or special purpose consent, the Minister must consult and obtain the recommendations of —

- (a) the Minister for the time being administering the *Environmental Protection Act 1986*; and
- (b) the Minister for the time being administering the *Fish Resources Management Act 1994*; and
- (c) the Minister for the time being administering the *Land Administration Act 1997*; and
- (d) the Minister for the time being administering the *Marine and Harbours Act 1981*; and
- (e) the Minister for the time being administering the *Pearling Act 1990*.

**39. Licences and consents available under this Act**

This Act provides for the grant of —

- (a) exploration licences (see Part 2.2); and
- (b) retention licences (see Part 2.3); and
- (c) mining licences (see Part 2.4); and
- (d) works licences (see Part 2.5); and
- (e) special purpose consents (see Part 2.6).

Note 1: An exploration licence is designed to cover the exploration phase of a project and authorises —

- exploration; and
- the recovery of mineral samples.

Note 2: A retention licence is designed to ensure the retention of rights pending the transition of a project from the exploration phase to the commercial mining phase and authorises —

- exploration; and
- the recovery of minerals but not as part of a commercial mining operation.

Note 3: A mining licence is designed to cover the commercial mining phase of a project and authorises —

- exploration; and
- full commercial recovery.

Note 4: A project might make use of any of the following 3 licence arrangements —

- an exploration licence leading to a mining licence;
- an exploration licence leading to a retention licence and then a mining licence;
- a mining licence (without progressing through an exploration/retention licence stage).

Note 5: A licence is granted over a particular area (constituted by blocks). The licence holder may need to carry out engineering or other activities outside the licence area. If so, the licence holder or someone else must obtain a works licence to carry out those activities.

Note 6: If a person wants to carry out —

- a scientific investigation; or
- a reconnaissance survey; or
- the collection of only small amounts of minerals,



in coastal waters, the person must obtain a special purpose consent under Part 2.6 to carry out the activity.

Note 7: Even though a person has a licence or special purpose consent, the person must not interfere unnecessarily with navigation, native title, fishing, resource conservation or other activities in the area (see section 44).

#### **40. Steps involved in the grant of a fully effective licence**

- (1) The following 3 steps must occur before a licence comes into force —
- (a) provisional grant of the licence;
  - (b) proper acceptance of the grant;
  - (c) registration of the grant.

Note 1: See sections 88, 154, 232 and 286.

Note 2: Section 38A(2) requires the consent of Parliament to be obtained to the provisional grant under section 206, 225 or 231 of a mining licence over a marine nature reserve or a marine park.

- (2) If a licence is provisionally granted to a person, the person must do the following to properly accept the grant —
- (a) give the Minister a written acceptance;
  - (b) lodge any security that the Minister has required;
  - (c) pay the fee that is payable under section 425.

Note: See sections 70, 84, 151, 214, 228 and 283.

- (3) The following 3 steps must occur before a renewal of a licence comes into force —
- (a) provisional renewal of the licence;
  - (b) proper acceptance of the renewal;
  - (c) registration of the renewal.

Note: See sections 89, 155, 233 and 287.

- (4) If a licence is provisionally renewed, the holder must do the following to properly accept the renewal —
- (a) give the Minister a written acceptance of the renewal;
  - (b) lodge any security that the Minister has required;

- (c) pay the fee that is payable under section 425.

Note: See sections 114, 173, 250 and 300.

**41. Approval of form and manner of applications etc.**

- (1) The Minister may approve the form and the manner in which the following are to be made —
- (a) applications for licences over blocks in coastal waters;
  - (b) applications for the renewal of licences over blocks in coastal waters.
- (2) An approval under subsection (1) is to be made in writing.

**42. Rights to minerals recovered**

- (1) Any minerals recovered by a licence holder or special purpose consent holder from a block covered by the licence or consent become the property of the holder when they are recovered.
- (2) If the licence or consent authorises the exploration for and the recovery of minerals only of a particular kind, subsection (1) only applies to the recovery of minerals of that kind.
- (3) Subsection (1) does not apply to the recovery of minerals by a works licence holder.
- (4) The minerals recovered are not subject to the rights of any other person.
- (5) Subsection (4) does not apply to rights that the licence or consent holder transfers to the other person.

**43. Effect of grant of licence or special purpose consent on native title**

- (1) The grant of a licence or special purpose consent does not extinguish native title in the licence or consent area.
- (2) While a licence or special purpose consent is in force over an area, native title in the area is subject to the rights conferred by the licence or consent.

- (3) If compensation is payable to native title holders for or in respect of the grant of a licence or special purpose consent, the person liable to pay the compensation is —
  - (a) if an amount is to be paid and held in trust, the applicant for the grant of, or the holder of, the licence or consent at the time the amount is required to be paid; or
  - (b) otherwise, the applicant for the grant of, or the holder of, the licence or consent at the time a determination of compensation is made.
- (4) If, at the relevant time, there is no holder of the licence or consent because the licence or consent has been surrendered or forfeited or has expired, a reference in subsection (3) to the holder of the licence or consent is a reference to the holder of the licence or consent immediately before its surrender, forfeiture or expiry.
- (5) In subsection (3) —  
**grant** includes renewal.
- (6) Expressions relating to native title have the same meanings in this section and section 44 as they have in the *Native Title Act 1993* of the Commonwealth.

**44. Licence etc. does not authorise unnecessary interference with other activities in the licence area**

- (1) A person who carries out activities in coastal waters under a licence or special purpose consent granted under this Act must not do so in a way that interferes with —
  - (a) navigation; or
  - (b) the exercise of native title rights and interests; or
  - (c) fishing, pearling or aquaculture; or
  - (d) the conservation of the resources of the sea or the seabed; or
  - (e) any activities that someone else is lawfully carrying out,

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to a greater extent than is necessary for —

- (f) the reasonable exercise of the person's rights under the licence or consent; or
- (g) the performance of the person's duties under the licence or consent.

Maximum penalty: \$10 000.

Note: The person referred to here might be the licence holder or consent holder or might be an associated person.

(2) In subsection (1)(1)(c) —

**aquaculture** and **fishing** have the same meanings as they have in the *Fish Resources Management Act 1994*;

**pearling** has the same meaning as it has in the *Pearling Act 1990*.

## **Part 2.2 — Exploration licences**

### Division 1 — General

#### **45. Exploration licences**

- (1) This Part provides for the grant of exploration licences over blocks in coastal waters.
- (2) An exploration licence may be granted over a standard block (see Division 2) or over a tender block (see Division 3).

Note: A tender block is a block that has been declared available for tender. A standard block is any block that is not a reserved block (see sections 19 and 20).

#### **46. Activities authorised by an exploration licence**

- (1) Subject to subsection (2), an exploration licence holder may —
  - (a) explore for minerals in the licence area; and
  - (b) take samples of minerals in the licence area.

Note 1: Under section 23(1) the concept of “exploration” extends to activities that are directly related to exploration.

Note 2: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

- (2) If the licence is expressed to restrict the kind of minerals covered by the licence, the holder is not permitted to explore for, or to take samples of, minerals not covered by the licence.
- (3) A restriction on the kind of minerals covered by the licence may be inclusive (for example, only minerals A, B and C) or exclusive (for example, all minerals except A, B and C).
- (4) For the purposes of subsection (2), the holder does not take samples of an excluded mineral if, in the course of exploring for, or taking samples of, another mineral, the holder recovers some excluded mineral.

**47. Minister may cancel or not renew exploration licence without compensation**

No compensation is payable because of the cancellation or non-renewal of an exploration licence by the Minister.

Note 1: The Minister may cancel the licence under section 130.

Note 2: The Minister may refuse under section 108 to renew the licence.

**48. Licence rights may be suspended**

- (1) The Minister must suspend particular rights conferred by an exploration licence if the Minister is satisfied that it is necessary in the public interest to do so.
- (2) The Minister may suspend rights under subsection (1) for a specified period or for an indefinite period.
- (3) The Minister may end a suspension at any time.
- (4) A suspension or the ending of a suspension must be in writing.
- (5) If the Minister —
  - (a) suspends rights conferred by an exploration licence; or
  - (b) ends a suspension,

the Minister must give the licence holder a written notice that informs the holder of the suspension or the ending of the suspension.

Note: See section 122 for the effect of the suspension on the obligations associated with the licence.

- (6) A suspension takes effect when —
  - (a) the holder has been given notice of the suspension under subsection (5); and
  - (b) the suspension has been registered under section 337.

**49. Compensation for acquisition of property due to suspension of rights**

(1) If —

- (a) the Minister suspends licence rights under section 48; and
- (b) the suspension results in the acquisition of property from a person; and
- (c) the State and the person agree on an amount of compensation for the acquisition,

the State must pay the person the agreed amount of compensation.

(2) If —

- (a) the Minister suspends licence rights under section 48; and
- (b) the suspension results in the acquisition of property from a person; and
- (c) the State and the person do not agree on an amount of compensation for the acquisition; and
- (d) the person brings an action for compensation against the State in the Supreme Court,

the State must pay the person the amount of compensation (if any) that is determined by that court.

(3) In this section —

*acquisition of property* has the same meaning as it has in section 51(xxxi) of the Commonwealth Constitution.

Division 2 — Application for and grant of exploration licence over standard blocks

**50. Application for exploration licence over standard block**

(1) A person may apply to the Minister for an exploration licence over a standard block if —

- (a) the block is vacant; and
- (b) the block is not excluded.

Note: For “excluded blocks” see section 51.

- (2) A standard block is vacant if no exploration, retention or mining licence is in force over the block.
- (3) A person may apply for an exploration licence over a group of standard blocks if —
  - (a) the group forms a discrete area; and
  - (b) there are not more than 500 blocks in the group.

Note: The Minister may, in certain circumstances, allow an application to be made for an exploration licence covering up to 3 discrete areas (see section 53).

**51. Excluded blocks**

- (1) A block is excluded if —
  - (a) an exploration licence over the block has been surrendered or cancelled; and
  - (b) a period of 30 days after the day on which the licence was surrendered or cancelled has not ended.
- (2) A block is excluded for a particular applicant if —
  - (a) the applicant previously applied for an exploration licence over the block; and
  - (b) the application was refused; and
  - (c) a period of 6 months after the day on which the previous application was refused has not ended.
- (3) A block is excluded for a particular applicant if —
  - (a) the applicant was previously the holder of an exploration, retention or mining licence over the block; and
  - (b) that previous licence was surrendered or cancelled; and
  - (c) a period of 6 months after the day on which the previous licence was surrendered or cancelled has not ended.



- (4) A block is excluded for a particular applicant if —
- (a) the applicant was previously the holder of an exploration, retention or mining licence over the block; and
  - (b) the holder was —
    - (i) required by the licence conditions; or
    - (ii) given a direction under section 387 or 392, to provide the Minister with information; and
  - (c) the holder provided the information; and
  - (d) the holder surrendered the licence; and
  - (e) a period of 6 months from the day on which the holder provided the information has not ended.

**52. Minister may determine that excluded block is available**

- (1) A person who wants to apply for an exploration licence over a block that is excluded may apply to the Minister for a determination under subsection (2).
- (2) The Minister may determine that the person may apply for the licence over the block despite section 51.
- (3) The determination is to be made in writing.

**53. Minister may allow application for more than one discrete area**

- (1) If —
  - (a) a person (the *first applicant*) applies for an exploration licence; and
  - (b) another person (the *second applicant*) subsequently applies for an exploration licence for a group of blocks that includes a block covered by the application made by the first applicant; and
  - (c) an exploration licence is then granted to the first applicant; and

- (d) as a result of the grant, the blocks for which the second applicant can be granted an exploration licence no longer form a discrete area,

the second applicant may apply to the Minister for approval for the application to proceed even though the blocks it covers no longer form a discrete area.

Note: See also section 59.

- (2) Subject to subsection (3), the Minister may approve the application proceeding even though the blocks that the application covers do not form a discrete area.
- (3) The Minister may give an approval under subsection (2) only if the blocks covered by the application form not more than 3 discrete areas.

**54. How to apply**

- (1) The application must —
  - (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) specify the blocks for which the application is made; and
  - (d) include details of —
    - (i) the activities that the applicant intends to carry out on the block or blocks covered by the application; and
    - (ii) the amount of money that the applicant intends to spend on those activities; and
    - (iii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in activities authorised by the licence; and
    - (iv) the technical advice available to the applicant; and

- (v) the financial resources available to the applicant;  
and
- (vi) if the licence is to be held by more than one person, the share in the licence that each prospective holder will hold;  
and
- (e) be accompanied by maps that —
  - (i) relate to the blocks; and
  - (ii) comply with the regulations;and
- (f) specify an address for service of notices under this Act and the regulations.

Note 1: For paragraphs (a) and (b) see section 41.

Note 2: Paragraph (c): the Minister may, after consulting the applicant, vary the blocks applied for (see section 59).

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

### **55. Effect of inclusion of unavailable block in application**

If —

- (a) a person applies for a licence over a group of standard blocks; and
- (b) because of section 18, 50 or 51 an exploration licence cannot be granted over one or more of the blocks in the group,

the Minister may still deal with the application to the extent to which the application covers blocks for which an exploration licence can be granted.

Note: An exploration licence cannot be granted over a block that is not vacant or is excluded (see sections 50 and 51) or over a reserved block (see section 18).

**56. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**57. Application must be advertised**

- (1) The applicant must advertise the application in a newspaper circulating throughout the State.
- (2) The advertisement must contain —
  - (a) the applicant's name and address; and
  - (b) a map and description of the blocks applied for that are sufficient for the blocks to be identified; and
  - (c) the address of the Minister; and
  - (d) a statement that —
    - (i) advises that the applicant has applied for an exploration licence over the blocks described in the notice; and
    - (ii) invites comment from the public on the application; and
    - (iii) requests that comments be sent to the applicant and the Minister within 30 days after the day on which the advertisement is published.
- (3) The advertisement must be published —
  - (a) as soon as possible after the applicant makes the application; and
  - (b) in any case, subject to subsection (4), within 14 days after the day on which the applicant makes the application.

- (4) If —
- (a) the applicant applies to the Minister within the 14 day period referred to in subsection (3) for an extension of the period; and
  - (b) the Minister extends the period,
- the advertisement must be published within the period as extended by the Minister.

**58. How multiple applications are dealt with**

- (1) Subject to subsection (2), if a block is covered by 2 or more applications for an exploration or mining licence, the Minister must deal with the applications in the order in which they are made.

Note: See also section 203.

- (2) If —
- (a) the applications are lodged within a particular time of each other; and
  - (b) the time is less than the time prescribed by the regulations,
- the Minister must determine the order in which the applications are to be dealt with by drawing lots in the way prescribed by the regulations.

**59. Discussions about blocks applied for**

- (1) The Minister may ask the applicant to discuss with the Minister the blocks covered by the application.
- (2) The request under subsection (1) must be —
- (a) made in writing; and
  - (b) given to the applicant.
- (3) If, after discussions, the Minister and the applicant agree on the blocks to be covered by the application, the applicant is taken to

have applied for an exploration licence over the blocks agreed on.

- (4) The Minister must give the applicant written confirmation of the agreement as soon as possible after the agreement is reached.
- (5) The Minister may include in the written confirmation a direction that the applicant must advertise the revised application under section 60.
- (6) If the Minister and the applicant do not agree on the blocks to be covered by the application —
  - (a) the Minister may make a written determination specifying the blocks to be covered by the application; and
  - (b) the applicant is taken to have applied for an exploration licence over the blocks specified in the determination.
- (7) The Minister may include in the written determination a direction that the applicant must advertise the revised application under section 60.
- (8) If the Minister makes a determination under subsection (6), the Minister must give a copy of the determination to the applicant as soon as possible after the determination is made.

**60. Advertising revised application**

- (1) If —
  - (a) the application has been revised under section 59; and
  - (b) the applicant has been given a direction under section 59(5) or (7),

the applicant must advertise the revised application in a newspaper circulating throughout the State.

- (2) The advertisement must contain —
  - (a) the applicant's name and address; and

- (b) a map and description of the blocks covered by the revised application that are sufficient for the blocks to be identified; and
  - (c) the address of the Minister; and
  - (d) a statement that —
    - (i) advises that the applicant has applied for an exploration licence over the blocks described in the notice; and
    - (ii) invites comment from the public on the application; and
    - (iii) requests that comments be sent to the applicant and the Minister within 30 days after the day on which the advertisement is published.
- (3) The advertisement must be published —
- (a) if the Minister and the applicant agree on the blocks applied for under section 59(3), as soon as possible after the applicant is given written confirmation of the agreement under section 59(4); or
  - (b) if the Minister makes a determination of the blocks applied for under section 59(6), as soon as possible after the applicant is given a copy of the determination under section 59(8),

but in any case, subject to subsection (4), within 14 days after the applicant is given the confirmation or copy.

- (4) If —
- (a) the applicant applies to the Minister within the 14 day period referred to in subsection (3) for an extension of the period; and
  - (b) the Minister extends the period,

the advertisement must be published within the period as extended by the Minister.

**61. Request for further information**

- (1) The Minister may ask the applicant for further information about the application.
- (2) The request must —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be provided.
- (3) Information requested under subsection (1) must be provided —
  - (a) in writing; and
  - (b) within the time specified in the request.

**62. Section number not used**

See note 2 to section 3(1).

**63. Minister may provisionally grant licence**

If the applicant does what is required by sections 54 to 61, the Minister may —

- (a) provisionally grant an exploration licence to the applicant; or
- (b) refuse the application.

**Note:** Under section 88, the grant of the licence cannot be effective before it is registered (see section 333 for registration). The grant will not be registered until it has been properly accepted (see section 70 for “proper acceptance”).

**64. Section number not used**

See note 2 to section 3(1).

**65. Matters to be specified in the licence**

The licence must specify —

- (a) the blocks covered by the licence; and
- (b) the term of the licence; and



(c) the licence conditions.

Note: For the term of a licence see section 88.

**66. Applicant must be notified**

- (1) The Minister must give the applicant written notice of a decision under section 63.
- (2) If the Minister provisionally grants an exploration licence —
  - (a) the Minister must give the licence to the provisional holder; and
  - (b) the notice under subsection (1) must contain the following information —
    - (i) notification of any determination under section 399 that the provisional holder must lodge a security;
    - (ii) notification that the provisional grant will lapse unless the provisional holder, before the end of the primary payment period —
      - (I) gives the Minister a written acceptance of the grant; and
      - (II) lodges any security required under section 399; and
      - (III) pays the fee that must be paid for the licence under section 425.

**67. Amendment of conditions**

- (1) If the provisional holder is dissatisfied with a licence condition, the provisional holder may ask the Minister to amend the condition.
- (2) The request must be made within 30 days after the day on which the provisional holder is given the licence under section 66.
- (3) If a request is made under subsection (1), the Minister may amend the licence condition and, with the consent of the provisional holder, any other licence condition.

- (4) The Minister must give the provisional holder written notice of a decision under this section.

**68. Amendment of security requirements**

- (1) If the provisional holder —
- (a) is notified of a security requirement; and
  - (b) is dissatisfied with the amount of the security required,
- the provisional holder may ask the Minister to make a new determination under section 399.
- (2) The request must be made within 30 days after the day on which the provisional holder is given notice under section 66.
- (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.
- (4) The Minister must give the provisional holder written notice of the new determination.

**69. Extension of primary payment period**

- (1) If the provisional holder makes a request under section 67 or 68, the provisional holder may ask the Minister to extend the primary payment period.
- (2) The request must be made within 30 days after the day on which the provisional holder is given notice under section 66.
- (3) If the Minister agrees to the request, the Minister must —
- (a) determine the period of the extension; and
  - (b) give the provisional holder a written notice of the period of the extension.

**70. Acceptance of grant of exploration licence for standard block**

- (1) The provisional grant of the exploration licence is properly accepted by the provisional holder if, before the required time, the provisional holder —
- (a) gives the Minister a written acceptance of the grant; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid for the licence under section 425.
- (2) The required time under subsection (1) is the end of the primary payment period or, if the provisional holder has been granted an extension of the primary payment period under section 69, the end of the secondary payment period.

Note: Under section 88, the grant of the licence cannot be effective before it is registered (see section 333 for registration).

**71. Conditions applicable to licence on grant**

If the provisional grant of the licence is properly accepted under section 70, it is subject to —

- (a) the conditions specified in the licence given to the applicant under section 66; or
- (b) if the Minister amended those conditions under section 67, those conditions as amended.

**72. Lapse of provisional grant of exploration licence**

If the provisional grant of the licence is not properly accepted under section 70, the provisional grant lapses.

Division 3 — Application for and grant of exploration licence over tender block

**73. Matters to be determined before applications for exploration licence over tender blocks invited**

If the Minister proposes to invite applications for the grant of an exploration licence over reserved blocks, the Minister must, before inviting the applications, determine —

- (a) the procedure and criteria that the Minister will adopt to allocate the licence; and
- (b) the amount of security that will be required for the licence under section 399; and
- (c) the licence conditions.

**74. Minister may invite applications for exploration licence over tender blocks**

- (1) Subject to subsection (2), the Minister may invite applications for the grant of an exploration licence over reserved blocks.
- (2) Applications may be invited for a licence covering a group of reserved blocks only if the group forms a discrete area.
- (3) The Minister is to invite applications by publishing a tender block licence notice for the licence in the *Gazette*.

**75. Tender block licence notice — exploration licence**

- (1) A tender block licence notice for an exploration licence must —
  - (a) specify the blocks to be covered by the licence; and
  - (b) specify the period within which applications may be made; and
  - (c) specify the procedure and criteria that the Minister will adopt to allocate the licence; and
  - (d) specify the amount of security that the successful applicant will be required to lodge; and

- (e) include a statement to the effect that information about —
  - (i) the security that the successful applicant will be required to lodge; and
  - (ii) the licence conditions,  
may be obtained from the Minister.
- (2) Without limiting paragraph (c) of subsection (1), the Minister may for the purposes of that paragraph specify that the tender will be determined on the basis of either or both of the following —
  - (a) the nature and extent of the exploration activity proposed to be carried out;
  - (b) the amount of money offered for the licence.
- (3) The tender block licence notice may specify not more than 500 blocks for the exploration licence.

**76. Application for exploration licence over tender blocks**

If a tender block licence notice has been published inviting applications for an exploration licence, a person may apply to the Minister for the licence.

**77. How to apply**

- (1) The application must —
  - (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) be made before the end of the period specified in the tender block licence notice; and
  - (d) address the criteria specified under section 75(1)(c); and
  - (e) include details of —
    - (i) the technical qualifications of the applicant and of the applicant's employees who are likely to be

- involved in activities authorised by the licence;  
and
- (ii) the technical advice available to the applicant;  
and
- (iii) the financial resources available to the applicant;  
and
- (iv) if the licence is to be held by more than one  
person, the share in the licence that each  
prospective holder will hold;  
and
- (f) specify an address for service of notices under this Act  
and the regulations.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other  
information that the applicant thinks is relevant.

**78. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the  
regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but  
only if the Minister is satisfied that special circumstances exist  
that justify the refund of the fee.

**79. Request for further information**

- (1) The Minister may ask the applicant for further information  
about the application.
- (2) The request must —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be  
provided.

- (3) Information requested under subsection (1) must be provided —
- (a) in writing; and
  - (b) within the time specified in the request.

**80. Section number not used**

See note 2 to section 3(1).

**81. Minister may provisionally grant licence**

- (1) The Minister may provisionally grant an exploration licence to an applicant who has done what is required by sections 77 to 79.
- (2) When provisionally granting a licence under subsection (1), the Minister must follow the procedure and apply the criteria specified in the tender block licence notice published for the licence under section 74.
- (3) If the Minister refuses to grant a licence under subsection (1), the Minister must give the applicant written notice of the refusal.

**82. Section number not used**

See note 2 to section 3(1).

**83. Successful applicant must be notified**

- (1) If the Minister provisionally grants an exploration licence under section 81 or 87, the Minister must give the provisional holder —
  - (a) the licence; and
  - (b) written notice that the provisional grant will lapse unless the provisional holder, within 30 days after the day on which the notice is given —
    - (i) gives the Minister a written acceptance of the grant; and
    - (ii) lodges any security required under section 399; and

- (iii) pays the fee that must be paid for the licence under section 425; and
  - (iv) if the tender is determined on the basis of the amounts of money offered for the licence, pays to the Minister the amount that the provisional holder offered for the licence under section 77(1)(d).
- (2) The licence must specify —
- (a) the blocks covered by the licence; and
  - (b) the term of the licence; and
  - (c) the licence conditions.

Note: For the term of a licence see section 88.

**84. Acceptance of grant of exploration licence over tender blocks**

The provisional grant of an exploration licence is properly accepted by the provisional holder if, within 30 days after the day on which the provisional holder is given notice under section 83, the provisional holder —

- (a) gives the Minister a written acceptance of the grant; and
- (b) lodges any security required under section 399; and
- (c) pays the fee that must be paid for the licence under section 425; and
- (d) if the tender is determined on the basis of the amount of money offered for the licence, pays to the Minister the amount that the provisional holder offered for the licence under section 77(1)(d).

Note: Under section 88, the grant of the licence cannot be effective before it is registered (see section 333 for registration).

**85. Conditions applicable to licence on grant**

If the provisional grant of the licence is properly accepted, the licence is subject to the conditions determined under section 73.



**86. Lapse of provisional grant of exploration licence**

If the provisional grant of the licence is not properly accepted under section 84, the provisional grant lapses.

**87. Provisional grant to next applicant if grant lapses**

- (1) If the provisional grant of the licence lapses under section 86, the Minister may provisionally grant the licence to another of the applicants for the licence.
- (2) When provisionally granting a licence under subsection (1), the Minister must follow the procedure and apply the criteria specified in the tender block licence notice published for the licence under section 74.

Division 4 — Duration of exploration licence

**88. Initial term of exploration licence**

- (1) An exploration licence comes into force on —
  - (a) the day on which the grant of the licence is registered; or
  - (b) if a day later than the day on which the grant of the licence is registered is specified in the licence as its commencement day, that specified day.
- (2) The initial term of an exploration licence ends —
  - (a) 4 years after the day on which the licence is provisionally granted; or
  - (b) if a day later than the day on which the licence is provisionally granted is specified in the licence as its commencement day, 4 years after that specified day.

Note: The licence may be surrendered at any time (see section 127).

**89. Term of renewal of exploration licence**

- (1) A renewal of an exploration licence comes into force on —
  - (a) the day on which the renewal is registered; or

- (b) the day on which the previous term of the licence expires,

whichever is the later.

Note: See Division 6 for renewal.

- (2) The term of a renewal of a licence ends 2 years after the day on which the previous term of the licence expires.

Note: The licence may be surrendered at any time (see section 127).

- (3) In working out the previous term of the licence, section 90 is to be disregarded.
- (4) An exploration licence is not to be renewed more than 3 times.

**90. Effect of suspension of rights on term of exploration licence**

- (1) If the Minister suspends rights conferred by an exploration licence for a specified period under section 48, the Minister may extend the term of the licence.
- (2) An extension of a licence term under subsection (1) —
  - (a) must not be for a period that is longer than the period for which the licence rights were suspended; and
  - (b) must be in writing.
- (3) If the Minister extends the term of a licence under subsection (1), the Minister must give the licence holder a written notice that informs the holder —
  - (a) that the licence has been extended; and
  - (b) of the period of the extension.

**91. Effect of application for renewal on term of exploration licence**

If —

- (a) an exploration licence holder applies to renew the licence under section 101; and
- (b) the current term of the licence expires; and

- (c) a renewal of the licence does not take effect immediately after the current term expires,

the licence remains in force after the current term expires until —

- (d) a renewal of the licence takes effect; or
- (e) a provisional renewal of the licence lapses; or
- (f) the application for renewal is withdrawn or refused.

**92. Effect of application for retention licence or mining licence on term of exploration licence**

If —

- (a) an exploration licence holder applies for —
  - (i) a retention licence (see section 137); or
  - (ii) a mining licence (see section 198),over the licence area, or part of the licence area, of the exploration licence; and
- (b) the current term of the exploration licence expires; and
- (c) a grant of the retention licence or mining licence does not take effect before the current term of the exploration licence expires,

the exploration licence remains in force until —

- (d) the grant of the retention licence or mining licence takes effect; or
- (e) a provisional grant of the retention licence or mining licence lapses; or
- (f) the application for the retention licence or mining licence is withdrawn or refused.

**93. Effect of application for extension on term of licence**

If —

- (a) an exploration licence holder applies for an extension of the term of the licence under section 94 or 96; and

(b) the holder has also applied to renew the licence under section 101; and

(c) the extension application is not decided before the licence is due to expire,

then —

(d) the renewal application lapses; and

(e) the licence remains in force until —

(i) if the Minister extends the term of the licence under section 95 or 97 for a specified period, 30 days after the day on which that period ends; or

(ii) if the Minister refuses to extend the term of the licence under section 95 or 97, 30 days after the day on which the holder is given notice of the refusal under section 98.

**94. Extension of licence — activities disrupted**

(1) If —

(a) an exploration licence authorises the licence holder to carry out an activity; and

(b) circumstances beyond the control of the holder prevent the holder from carrying out the activity,

the holder may apply to the Minister for an extension of the term of the licence.

(2) The application must be made —

(a) within 30 days after the day on which the holder first became aware of the circumstances; and

(b) before the licence expires.

**95. Grant of licence extension — activities disrupted**

(1) Subject to subsection (2), if an exploration licence holder applies for an extension under section 94, the Minister —

- (a) must grant an extension of the term of the licence if the Minister is satisfied that —
- (i) the holder is or has been unable to carry out the activities authorised by the licence; and
  - (ii) the holder is or has been unable to do so because of circumstances beyond the holder's control; and
  - (iii) no excluded time is included in the period of inability for which an extension is sought;
- and
- (b) must refuse the application for extension if the Minister is not satisfied of the matters referred to in paragraph (a).
- (2) The period for which the extension is granted must not be longer than the disruption period for the licence less any excluded time for the licence.
- (3) The extension may be granted subject to whatever conditions the Minister thinks appropriate.
- (4) In this section —
- disruption period*** for a licence means the period during which the licence holder is unable to carry out activities authorised by the licence because of circumstances beyond the holder's control;
- excluded time*** for a licence means any period during which the licence was in force because of section 90, 91, 92 or 93.

Note: Under section 90, if the Minister has under section 48 suspended rights under a licence for a period, the Minister may extend the term of the licence for an equivalent period. Under section 91, the term of a licence is automatically extended if there is an application for the renewal of a licence undecided when the licence is due to expire. Under section 92, the term of a licence is automatically extended if the holder applies for a retention or mining licence over the licence area. Under section 93, the term of a licence is automatically extended if there is an application for an extension of the licence undecided when the licence is due to expire.

**96. Extension of licence — other circumstances**

- (1) An exploration licence holder may apply to the Minister for an extension of the term of the licence if, under section 121, the Minister —
  - (a) suspends a licence condition; or
  - (b) exempts the holder from complying with a licence condition.
- (2) The application must be made not later than 30 days before the licence expires.

**97. Grant of licence extension — other circumstances**

- (1) Subject to subsection (2), if an exploration licence holder applies for an extension under section 96, the Minister —
  - (a) may grant an extension of the term of the licence; or
  - (b) may refuse to grant an extension of the term of the licence.
- (2) The extension must not be for a period that is longer than the period of the suspension or exemption.
- (3) The extension may be granted subject to whatever conditions the Minister thinks appropriate.

**98. Notification of decision**

- (1) If the Minister grants an extension of the term of the exploration licence under section 95 or 97, the Minister must give the licence holder a written notice that informs the holder of —
  - (a) the grant of extension; and
  - (b) the period of the extension; and
  - (c) if the extension is subject to conditions, the conditions.
- (2) If the Minister refuses an application for a licence extension, the Minister must give the licence holder a written notice that informs the holder of —

- (a) the refusal; and
- (b) the reasons for the refusal.

Division 5 — Voluntary surrender of part of exploration licence area

**99. Voluntary surrender of blocks if discrete area remains**

- (1) An exploration licence holder may surrender a block or some of the blocks covered by the licence if the remaining blocks in the licence area form a discrete area.

Note: See section 127 for the surrender of the whole licence.

- (2) A surrender under subsection (1) must —
  - (a) be made in writing; and
  - (b) identify the blocks surrendered; and
  - (c) be given to the Minister.

Note: The surrender takes effect when it is registered under section 337 (see section 337(5)).

**100. Voluntary surrender of blocks if up to 3 discrete areas remain**

- (1) If —
  - (a) an exploration licence holder wants to surrender some of the blocks covered by the licence; and
  - (b) the blocks remaining in the licence area after the proposed surrender would form not more than 3 discrete areas,

the holder may apply to the Minister for approval of the proposed surrender.

- (2) The application —
  - (a) must be in writing; and
  - (b) must include a surrender proposal that identifies the blocks in the licence area that the holder proposes to surrender; and

(c) may include any other information that the holder thinks is relevant.

(3) If the Minister agrees with the surrender proposal, the Minister may approve the surrender of the blocks specified in the proposal by giving the holder written notice of the approval.

Note: The surrender takes effect when it is registered under section 337 (see section 337(5)).

(4) If the Minister does not agree with the surrender proposal, the Minister may ask the holder to discuss the proposal.

(5) If the Minister and the holder agree, after discussions, on the blocks to be surrendered the Minister may approve the surrender of the blocks agreed on by giving the holder written confirmation of the agreement.

Note: The surrender takes effect when it is registered under section 337 (see section 337(5)).

(6) If, after discussions, the Minister and the holder do not agree on the surrender proposal, no blocks are surrendered.

#### Division 6 — Application for and grant of renewal of exploration licence

##### **101. Application for renewal of exploration licence**

An exploration licence holder may apply to the Minister to renew the licence.

Note 1: Part of the licence area must be surrendered on each renewal (see section 104).

Note 2: At each renewal, the licence conditions are reviewed (see section 118).

##### **102. When application to be made**

(1) Subject to subsections (2) and (3), the application must be made at least 30 days before the day on which the licence is to expire.

Note: If an application for extension of a licence is made, the expiry of the licence is postponed (see section 93). For expiry of a licence see section 126.

(2) The Minister may accept an application that is made later than 30 days before the day on which the licence is to expire if —

(a) the application is made before the day on which the licence expires; and



- (b) the Minister believes that there are reasonable grounds for accepting the application.
- (3) If a licence remains in force because of section 93(e)(ii), the application may be made at any time before the licence ceases to be in force.

**103. How to apply for renewal**

- (1) The application must —
  - (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) include details of —
    - (i) the activities carried out by the applicant under the licence during its current term; and
    - (ii) the amount of money spent by the applicant in relation to the blocks covered by the licence during its current term; and
    - (iii) the activities that the applicant intends to carry out under the licence during the term applied for; and
    - (iv) the amount of money that the applicant intends to spend on those activities during the term applied for;and
  - (d) specify the blocks that the applicant nominates for surrender in accordance with section 104.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

**104. Mandatory reduction of licence area on renewal of exploration licence**

- (1) This section deals with the mandatory reduction of the licence area covered by an exploration licence when the licence is renewed.
- (2) Subject to subsection (4)(b), on each surrender day of an exploration licence, the licence holder must surrender —
  - (a) 50% of the number of blocks in the licence area; or
  - (b) if 50% of that number of the blocks is a whole number and a fraction, the next higher whole number of the blocks.
- (3) Subject to subsection (4)(a), the blocks that remain in the licence area after a surrender under subsection (2) must form a discrete area.
- (4) The Minister may —
  - (a) give permission for the surrender of blocks in a licence area if the licence area remaining after the proposed surrender would consist of not more than 3 discrete areas; or
  - (b) give permission for a licence area to be reduced by less than 50% if the Minister considers that there are special circumstances present in relation to the renewal application.

**105. Request for further information**

- (1) The Minister may ask the applicant to provide further information about the application.
- (2) The request must —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be provided.

- (3) Information requested under subsection (1) must be provided —
- (a) in writing; and
  - (b) within the time specified in the request.

**106. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**107. Section number not used**

See note 2 to section 3(1).

**108. Provisional renewal of an exploration licence**

- (1) The Minister must provisionally renew an exploration licence if the applicant —
- (a) does what is required by sections 101 to 106; and
  - (b) has complied with —
    - (i) this Act; and
    - (ii) the regulations; and
    - (iii) the licence conditions.

Note 1: Under section 89, the renewal of the licence cannot be effective before it is registered (see section 334 for registration). The renewal will not be registered until it has been properly accepted (see section 114 for “proper acceptance”).

Note 2: Under section 118, new conditions may be imposed on renewal.

- (2) If subsection (1) does not require the Minister to provisionally renew the licence, the Minister may —
- (a) provisionally renew the licence; or
  - (b) refuse to renew the licence.

**109. Section number not used**

See note 2 to section 3(1).

**110. Applicant must be notified**

- (1) The Minister must give the applicant written notice of the Minister's decision under section 108.
- (2) If the Minister provisionally renews the exploration licence under section 108, the notice must contain the following information —
  - (a) notification of the conditions of the renewed licence;
  - (b) notification of any determination under section 399 that the applicant must lodge a security or a further security;
  - (c) notification that the provisional renewal will lapse unless the applicant, before the end of the primary payment period —
    - (i) gives the Minister a written acceptance of the renewal; and
    - (ii) lodges any security required by the Minister under section 399; and
    - (iii) pays the fees that must be paid under section 425.

Note: Section 118 provides for renewals to be granted subject to conditions.

**111. Amendment of conditions**

- (1) If the licence holder —
  - (a) has been provisionally granted a renewal of the licence under section 108; and
  - (b) is notified of the licence conditions; and
  - (c) is dissatisfied with a condition,the holder may ask the Minister to amend the condition.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 110.

- (3) If a request is made under subsection (1), the Minister may amend the licence conditions and, with the consent of the holder, any other licence condition.
- (4) The Minister must give the holder written notice of a decision under this section.

**112. Amendment of security requirements**

- (1) If the licence holder —
  - (a) has been provisionally granted a renewal of the licence under section 108; and
  - (b) is notified of a security requirement; and
  - (c) is dissatisfied with the amount of the security required,the holder may ask the Minister to make a new determination under section 399.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 110.
- (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.
- (4) The Minister must give the holder written notice of the new determination.

**113. Extension of primary payment period**

- (1) If the licence holder makes a request under section 111 or 112, the holder may ask the Minister to extend the primary payment period.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 110.
- (3) If the Minister agrees to the request, the Minister must —
  - (a) determine the period of the extension; and
  - (b) give the holder a written notice informing the holder of the period of the extension.

**114. Acceptance of renewal of exploration licence**

- (1) The provisional renewal of an exploration licence is properly accepted by the licence holder if, before the required time, the holder —
  - (a) gives the Minister a written acceptance of the renewal; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid under section 425.
- (2) The required time under subsection (1) is the end of the primary payment period or, if the licence holder has been granted an extension of the primary payment period under section 113, the end of the secondary payment period.

Note: Under section 89, the renewal of the licence cannot be effective before it is registered (see section 334 for registration).

**115. Conditions applicable to licence on renewal**

If the provisional renewal is properly accepted under section 114, the renewed licence is subject to —

- (a) the conditions specified in the notice given to the licence holder under section 110; or
- (b) if the Minister amended those conditions under section 111, those conditions as amended.

**116. Lapse of provisional renewal of exploration licence**

If the provisional renewal of an exploration licence is not properly accepted under section 114, the provisional renewal lapses.

Division 7 — Obligations associated with exploration licence

**117. General**

- (1) The sources of obligations associated with an exploration licence are —

- (a) the licence conditions; and
- (b) obligations arising from directions under section 387 or 392 given by the Minister; and
- (c) obligations imposed by this Act and the regulations.

Note: For paragraph (a) see sections 118 to 120. For paragraph (c) see sections 44, 123 to 125, 372 and 391(1).

- (2) If an exploration licence has 2 or more holders, all the holders are jointly and severally bound by the obligations that attach to the licence.

**118. Conditions of exploration licence**

- (1) The Minister may grant or renew an exploration licence subject to whatever conditions the Minister thinks appropriate.
- (2) If the Minister grants or renews an exploration licence subject to conditions, the conditions must be specified in the licence.
- (3) Without limiting subsection (1), the Minister may attach the following kinds of conditions to the grant or renewal of an exploration licence —
  - (a) a condition requiring the licence holder to take out insurance as required by the Minister;
  - (b) a condition requiring the holder to carry out certain work in or in relation to the licence area during the term of the licence;
  - (c) a condition requiring the holder to spend a specified amount of money in carrying out the work referred to in paragraph (b);
  - (d) a condition requiring the holder to lodge a security with the Minister;
  - (e) a condition requiring the holder to keep specified information;
  - (f) a condition requiring the holder to give the Minister, on request, specified information;

- (g) a condition requiring the holder to take steps to protect the environment of the licence area, including conditions relating to —
    - (i) protecting wildlife; or
    - (ii) minimising the effect on the environment of the licence area and the area surrounding the licence area of activities carried out in the licence area;
  - (h) a condition requiring the holder to repair any damage to the environment caused by activities in the licence area;
  - (i) a condition requiring the holder to pay a specified penalty to the State if the holder does not comply with a licence condition.
- (4) A condition under subsection (3)(d) must specify —
- (a) the amount of the security required; and
  - (b) the kind of security required; and
  - (c) the manner and form in which the security is to be lodged.
- (5) Without limiting paragraph (d) of subsection (3), a condition under that paragraph may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify —
- (a) the kind of person who is to give the guarantee; and
  - (b) the terms of the guarantee.

**119. No conditions requiring payment of money**

Except for a condition requiring the payment of a penalty or lodgment of security, a licence condition must not require the payment of money to the State.

**120. Variation of conditions**

- (1) If —



- (a) an exploration licence holder requests the Minister in writing to vary a licence condition; or
- (b) an exploration licence continues in force because of section 93; or
- (c) an extension of the term of an exploration licence is granted under section 95; or
- (d) part of the licence area of an exploration licence is surrendered under section 99 or 100,

the Minister may vary a licence condition.

- (2) If the Minister gives —
  - (a) a direction under section 387; or
  - (b) an approval, consent or exemption under the regulations,to an exploration licence holder, the Minister may vary a licence condition to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.
- (3) The Minister may vary a licence condition subject to whatever conditions the Minister thinks appropriate.
- (4) If the Minister varies a licence condition, the Minister must give the licence holder a written notice that —
  - (a) informs the holder of the variation; and
  - (b) specifies the conditions which have been varied; and
  - (c) specifies any conditions to which the variation is subject.

**121. Exemption from or suspension of conditions**

- (1) If —
  - (a) an exploration licence holder requests the Minister in writing to —
    - (i) suspend a licence condition; or

(ii) exempt the holder from complying with a licence condition;

or

- (b) an exploration licence continues in force because of section 93; or
- (c) an extension of the term of an exploration licence is granted under section 95; or
- (d) part of the licence area of an exploration licence is surrendered under section 99 or 100,

the Minister may —

- (e) suspend a licence condition; or
- (f) exempt the holder from complying with a licence condition.

(2) If the Minister gives —

- (a) a direction under section 387; or
- (b) an approval, consent or exemption under the regulations,

to an exploration licence holder, the Minister may suspend a licence condition, or exempt the holder from compliance with a licence condition, to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.

(3) The Minister may —

- (a) suspend a licence condition; or
- (b) exempt the licence holder from complying with a licence condition,

subject to whatever conditions the Minister thinks appropriate.

(4) If the Minister —

- (a) suspends a licence condition; or

- (b) exempts the licence holder from complying with a licence condition,

the Minister must give the holder a written notice that —

- (c) informs the holder of the exemption or suspension; and
- (d) specifies the conditions which have been suspended or affected by the exemption; and
- (e) specifies any conditions to which the suspension or exemption is subject.

Note: A suspension or exemption of a condition cannot be effective before it is registered (see section 337).

**122. Automatic suspension of conditions if licence rights are suspended**

If —

- (a) the Minister suspends particular rights conferred by an exploration licence under section 48; and
- (b) a licence condition is affected by the suspension,

the licence condition is suspended for the period of the suspension of the rights.

**123. Work practices**

A person who is an exploration licence holder or an associate of the holder, in carrying out activities in the licence area that are authorised by the licence, must take all reasonable steps —

- (a) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the mining industry; and
- (b) to maintain in good repair all structures and equipment erected in, or brought into, the licence area by the person; and

- (c) to remove from the licence area any structure, equipment or other property that —
  - (i) belongs to the person, or is under the person’s control; and
  - (ii) is not being used, or is not going to be used, in connection with the activities.

Maximum penalty: \$20 000.

Note: The safety of offshore exploration activities is governed by the *Mines Safety and Inspection Act 1994* — see the definition of “exploration operations” and paragraph (a) of the definition of “mining operations” in section 4(1) of that Act.

**124. Licence holder must keep specified records etc.**

An exploration licence holder must —

- (a) keep whatever records and samples; and
- (b) give whatever records and samples to the Minister for inspection; and
- (c) make whatever returns,

are necessary to comply with —

- (d) the regulations; or
- (e) the licence conditions; or
- (f) a direction given by the Minister under section 387.

Note: Under sections 386 and 387 the Minister may direct a person to keep records and samples, to give records and samples to the Minister, and to make returns.

Maximum penalty: \$10 000.

**125. Licence holder must assist inspectors**

An exploration licence holder must provide an inspector with reasonable facilities and assistance so that the inspector is able to carry out compliance inspections.

Note: See sections 377 to 384 for compliance inspections.

Maximum penalty: \$5 000.

Division 8 — Expiry of exploration licence

**126. General**

- (1) An exploration licence expires if —
- (a) the term of the licence ends without the licence being renewed; or
  - (b) the licence holder surrenders the licence; or
  - (c) a retention licence is granted over the blocks in the licence area of the exploration licence; or
  - (d) a mining licence is granted over the blocks in the licence area of the exploration licence; or
  - (e) the licence is cancelled.

Note: For paragraph (a) see Division 6. For paragraph (b) see section 127. For paragraph (c) see section 128. For paragraph (d) see section 129. For paragraph (e) see section 130.

- (2) In subsection (1)(a) the reference to the term of the licence includes any period during which the licence is in force under section 90, 91, 92 or 93.

**127. Voluntary surrender of exploration licence**

An exploration licence holder may surrender the licence.

Note 1: See Division 5 for voluntary surrender of part of a licence area.

Note 2: The surrender takes effect when it is registered under section 337 (see section 337(5)).

**128. Automatic expiry of exploration licence when retention licence takes effect**

If —

- (a) an exploration licence is in force; and
- (b) a retention licence over all or some of the blocks in the exploration licence area comes into force under section 154,

the exploration licence expires in relation to the blocks covered by the retention licence.

**129. Automatic expiry of exploration licence when mining licence takes effect**

If —

- (a) an exploration licence is in force; and
- (b) a mining licence over all or some of the blocks in the exploration licence area comes into force under section 232,

the exploration licence expires in relation to the blocks covered by the mining licence.

**130. Cancellation of exploration licence**

- (1) Subject to subsection (5), the Minister may cancel an exploration licence if the licence holder —
  - (a) breaches a licence condition; or
  - (b) contravenes a provision of this Act or the regulations; or
  - (c) breaches a condition attached to an approval under section 365(2).
- (2) If the Minister proposes to cancel a licence under subsection (1), the Minister must give the licence holder a written notice that informs the holder of the proposed cancellation.
- (3) The notice must —
  - (a) specify the reason for the proposed cancellation; and
  - (b) invite the holder to make submissions in relation to the proposed cancellation; and
  - (c) specify the day by which submissions may be given to the Minister; and
  - (d) specify an address where submissions are to be lodged.
- (4) The day specified under subsection (3)(c) must be not less than 60 days after the day on which the notice is given.
- (5) The Minister may cancel the licence only if —

- (a) the holder has been given a notice under subsection (2);  
and
- (b) the Minister has considered —
  - (i) any submission made by the holder in accordance with subsection (3); and
  - (ii) any steps taken by the holder to remedy the breach or contravention that led to the proposal to cancel the licence and to prevent any similar breach or contravention from happening again;and
- (c) the Minister is satisfied that no special circumstances exist that justify the licence not being cancelled.

**131. Obligations of former exploration licence holders and former associates**

- (1) Subject to subsection (4), if —
  - (a) a person was —
    - (i) an exploration licence holder; or
    - (ii) an associate of an exploration licence holder;and
  - (b) the licence —
    - (i) expires; or
    - (ii) is cancelled; or
    - (iii) is surrendered;and
  - (c) an obligation associated with the licence arising out of —
    - (i) a licence condition; or
    - (ii) a direction given under section 387; or
    - (iii) this Act or the regulations,has not been discharged; and

- (d) the person was bound by that obligation when the person was the licence holder or an associate,  
the person remains bound by the obligation until the obligation is discharged.
- (2) Subsection (1) does not continue an obligation to carry out exploration or recovery activities.
- (3) Subsection (1) continues an obligation that a person had to carry out exploration or recovery activities in a particular manner if the person carries them out.
- (4) The Minister may determine that the person is not subject to —
- (a) any particular obligation under this section; or
  - (b) all the person's remaining obligations under this section.
- (5) A determination under subsection (4) is to be in writing.



## **Part 2.3 — Retention licences**

### Division 1 — General

#### **132. Retention licences**

This Part provides for the grant of retention licences over blocks in coastal waters.

Note: A retention licence is designed to allow an exploration licence holder to retain rights over an area if —

- the holder has identified and evaluated a significant mineral deposit in the exploration licence area; and
- mining the deposit is not commercially viable in the short term; and
- there is a reasonable prospect of development of the deposit in the longer term.

See section 145 for the grounds on which a retention licence may be granted.

#### **133. Activities authorised by a retention licence**

- (1) Subject to subsections (2) and (3), a retention licence holder may —
- (a) explore for minerals in the licence area; and
  - (b) recover minerals in the licence area.

Note 1: The retention licence may specify a restricted range of activities that are the only ones authorised by the licence (see section 146(3)).

Note 2: Under section 23(1) the concept of “exploration” extends to activities that are directly related to exploration.

Note 3: Under section 24(1) the concept of “recovery” extends to activities that are directly related to the recovery of minerals.

Note 4: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

- (2) A retention licence does not authorise the recovery of minerals as part of a commercial mining operation.

- (3) If the licence is expressed to restrict the kind of minerals covered by the licence, the holder is not permitted to explore for, or to recover, minerals not covered by the licence.
- (4) A restriction on the kind of minerals covered by the licence may be inclusive (for example, only minerals A, B and C) or exclusive (for example, all minerals except A, B and C).
- (5) For the purposes of subsection (3), the holder does not recover an excluded mineral if, in the course of exploring for, or recovering, another mineral, the holder recovers some excluded mineral.

**134. Minister may cancel or not renew retention licence without compensation**

No compensation is payable because of the cancellation or non-renewal of a retention licence by the Minister.

Note 1: The Minister may cancel the licence under section 189 or 190.

Note 2: The Minister may refuse under section 165 to renew the licence.

**135. Licence rights may be suspended**

- (1) The Minister must suspend particular rights conferred by a retention licence if the Minister is satisfied that it is necessary in the public interest to do so.
- (2) The Minister may suspend rights under subsection (1) for a specified period or for an indefinite period.
- (3) The Minister may end a suspension at any time.
- (4) A suspension or the ending of a suspension must be in writing.
- (5) If the Minister —
  - (a) suspends rights conferred by a retention licence; or

(b) ends a suspension,

the Minister must give the licence holder a written notice that informs the holder of the suspension or the ending of a suspension.

Note: See section 181 for the effect of the suspension on the obligations associated with the licence.

(6) A suspension takes effect when —

- (a) the holder has been given notice of the suspension under subsection (5); and
- (b) the suspension has been registered under section 337.

**136. Compensation for acquisition of property due to suspension of rights**

(1) If —

- (a) the Minister suspends licence rights under section 135; and
- (b) the suspension results in the acquisition of property from a person; and
- (c) the State and the person agree on an amount of compensation for the acquisition,

the State must pay the person the agreed amount of compensation.

(2) If —

- (a) the Minister suspends licence rights under section 135; and
- (b) the suspension results in the acquisition of property from a person; and
- (c) the State and the person do not agree on an amount of compensation for the acquisition; and
- (d) the person brings an action for compensation against the State in the Supreme Court,

the State must pay the person the amount of compensation (if any) that is determined by that court.

(3) In this section —

*acquisition of property* has the same meaning as it has in section 51(xxxi) of the Commonwealth Constitution.

Division 2 — Application for and grant of retention licence

**137. Application for retention licence**

- (1) An exploration licence holder may apply to the Minister for a retention licence over blocks within the exploration licence area.
- (2) A person may apply for a retention licence over a group of blocks only if —
  - (a) the group forms a discrete area; and
  - (b) there are not more than 20 blocks in the group.
- (3) The exploration licence holder may apply for 2 or more retention licences over different parts of the exploration licence area.

**138. How to apply**

- (1) The application must —
  - (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) specify the blocks for which the application is made; and
  - (d) include details of —
    - (i) the reasons why the applicant is applying for a retention licence rather than a mining licence; and
    - (ii) the mineral deposit that the applicant has identified and evaluated and that the applicant believes is commercially viable in the longer term; and

- (iii) the applicant's assessment of the present and potential commercial viability of the mineral deposit; and
- (iv) the overall work programme that the applicant has already carried out under the exploration licence on the blocks covered by the application; and
- (v) the amount of money that the applicant has already spent under the exploration licence on and in connection with the blocks covered by the application; and
- (vi) the activities that the applicant intends to carry out on the blocks covered by the application; and
- (vii) the amount of money that the applicant intends to spend on and in connection with those activities; and
- (viii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in activities authorised by the licence; and
- (ix) the technical advice available to the applicant; and
- (x) the financial resources available to the applicant; and
- (e) be accompanied by maps that —
  - (i) relate to the blocks; and
  - (ii) comply with the regulations;and
- (f) specify an address for service of notices under this Act and the regulations.

Note: For paragraphs (a) and (b) see section 41.

- (2) The mineral deposit details given under subsection (1)(d)(ii) must include —

- (a) a full description of the mineral deposit; and
  - (b) both factual information about the deposit and the applicant's interpretation of the factual information.
- (3) The applicant may include in the application any other information that the applicant thinks is relevant.

**139. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**140. Application must be advertised**

- (1) The applicant must advertise the application in a newspaper circulating throughout the State.
- (2) The advertisement must contain —
  - (a) the applicant's name and address; and
  - (b) a map and description of the blocks applied for that are sufficient for the blocks to be identified; and
  - (c) the address of the Minister; and
  - (d) a statement that —
    - (i) advises that the applicant has applied for a retention licence for the blocks described in the notice; and
    - (ii) invites comment from the public on the application; and
    - (iii) requests that comments be sent to the applicant and the Minister within 30 days after the day on which the advertisement is published.

- (3) The advertisement must be published —
  - (a) as soon as possible after the applicant makes the application; and
  - (b) in any case, subject to subsection (4), within 14 days after the day on which the applicant makes the application.
  
- (4) If —
  - (a) the applicant applies to the Minister within the 14 day period referred to in subsection (3) for an extension of the period; and
  - (b) the Minister extends the period,

the advertisement must be published within the period as extended by the Minister.

**141. Request for further information**

- (1) The Minister may ask the applicant for further information about the application.
  
- (2) The request must —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be provided.
  
- (3) Information requested under subsection (1) must be provided —
  - (a) in writing; and
  - (b) within the time specified in the request.

**142. Section number not used**

See note 2 to section 3(1).

**143. Minister may provisionally grant licence**

If the applicant does what is required by sections 138 to 141, the Minister may —

- (a) subject to section 145, provisionally grant a retention licence to the applicant; or
- (b) refuse the application.

**Note:** Under section 154, the grant of the licence cannot be effective before it is registered (see section 333 for registration). The grant will not be registered until it has been properly accepted (see section 151 for “proper acceptance”).

**144. Section number not used**

See note 2 to section 3(1).

**145. Grounds for granting retention licence**

- (1) The Minister may provisionally grant the retention licence only if the Minister is satisfied that —
  - (a) the exploration licence holder has identified and evaluated a significant mineral deposit in the exploration licence area; and
  - (b) there are reasonable grounds for the holder not applying immediately for a mining licence.
- (2) Without limiting subsection (1), reasonable grounds for not applying immediately for a mining licence include the following —
  - (a) the need to obtain government approvals (for example, relating to environmental protection) before mining activities can commence;
  - (b) the need to carry out further exploration or evaluation in order to establish the commercial viability of a mineral deposit found in the licence area;
  - (c) the need to develop technologies before mining activities can commence;
  - (d) the need to arrange finance, or to secure additional capital reserves, before mining activities can commence;



- (e) the existence of economic considerations (for example, the prevailing condition of the commodity market for the minerals concerned) that effectively preclude mining activities in the immediate future;
- (f) the existence of political considerations that effectively preclude mining activities in the immediate future.

**146. Matters to be specified in the licence**

- (1) The licence must specify —
  - (a) the blocks covered by the licence; and
  - (b) the term of the licence; and
  - (c) the licence conditions.
- (2) The term specified under subsection (1)(b) is not to exceed 5 years.
- (3) The licence may specify the activities that may be carried out under the licence.
- (4) If the licence includes a specification under subsection (3), the licence authorises only the specified activities.

**147. Applicant must be notified**

- (1) The Minister must give the applicant written notice of a decision under section 143.
- (2) If the Minister provisionally grants a retention licence —
  - (a) the Minister must give the licence to the provisional holder; and
  - (b) the notice under subsection (1) must contain the following information —
    - (i) notification of any determination under section 399 that the provisional holder must lodge a security;

- (ii) notification that the provisional grant will lapse unless the provisional holder, before the end of the primary payment period —
  - (I) gives the Minister a written acceptance of the grant; and
  - (II) lodges any security required under section 399; and
  - (III) pays the fee that must be paid for the licence under section 425.

**148. Amendment of conditions**

- (1) If the provisional holder is dissatisfied with a licence condition, the provisional holder may ask the Minister to amend the condition.
- (2) The request must be made within 30 days after the day on which the provisional holder is given the licence under section 147.
- (3) If a request is made under subsection (1), the Minister may amend the licence condition and, with the consent of the provisional holder, any other licence condition.
- (4) The Minister must give the provisional holder written notice of a decision under this section.

**149. Amendment of security requirements**

- (1) If the provisional holder —
  - (a) is notified of a security requirement; and
  - (b) is dissatisfied with the amount of the security required,the provisional holder may ask the Minister to make a new determination under section 399.
- (2) The request must be made within 30 days after the day on which the provisional holder is given notice under section 147.
- (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.

- (4) The Minister must give the provisional holder written notice of the new determination.

**150. Extension of primary payment period**

- (1) If the provisional holder makes a request under section 148 or 149, the provisional holder may ask the Minister to extend the primary payment period.
- (2) The request must be made within 30 days after the day on which the provisional holder is given notice under section 147.
- (3) If the Minister agrees to the request, the Minister must —
- (a) determine the period of the extension; and
  - (b) give the provisional holder a written notice of the period of the extension.

**151. Acceptance of grant of retention licence**

- (1) The provisional grant of a retention licence is properly accepted by the provisional holder if, before the required time, the provisional holder —
- (a) gives the Minister a written acceptance of the grant; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid for the licence under section 425.
- (2) The required time under subsection (1) is the end of the primary payment period or, if the provisional holder has been granted an extension of the primary payment period under section 150, the end of the secondary payment period.

**Note:** Under section 154, the grant of the licence cannot be effective before the grant is registered (see section 333 for registration).

**152. Conditions applicable to licence on grant**

If the provisional grant of the licence is properly accepted under section 151, it is subject to —

- (a) the conditions specified in the licence given to the applicant under section 147; or
- (b) if the Minister amended those conditions under section 148, those conditions as amended.

**153. Lapse of provisional grant of retention licence**

If the provisional grant of the licence is not properly accepted under section 151, the provisional grant lapses.

Division 3 — Duration of retention licence

**154. Initial term of retention licence**

- (1) A retention licence comes into force on —
  - (a) the day on which the grant of the licence is registered; or
  - (b) if a day later than the day on which the grant of the licence is registered is specified in the licence as its commencement day, that specified day.
- (2) The initial term of a retention licence expires at the end of the period specified in the licence under section 146(1).

Note 1: For the maximum initial term see section 146(2).

Note 2: The licence may be surrendered at any time (see section 187).

- (3) The period runs from —
  - (a) the day on which the licence is provisionally granted; or
  - (b) if a day later than the day on which the licence is provisionally granted is specified in the licence as its commencement day, that specified day.

**155. Term of renewal of licence**

- (1) A renewal of a retention licence comes into force on —

- (a) the day on which the renewal is registered; or
- (b) the day on which the previous term of the licence expires,

whichever is the later.

Note: See Division 5 for renewal.

- (2) The term of a renewal of a licence expires at the end of the period specified in the notice under section 169.

Note 1: For the maximum term of renewal see section 169(3).

Note 2: The licence may be surrendered at any time (see section 187).

- (3) The period runs from the expiry of the previous term of the licence.
- (4) In working out the period referred to in subsection (3) section 156 is to be disregarded.

**156. Effect of application for renewal on term of retention licence**

If —

- (a) a retention licence holder applies to renew the licence under section 159; and
- (b) the current term of the licence expires; and
- (c) a renewal of the licence does not take effect immediately after the current term expires,

the licence remains in force after the current term expires until —

- (d) a renewal of the licence takes effect; or
- (e) a provisional renewal of the licence lapses; or
- (f) the application for renewal is withdrawn or refused.

**157. Effect of application for mining licence on term of retention licence**

If —

- (a) a retention licence holder applies for a mining licence over the licence area, or part of the licence area, of the retention licence; and
- (b) the current term of the retention licence expires; and
- (c) a grant of the mining licence does not take effect before the current term of the retention licence expires,

the retention licence remains in force until —

- (d) the grant of the mining licence takes effect; or
- (e) a provisional grant of the mining licence lapses; or
- (f) the application for the mining licence is withdrawn or refused.

Division 4 — Voluntary surrender of part of retention licence area

**158. Voluntary surrender of blocks if discrete area remains**

- (1) A retention licence holder may surrender a block or some of the blocks covered by the licence if the remaining blocks in the licence area form a discrete area.

Note: See section 187 for the surrender of the whole licence.

- (2) A surrender under subsection (1) must —
  - (a) be made in writing; and
  - (b) identify the blocks surrendered; and
  - (c) be given to the Minister.

Note: The surrender takes effect when it is registered under section 337 (see section 337(5)).

Division 5 — Application for and grant of renewal of retention licence

**159. Application for renewal of retention licence**

A retention licence holder may apply to the Minister to renew the licence.

Note: At each renewal, the licence conditions are reviewed (see section 177).

**160. When application to be made**

- (1) Subject to subsection (2), the application must be made at least 6 months before the day on which the licence is to expire.
- (2) The Minister may accept an application that is made later than 6 months before the day on which the licence is to expire if —
  - (a) the application is made before the day on which the licence expires; and
  - (b) the Minister believes that there are reasonable grounds for accepting the application.

**161. How to apply for renewal**

- (1) The application must —
  - (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) include details of —
    - (i) the reasons why the applicant is applying to renew the retention licence rather than applying for a mining licence; and
    - (ii) the activities carried out by the applicant under the licence during its current term; and
    - (iii) the amount of money spent by the applicant in relation to the blocks covered by the licence during its current term; and
    - (iv) the results obtained by the applicant from carrying out the activities referred to in subparagraph (ii); and
    - (v) the activities that the applicant intends to carry out under the licence during the term applied for; and
    - (vi) the amount of money that the applicant intends to spend in relation to activities authorised by the licence during the term applied for.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

**162. Request for further information**

- (1) The Minister may ask the applicant to provide further information relating to the application.
- (2) The request must —
- (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be provided.
- (3) Information requested under subsection (1) must be provided —
- (a) in writing; and
  - (b) within the time specified in the request.

**163. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**164. Section number not used**

See note 2 to section 3(1).

**165. Provisional renewal of retention licence**

The Minister may —

- (a) provisionally renew the licence; or
- (b) subject to section 168, refuse to renew the licence.



Note 1: Under section 155, the renewal of the licence cannot be effective before it is registered (see section 334 for registration). The renewal will not be registered until it has been properly accepted (see section 173 for “proper acceptance”).

Note 2: Under section 177, new conditions may be imposed on renewal.

**166. Section number not used**

See note 2 to section 3(1).

**167. Matters that may be taken into account**

In determining whether to renew the licence, the Minister may have regard to —

- (a) whether mining activities are commercially viable in the retention licence area; and
- (b) whether the applicant has complied with —
  - (i) this Act; and
  - (ii) the regulations; and
  - (iii) any licence conditions.

**168. Refusal of application for renewal**

- (1) If the Minister proposes to refuse to renew the licence, the Minister must give the applicant notice of the proposed refusal.

Note: The retention licence remains in force until the application for renewal has been finally determined (i.e. until the Minister decides whether or not to renew the licence) (see section 156).

- (2) The notice must —
  - (a) be in writing; and
  - (b) give details of the Minister’s reasons for the proposal not to renew the licence; and
  - (c) invite the applicant to make written submissions on the proposed non-renewal to the Minister; and
  - (d) specify the day by which submissions may be made to the Minister.

- (3) The day specified under subsection (2)(d) is to be at least 30 days after the day on which the notice under subsection (1) is given to the applicant.
- (4) The Minister, in deciding whether to refuse to renew the licence, must have regard to any submissions made by the applicant in response to the notice under subsection (1).

**169. Applicant must be notified**

- (1) The Minister must give the applicant written notice of the Minister's decision under section 165.
- (2) If the Minister provisionally renews the licence under section 165, the notice must contain the following information —
  - (a) notification of the term of the renewal;
  - (b) notification of the conditions of the renewed licence;
  - (c) notification of any determination under section 399 that the applicant must lodge a security or a further security;
  - (d) notification that the provisional renewal will lapse unless the applicant, before the end of the primary payment period —
    - (i) gives the Minister a written acceptance of the renewal; and
    - (ii) lodges any security required under section 399; and
    - (iii) pays the fee that must be paid under section 425.

Note: Paragraph (b): section 177 provides for renewals to be granted subject to conditions.

- (3) The term specified under subsection (2)(a) is not to exceed 5 years.

**170. Amendment of conditions**

- (1) If the licence holder —

- (a) has been provisionally granted a renewal of the licence under section 165; and
  - (b) is notified of the licence conditions; and
  - (c) is dissatisfied with a condition,
- the holder may ask the Minister to amend the condition.
- (2) The request must be made within 30 days after the day on which the applicant is given notice under section 169.
  - (3) If a request is made under subsection (1), the Minister may amend the licence conditions and, with the consent of the holder, any other licence condition.
  - (4) The Minister must give the holder written notice of a decision under this section.

**171. Amendment of security requirements**

- (1) If the licence holder —
  - (a) has been provisionally granted a renewal of the licence under section 165; and
  - (b) is notified of a security requirement; and
  - (c) is dissatisfied with the amount of the security required,the holder may ask the Minister to make a new determination under section 399.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 169.
- (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.
- (4) The Minister must give the holder written notice of the new determination.

**172. Extension of primary payment period**

- (1) If the licence holder makes a request under section 170 or 171, the holder may ask the Minister to extend the primary payment period.

- (2) The request must be made within 30 days after the day on which the holder is given notice under section 169.
- (3) If the Minister agrees to the request to extend the primary payment period, the Minister must —
  - (a) determine the period of the extension; and
  - (b) give the holder a written notice informing the holder of the period of the extension.

**173. Acceptance of renewal of retention licence**

- (1) The provisional renewal of a retention licence is properly accepted by the licence holder if, before the required time, the holder —
  - (a) gives the Minister a written acceptance of the renewal; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid under section 425.
- (2) The required time under subsection (1) is the end of the primary payment period or, if the licence holder has been granted an extension of the primary payment period under section 172, the end of the secondary payment period.

Note: Under section 155, the renewal of the licence cannot be effective before it is registered (see section 334 for registration).

**174. Conditions applicable to licence on renewal**

If the provisional renewal is properly accepted under section 173, the renewed licence is subject to —

- (a) the conditions specified in the notice given to the licence holder under section 169; or
- (b) if the Minister amended those conditions under section 170, those conditions as amended.

**175. Lapse of provisional renewal of retention licence**

If the provisional renewal of a retention licence is not properly accepted under section 173, the provisional renewal lapses.

Division 6 — Obligations associated with retention licence

**176. General**

- (1) The sources of obligations associated with a retention licence are —
- (a) the licence conditions; and
  - (b) obligations arising from directions under section 387 or 392 given by the Minister; and
  - (c) obligations imposed by this Act and the regulations.

Note: For paragraph (a) see section 177. For paragraph (c) see sections 44, 177 to 185, 372 and 391(1).

- (2) If a retention licence has 2 or more holders, all the holders are jointly and severally bound by the obligations that attach to the licence.

**177. Conditions of retention licence**

- (1) The Minister may grant or renew a retention licence subject to whatever conditions the Minister thinks appropriate.
- (2) If the Minister grants or renews a retention licence subject to conditions, the conditions must be specified in the licence.
- (3) Without limiting subsection (1), the Minister may attach the following kinds of conditions to the grant or renewal of a retention licence —
- (a) a condition requiring the licence holder to take out insurance as required by the Minister;
  - (b) a condition requiring the holder to carry out certain activities in or in relation to the licence area during the term of the licence;

- (c) a condition requiring the holder to spend a specified amount of money in carrying out the activities referred to in paragraph (b);
  - (d) a condition requiring the holder to lodge a security with the Minister;
  - (e) a condition requiring the holder to keep specified information;
  - (f) a condition requiring the holder to give the Minister, on request, specified information;
  - (g) a condition requiring the holder to take steps to protect the environment of the licence area, including conditions relating to —
    - (i) protecting wildlife; or
    - (ii) minimising the effect on the environment of the licence area and the area surrounding the licence area of activities carried out in the licence area;
  - (h) a condition requiring the holder to repair any damage to the environment caused by activities in the licence area;
  - (i) a condition requiring the holder to pay a specified penalty to the State if the holder does not comply with a licence condition.
- (4) A condition under subsection (3)(d) must specify —
- (a) the amount of the security required; and
  - (b) the kind of security required; and
  - (c) the manner and form in which the security is to be lodged.
- (5) Without limiting subsection (3)(d), a condition under that provision may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify —
- (a) the kind of person who is to give the guarantee; and
  - (b) the terms of the guarantee.

**178. No conditions requiring payment of money**

Except for a condition requiring the payment of a penalty or lodgment of a security, a licence condition must not require the payment of money to the State.

**179. Variation of conditions**

(1) If —

- (a) a retention licence holder requests the Minister in writing to vary a licence condition; or
- (b) part of the licence area of a retention licence is surrendered under section 158,

the Minister may vary a licence condition.

(2) If a Minister gives —

- (a) a direction under section 387; or
- (b) an approval, consent or exemption under the regulations,

to a retention licence holder, the Minister may vary a licence condition to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.

(3) The Minister may vary a licence condition subject to whatever conditions the Minister thinks appropriate.

(4) If the Minister varies a licence condition, the Minister must give the licence holder a written notice that —

- (a) informs the holder of the variation; and
- (b) specifies the conditions which have been varied; and
- (c) specifies any conditions to which the variation is subject.

**180. Exemption from or suspension of conditions**

(1) If —

- (a) a retention licence holder requests the Minister in writing to —
  - (i) suspend a licence condition; or
  - (ii) exempt the holder from complying with a licence condition;or
- (b) part of the licence area of a retention licence is surrendered under section 158,  
the Minister may —
  - (c) suspend a licence condition; or
  - (d) exempt the holder from complying with a licence condition.
- (2) If the Minister gives —
  - (a) a direction under section 387; or
  - (b) an approval, consent or exemption under the regulations,to a retention licence holder, the Minister may suspend a licence condition, or exempt the holder from compliance with a licence condition, to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.
- (3) The Minister may —
  - (a) suspend a licence condition; or
  - (b) exempt the licence holder from compliance with a licence condition,subject to whatever conditions the Minister thinks appropriate.
- (4) If the Minister —
  - (a) suspends a licence condition; or
  - (b) exempts the licence holder from complying with a licence condition,the Minister must give the holder a written notice that —



- (c) informs the holder of the exemption or suspension; and
- (d) specifies the conditions which have been suspended or affected by the exemption; and
- (e) specifies any conditions to which the suspension or exemption is subject.

Note: A suspension or exemption of a condition does not take effect until registered (see section 337).

**181. Automatic suspension of conditions if licence rights are suspended**

If —

- (a) the Minister suspends particular rights conferred by a retention licence under section 135; and
- (b) a licence condition is affected by the suspension,

the licence condition is suspended for the period of the suspension of the rights.

**182. Significant changes in circumstances to be reported to Minister**

- (1) A retention licence holder must notify the Minister of any change of circumstances that significantly affects the long term viability of mining activities in the retention licence area.

Note: The Minister may cancel the retention licence if the Minister believes that circumstances have changed so that mining activities can now commence (see section 190).

- (2) Subsection (1) applies to a change of circumstances whether favourable or unfavourable to the long term viability of mining activities in the retention licence area.

**183. Work practices**

A person who is a retention licence holder, or an associate of the holder, in carrying out activities in the licence area that are authorised by the licence, must take all reasonable steps —

- (a) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the mining industry; and
- (b) to maintain in good repair all structures and equipment erected in, or brought into, the licence area by the person; and
- (c) to remove from the licence area any structure, equipment or other property that —
  - (i) belongs to the person, or is under the person's control; and
  - (ii) is not being used, or is not going to be used, in connection with the activities.

Maximum penalty: \$20 000.

Note 1: The safety of offshore exploration and mining activities is governed by the *Mines Safety and Inspection Act 1994* — see the definition of “exploration operations” and paragraphs (a) and (j) of the definition of “mining operations” in section 4(1) of that Act.

Note 2: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

**184. Licence holder must keep specified records etc.**

A retention licence holder must —

- (a) keep whatever records and samples; and
- (b) give whatever records and samples to the Minister for inspection; and
- (c) make whatever returns,

are necessary to comply with —

- (d) the regulations; or
- (e) the licence conditions; or
- (f) a direction given by the Minister under section 387.

Note: Under sections 386 and 387 the Minister may direct a person to keep records and samples and to give records and samples to the Minister, and to make returns.

Maximum penalty: \$10 000.

**185. Licence holder must assist inspectors**

A retention licence holder must provide an inspector with reasonable facilities and assistance so that the inspector is able to carry out compliance inspections.

Note: See sections 377 to 384 for compliance inspections.

Maximum penalty: \$5 000.

Division 7 — Expiry of retention licence

**186. General**

A retention licence expires if —

- (a) the term of the licence ends without the licence being renewed; or
- (b) the licence holder surrenders the licence; or
- (c) a mining licence is granted over the blocks in the licence area of the retention licence; or
- (d) the licence is cancelled.

Note: For paragraph (a) see Division 5. For paragraph (b) see section 187. For paragraph (c) see section 188. For paragraph (d) see sections 189 and 190.

**187. Voluntary surrender of retention licence**

A retention licence holder may surrender the licence.

Note 1: See Division 4 for voluntary surrender of part of a licence area.

Note 2: The surrender takes effect when it is registered under section 337 (see section 337(5)).

**188. Automatic expiry of retention licence when mining licence takes effect**

If —

- (a) a retention licence is in force; and
- (b) a mining licence over all or some of the blocks in the retention licence area comes into force under section 232,

the retention licence expires in relation to the blocks covered by the mining licence.

**189. Cancellation of retention licence, breach of condition etc.**

- (1) Subject to subsection (5), the Minister may cancel a retention licence if the licence holder —
  - (a) breaches a licence condition; or
  - (b) contravenes a provision of this Act or the regulations; or
  - (c) breaches a condition attached to an approval under section 365(2).
- (2) If the Minister proposes to cancel a licence under subsection (1), the Minister must give the holder a written notice that informs the holder of the proposed cancellation.
- (3) The notice must —
  - (a) specify the reason for the proposed cancellation; and
  - (b) invite the holder to make submissions in relation to the proposed cancellation; and
  - (c) specify the day by which submissions may be made to the Minister; and
  - (d) specify an address where submissions are to be lodged.
- (4) The day specified under subsection (3)(c) must be not less than 60 days after the day on which the notice is given.
- (5) The Minister may cancel the licence only if —
  - (a) the holder has been given a notice under subsection (2); and
  - (b) the Minister has considered —

- (i) any submission made by the holder in accordance with subsection (3); and
  - (ii) any steps taken by the holder to remedy the breach or contravention that led to the proposal to cancel the licence and to prevent any similar breach or contravention from happening again;
- and
- (c) the Minister is satisfied that no special circumstances exist that justify the licence not being cancelled.

**190. Cancellation of retention licence, mining activities viable**

- (1) If the Minister believes that mining activities should commence in a retention licence area, the Minister must ask the licence holder to explain to the Minister why the holder should not apply for a mining licence over the retention licence area.
- (2) A request under subsection (1) must —
  - (a) be in writing; and
  - (b) specify the day by which the holder is to give the explanation to the Minister.
- (3) The day specified under subsection (2)(b) is to be at least 30 days after the day on which the request is given to the holder.
- (4) An explanation provided in response to a request under subsection (1) must be in writing.
- (5) The Minister may cancel the retention licence if —
  - (a) a request is made under subsection (1); and
  - (b) either —
    - (i) the holder does not give the Minister an explanation in response to the request by the day specified in the request; or
    - (ii) the holder gives the Minister an explanation in response to the request but the Minister does not consider the explanation to be satisfactory.

- (6) If the Minister cancels a retention licence under subsection (5), the Minister may specify the day on which the cancellation takes effect.
- (7) Without limiting subsection (6), the Minister, in determining the day on which the cancellation is to take effect, may have regard to the time needed by the holder to obtain the grant of a mining licence over the retention licence area.

**191. Obligations of former retention licence holders and former associates**

- (1) Subject to subsection (4), if —
  - (a) a person was —
    - (i) a retention licence holder; or
    - (ii) an associate of a retention licence holder;and
  - (b) the licence —
    - (i) expires; or
    - (ii) is cancelled; or
    - (iii) is surrendered;and
  - (c) an obligation associated with the licence arising out of —
    - (i) a licence condition; or
    - (ii) a direction given under section 387; or
    - (iii) this Act or the regulations,has not been discharged; and

- (d) the person was bound by that obligation when the person was the licence holder or an associate,  
the person remains bound by the obligation until the obligation is discharged.
- (2) Subsection (1) does not continue an obligation to carry out exploration or recovery activities.
- (3) Subsection (1) continues an obligation that a person had to carry out exploration or recovery activities in a particular manner if the person carries them out.
- (4) The Minister may determine that the person is not subject to —
- (a) any particular obligation under this section; or
  - (b) all the person's remaining obligations under this section.
- (5) A determination under subsection (4) is to be in writing.

## **Part 2.4 — Mining licences**

### Division 1 — General

#### **192. Mining licences**

- (1) This Part provides for the grant of mining licences over blocks in coastal waters.
- (2) A mining licence may be granted over —
  - (a) a vacant standard block (see Division 2); or
  - (b) certain blocks that are not vacant (see Division 2); or
  - (c) a tender block (see Division 3).

Note 1: A tender block is a block that has been declared available for tender. A standard block is any other block (see sections 19 and 20).

Note 2: A retention or exploration licence holder may apply for a mining licence over the same area or part of the same area.

Note 3: Section 38A(2) requires the consent of Parliament to be obtained to the provisional grant under section 206, 225 or 231 of a mining licence over a marine nature reserve or a marine park.

#### **193. Activities authorised by a mining licence**

- (1) Subject to subsection (2), a mining licence holder may —
  - (a) recover minerals in the licence area; and
  - (b) explore for minerals in the licence area.

Note 1: Under section 23(1) the concept of “exploration” extends to activities that are directly related to exploration.

Note 2: Under section 24(1) the concept of “recovery” extends to activities that are directly related to the recovery of minerals.

Note 3: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.



- (2) If the licence is expressed to restrict the kind of minerals covered by the licence, the holder is not permitted to recover, or to explore for, minerals not covered by the licence.
- (3) A restriction on the kind of minerals covered by the licence may be inclusive (for example, only minerals A, B and C) or exclusive (for example, all minerals except A, B and C).
- (4) For the purposes of subsection (2), the holder does not recover an excluded mineral if, in the course of recovering, or exploring for, another mineral, the holder recovers some excluded mineral.

**194. Minister may cancel or not renew mining licence without compensation**

No compensation is payable because of the cancellation or non-renewal of a mining licence by the Minister.

Note 1: The Minister may cancel the licence under section 265.

Note 2: The Minister may refuse under section 242 to renew the licence.

**195. Licence rights may be suspended**

- (1) The Minister must suspend particular rights conferred by a mining licence if the Minister is satisfied that it is necessary in the public interest to do so.
- (2) The Minister may suspend rights under subsection (1) for a specified period or for an indefinite period.
- (3) The Minister may end a suspension at any time.
- (4) A suspension or the ending of a suspension must be in writing.
- (5) If the Minister —
  - (a) suspends rights conferred by a mining licence; or

(b) ends a suspension,

the Minister must give the licence holder a written notice that informs the holder of the suspension or the ending of a suspension.

**Note:** See section 258 for the effect of the suspension on the obligations associated with the licence.

(6) A suspension takes effect when —

- (a) the holder has been given notice of the suspension under subsection (5); and
- (b) the suspension has been registered under section 337.

**196. Compensation for acquisition of property due to suspension of rights**

(1) If —

- (a) the Minister suspends licence rights under section 195; and
- (b) the suspension results in the acquisition of property from a person; and
- (c) the State and the person agree on an amount of compensation for the acquisition,

the State must pay the person the agreed amount of compensation.

(2) If —

- (a) the Minister suspends licence rights under section 195; and
- (b) the suspension results in the acquisition of property from a person; and
- (c) the State and the person do not agree on an amount of compensation for the acquisition; and
- (d) the person brings an action for compensation against the State in the Supreme Court,

the State must pay the person the amount of compensation (if any) that is determined by that court.

- (3) In this section —  
*acquisition of property* has the same meaning as it has in section 51(xxxi) of the Commonwealth Constitution.

Division 2 — Application for and grant of mining licence  
over standard blocks

**197. Application for mining licence over vacant standard block**

- (1) A person may apply to the Minister for a mining licence over a standard block that is vacant.
- (2) A standard block is vacant if no exploration, retention or mining licence is in force over the block.
- (3) The application must not cover more than 20 blocks.
- (4) If the application is for a licence over a group of blocks, the blocks must form a discrete area.

**198. Holder of exploration licence or retention licence may apply for mining licence**

- (1) An exploration or retention licence holder may apply to the Minister for a mining licence over all or some of the blocks in the licence area of the exploration or retention licence.
- (2) A person may apply for a mining licence under subsection (1) over a group of blocks only if —
  - (a) the group forms a discrete area; and
  - (b) there are not more than 20 blocks in the group.
- (3) The holder may apply for 2 or more mining licences over different parts of the licence area of the exploration or retention licence.

**199. How to apply**

- (1) An application under section 197 or 198 must —
- (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) specify the blocks for which the application is made; and
  - (d) include details of —
    - (i) the activities that the applicant intends to carry out on the block or blocks covered by the application; and
    - (ii) the amount of money that the applicant intends to spend on those activities; and
    - (iii) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in activities authorised by the licence; and
    - (iv) the technical advice available to the applicant; and
    - (v) the financial resources available to the applicant; and
    - (vi) if the licence is to be held by more than one person, the share of the licence that each prospective holder will hold;
- and
- (e) be accompanied by maps that —
    - (i) relate to the blocks; and
    - (ii) comply with the regulations;
- and
- (f) specify an address for service of notices under this Act and the regulations.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

**200. Effect of inclusion of unavailable block in application**

If —

- (a) a person applies under section 197 or 198 for a licence over a group of blocks; and
- (b) because of section 18, 197 or 198 a mining licence cannot be granted over one or more of the blocks in the group,

the Minister may still deal with the application to the extent to which the application covers blocks for which a mining licence can be granted.

**Note:** A mining licence cannot be granted over a block that is not vacant or over a reserved block (see section 18).

**201. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**202. Application must be advertised**

- (1) The applicant must advertise the application in a newspaper that circulates throughout the State.
- (2) The advertisement must contain —
  - (a) the applicant's name and address; and
  - (b) a map and description of the blocks applied for that are sufficient for the blocks to be identified; and
  - (c) the address of the Minister; and

- (d) a statement that —
  - (i) advises that the applicant has applied for a mining licence over the blocks described in the notice; and
  - (ii) invites comment from the public on the application; and
  - (iii) requests that comments be sent to the applicant and the Minister within 30 days after the day on which the advertisement is published.
- (3) The advertisement must be published —
  - (a) as soon as possible after the applicant lodges the application; and
  - (b) in any case, subject to subsection (4), within 14 days after the day on which the applicant lodges the application.
- (4) If —
  - (a) the applicant applies to the Minister within the 14 day period referred to in subsection (3) for an extension of the period; and
  - (b) the Minister extends the period,

the advertisement must be published within the period as extended by the Minister.

**203. How multiple applications are dealt with**

- (1) Subject to subsection (2), if a block is covered by 2 or more applications for a mining or exploration licence, the Minister must deal with the applications in the order in which they are made.

Note: See also section 58.

- (2) If —
  - (a) the applications are lodged within a particular time of each other; and

- (b) the time is less than the time prescribed by the regulations,

the Minister must determine the order in which the applications are to be dealt with by drawing lots in the way prescribed by the regulations.

**204. Request for further information**

- (1) The Minister may ask the applicant for further information relating to the application.
- (2) The request must —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be provided.
- (3) Information requested under subsection (1) must be provided —
  - (a) in writing; and
  - (b) within the time specified in the request.

**205. Section number not used**

See note 2 to section 3(1).

**206. Minister may provisionally grant licence**

If the applicant does what is required by sections 199 to 204, the Minister may —

- (a) provisionally grant a mining licence to the applicant; or
- (b) subject to section 208, refuse the application.

**Note:** Under section 232, the grant of the licence cannot be effective before it is registered (see section 333 for registration). The grant will not be registered until it has been properly accepted (see section 214 for “proper acceptance”).

**207. Restriction in case of marine nature reserve or marine park**

In the case of the provisional grant of a mining licence over a marine nature reserve or a marine park, section 206 has effect subject to section 38A(2).

**Note:** Section 38A(2) requires the consent of Parliament to be obtained to the provisional grant under section 206 of a mining licence over a marine nature reserve or a marine park.

**208. Refusal of application for mining licence made under section 198**

- (1) If the Minister proposes to refuse an application for a mining licence made under section 198, the Minister must notify the applicant of the proposed refusal.
- (2) The notice must —
  - (a) be in writing; and
  - (b) specify the reason for the proposed refusal; and
  - (c) invite the applicant to make written submissions in relation to the proposed refusal; and
  - (d) specify the day by which submissions may be made to the Minister; and
  - (e) specify an address where submissions are to be lodged.
- (3) The day specified under subsection (2)(d) must be not less than 30 days after the day on which the notice is given.
- (4) The Minister may refuse to grant an application for a mining licence made under section 198 only if —
  - (a) the applicant has been given a notice under subsection (1); and
  - (b) the Minister has considered any submission made by the applicant; and
  - (c) the Minister is satisfied that no special circumstances exist that justify the licence being granted.



- (5) This section does not apply if the reason for the refusal of an application for a mining licence is that the requirements of section 38A(2) have not been met.

Note: Section 38A(2) requires the consent of Parliament to be obtained to the provisional grant under section 206 of a mining licence over a marine nature reserve or a marine park.

**209. Matters to be specified in the licence**

- (1) The licence must specify —
- (a) the blocks covered by the licence; and
  - (b) the term of the licence; and
  - (c) the licence conditions.
- (2) The term specified under subsection (1)(b) is not to exceed 21 years.

**210. Applicant must be notified**

- (1) The Minister must give the applicant written notice of the Minister's decision under section 206.
- (2) If the Minister provisionally grants a mining licence —
- (a) the Minister must give the licence to the provisional holder; and
  - (b) the notice under subsection (1) must contain the following information —
    - (i) notification of any determination under section 399 that the provisional holder must lodge a security;
    - (ii) notification that the provisional grant will lapse unless the provisional holder, before the end of the primary payment period —
      - (I) gives the Minister a written acceptance of the grant; and
      - (II) lodges any security required by the Minister under section 399; and

- (III) pays the fee that must be paid for the licence under section 425.

**211. Amendment of conditions**

- (1) If the provisional holder is dissatisfied with a licence condition, the provisional holder may ask the Minister to amend the condition.
- (2) The request must be made within 30 days after the day on which the provisional holder is given the licence under section 210.
- (3) If a request is made under subsection (1), the Minister may amend the licence condition and, with the consent of the provisional holder, any other licence condition.
- (4) The Minister must give the provisional holder written notice of a decision under this section.
- (5) This section does not apply to a licence condition that is specified in a resolution referred to in section 38A(2).

**212. Amendment of security requirements**

- (1) If the provisional holder —
  - (a) is notified of a security requirement; and
  - (b) is dissatisfied with the amount of the security required,the provisional holder may ask the Minister to make a new determination under section 399.
- (2) The request must be made within 30 days after the day on which the applicant is given notice under section 210.
- (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.
- (4) The Minister must give the provisional holder written notice of the new determination.
- (5) This section does not apply to a security requirement that is specified in a resolution referred to in section 38A(2).

**213. Extension of primary payment period**

- (1) If the provisional holder makes a request under section 211 or 212, the provisional holder may ask the Minister to extend the primary payment period.
- (2) The request must be made within 30 days after the day on which the provisional holder is given notice under section 210.
- (3) If the Minister agrees to the request, the Minister must —
  - (a) determine the period of the extension; and
  - (b) give the provisional holder a written notice of the period of the extension.

**214. Acceptance of grant of mining licence for standard block**

- (1) The provisional grant of the mining licence is properly accepted by the provisional holder if, before the required time, the provisional holder —
  - (a) gives the Minister a written acceptance of the grant; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid for the licence under section 425.
- (2) The required time under subsection (1) is the end of the primary payment period or, if the provisional holder has been granted an extension of the primary payment period under section 213, the end of the secondary payment period.

Note: Under section 232, the grant of the licence cannot be effective before it is registered (see section 333 for registration).

**215. Conditions applicable to licence on grant**

If the provisional grant of the licence is properly accepted under section 214, it is subject to —

- (a) the conditions specified in the licence given to the applicant under section 210; or

- (b) if the Minister amended those conditions under section 211, those conditions as amended.

**216. Lapse of provisional grant of mining licence**

If the provisional grant of the licence is not properly accepted under section 214, the provisional grant lapses.

Division 3 — Application for and grant of mining licence  
over tender block

**217. Matters to be determined before applications for mining licence over tender blocks invited**

- (1) If the Minister proposes to invite applications for the grant of a mining licence over reserved blocks, the Minister must, before inviting the applications, determine —
  - (a) the procedure and criteria that the Minister will adopt to allocate the licence; and
  - (b) the amount of security that will be required for the licence under section 399; and
  - (c) the initial term of the licence; and
  - (d) the licence conditions.
- (2) The term determined under subsection (1)(c) is not to exceed 21 years.

**218. Minister may invite applications for mining licence over tender blocks**

- (1) Subject to subsection (2), the Minister may invite applications for the grant of a mining licence over reserved blocks.
- (2) Applications may be invited for a licence covering a group of reserved blocks only if the group forms a discrete area.
- (3) The Minister is to invite applications by publishing a tender block licence notice for the licence in the *Gazette*.

Note 1: A mining licence may cover not more than 20 tender blocks (see section 219).

Note 2: A mining licence might be made available by a tender block notice if a mineral deposit in the area had already been identified and sufficient information was already available to justify the issue of a mining licence rather than an exploration licence.

**219. Tender block licence notice — mining licence**

- (1) A tender block licence notice for a mining licence must —
  - (a) specify the blocks to be covered by the licence; and
  - (b) specify the period within which applications may be made; and
  - (c) specify the procedure and criteria that the Minister will adopt to allocate the licence; and
  - (d) specify the amount of security that the successful applicant will be required to lodge; and
  - (e) specify the initial term of the licence; and
  - (f) include a statement to the effect that information about —
    - (i) the security that the successful applicant will be required to lodge; and
    - (ii) the licence conditions,may be obtained from the Minister.
- (2) Without limiting paragraph (c) of subsection (1), the Minister may for the purposes of that paragraph specify that the tender will be determined on the basis of either or both of the following —
  - (a) the nature and extent of the mining activity proposed to be carried out;
  - (b) the amount of money offered for the licence.
- (3) The tender block licence notice may specify not more than 20 blocks for the mining licence.
- (4) If section 38A will apply to the grant of a licence, the tender block licence notice must specify that fact.

**220. Application for mining licence over tender blocks**

If a tender block licence notice has been published inviting applications for a mining licence, a person may apply to the Minister for the licence.

**221. How to apply**

- (1) The application must —
- (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) be made before the end of the period specified in the tender block licence notice; and
  - (d) address the criteria specified under section 219(1)(c); and
  - (e) include details of —
    - (i) the technical qualifications of the applicant and of the applicant's employees who are likely to be involved in activities authorised by the licence; and
    - (ii) the technical advice available to the applicant; and
    - (iii) the financial resources available to the applicant; and
    - (iv) if the licence is to be held by more than one person, the share in the licence that each prospective holder will hold;
- and
- (f) specify an address for service of notices under this Act and the regulations.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

**222. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**223. Request for further information**

- (1) The Minister may ask the applicant for further information about the application.
- (2) The request must —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be provided.
- (3) Information requested under subsection (1) must be provided —
  - (a) in writing; and
  - (b) within the time specified in the request.

**224. Section number not used**

See note 2 to section 3(1).

**225. Minister may provisionally grant licence**

- (1) The Minister may provisionally grant a mining licence to an applicant who has done what is required by sections 221 to 223.
- (2) When provisionally granting a licence under subsection (1), the Minister must follow the procedure and apply the criteria specified in the tender block licence notice published for the licence under section 218.

- (3) If the Minister refuses to grant a licence under subsection (1) the Minister must give the applicant notice of the refusal.

**226. Restriction in case of marine nature reserve or marine park**

In the case of the provisional grant of a mining licence over a marine nature reserve or a marine park, section 225 has effect subject to section 38A(2).

Note: Section 38A(2) requires the consent of Parliament to be obtained to the provisional grant under section 225 of a mining licence over a marine nature reserve or a marine park.

**227. Successful applicant must be notified**

- (1) If the Minister provisionally grants a mining licence under section 225 or 231, the Minister must give the provisional holder —
- (a) the licence; and
  - (b) written notice that the provisional grant will lapse unless the provisional holder, within 30 days after the day on which the notice is given —
    - (i) gives the Minister a written acceptance of the grant; and
    - (ii) lodges any security required under section 399; and
    - (iii) pays the fee that must be paid for the licence under section 425; and
    - (iv) if the tender is determined on the basis of the amounts of money offered for the licence, pays to the Minister the amount that the provisional holder offered for the licence under section 221(1)(d).
- (2) The licence must specify —
- (a) the blocks covered by the licence; and
  - (b) the term of the licence; and
  - (c) the licence conditions.



Note: For the term of a licence see section 217(2).

**228. Acceptance of grant of mining licence over tender blocks**

The provisional grant of a mining licence is properly accepted by the provisional holder if, within 30 days after the day on which the provisional holder is given notice under section 227, the provisional holder —

- (a) gives the Minister a written acceptance of the grant; and
- (b) lodges any security required under section 399; and
- (c) pays the fee that must be paid for the licence under section 425; and
- (d) if the tender is determined on the basis of the amounts of money offered for the licence, pays to the Minister the amount that the provisional holder offered for the licence under section 221(1)(d).

Note: Under section 232, the grant of the licence cannot be effective before it is registered (see section 333 for registration).

**229. Conditions applicable to licence on grant**

- (1) If the provisional grant of the licence is properly accepted, the licence is subject to the conditions determined under section 217.
- (2) If subsection (2) of section 38A applies, the licence is also subject to the conditions specified in a resolution referred to in that subsection.

**230. Lapse of provisional grant of mining licence**

If the provisional grant of the licence is not properly accepted under section 228, the provisional grant lapses.

**231. Provisional grant to next applicant if grant lapses**

- (1) If the provisional grant of the licence lapses under section 230, the Minister may provisionally grant the licence to another of the applicants for the licence.

- (2) When provisionally granting a licence under subsection (1), the Minister must follow the procedure and apply the criteria specified in the tender block licence notice published for the licence under section 218.
- (3) In the case of the provisional grant of a licence over a marine nature reserve or a marine park, subsection (1) has effect subject to section 38A(2).

Note: Section 38A(2) requires the consent of Parliament to be obtained to the provisional grant under section 231 of a mining licence over a marine nature reserve or a marine park.

#### Division 4 — Duration of mining licence

### **232. Initial term of mining licence**

- (1) A mining licence comes into force on —
  - (a) the day on which the grant of the licence is registered; or
  - (b) if a day later than the day on which the grant of the licence is registered is specified in the licence as its commencement day, that specified day.
- (2) The initial term of a mining licence ends —
  - (a) if the licence is granted under Division 2, at the end of the period specified in the licence under section 209(1); or
  - (b) if the licence is granted under Division 3, at the end of the period specified under section 227(2).

Note: The licence may be surrendered at any time (see section 264).

- (3) The period runs from —
  - (a) the day on which the licence is provisionally granted; or
  - (b) if a day later than the day on which the licence is provisionally granted is specified in the licence as its commencement day, that specified day.

**233. Term of renewal of licence**

- (1) A renewal of a mining licence comes into force on —
- (a) the day on which the renewal is registered; or
  - (b) the day on which the previous term of the licence expires,

whichever is the later.

Note: See Division 6 for renewal.

- (2) The term of a renewal of a licence ends at the end of the period specified in the notice under section 246.

Note 1: For the maximum term of renewal see section 246(3).

Note 2: The licence may be surrendered at any time (see section 264).

- (3) The period runs from the day on which the previous term of the licence expires.
- (4) In working out the period referred to in subsection (3) section 234 is to be disregarded.

**234. Effect of application for renewal on term of mining licence**

If —

- (a) a mining licence holder applies to renew the licence under section 236; and
- (b) the current term of the licence expires; and
- (c) a renewal of the licence does not take effect immediately after the current term expires,

the licence remains in force after the current term expires until —

- (d) a renewal of the licence takes effect; or
- (e) a provisional renewal of the licence lapses; or
- (f) the application for renewal is withdrawn or refused.

Division 5 — Voluntary surrender of part of mining licence area

**235. Voluntary surrender of blocks if discrete area remains**

- (1) A mining licence holder may surrender a block or some of the blocks covered by the licence if the remaining blocks in the licence area form a discrete area.

Note: See section 264 for the surrender of the whole licence.

- (2) A surrender under subsection (1) must —
- (a) be made in writing; and
  - (b) identify the blocks surrendered; and
  - (c) be given to the Minister.

Note: The surrender takes effect when it is registered under section 337 (see section 337(5)).

Division 6 — Application for and grant of renewal of mining licence

**236. Application for renewal of mining licence**

A mining licence holder may apply to the Minister to renew the licence.

Note: At each renewal, the licence conditions are reviewed (see section 254).

**237. When application to be made**

- (1) Subject to subsection (2), the application must be made at least 6 months before the day on which the licence is to expire.
- (2) The Minister may accept an application that is made later than 6 months before the day on which the licence is to expire if —
- (a) the application is made before the day on which the licence expires; and
  - (b) the Minister believes that there are reasonable grounds for accepting the application.

**238. How to apply for renewal**

- (1) The application must —

- (a) be made in accordance with the approved form; and
- (b) be made in the approved manner; and
- (c) include details of —
  - (i) the activities carried out by the applicant under the licence during its current term; and
  - (ii) the amount of money spent by the applicant in relation to the blocks covered by the licence during its current term; and
  - (iii) the activities that the applicant intends to carry out under the licence during the term applied for; and
  - (iv) the amount of money that the applicant intends to spend in relation to activities authorised by the licence during the term applied for.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

**239. Request for further information**

- (1) The Minister may ask the applicant to provide further information relating to the application.
- (2) The request must —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify the time within which the information must be provided.
- (3) Information requested under subsection (1) must be provided —
  - (a) in writing; and
  - (b) within the time specified in the request.

**240. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**241. Section number not used**

See note 2 to section 3(1).

**242. Provisional renewal of mining licence**

The Minister may —

- (a) provisionally renew the licence; or
- (b) subject to section 245, refuse to renew the licence.

Note 1: Under section 233, the renewal of the licence cannot be effective before it is registered (see section 334 for registration). The renewal will not be registered until it has been properly accepted (see section 250 for “proper acceptance”).

Note 2: Under section 254, new conditions may be imposed on renewal.

**243. Section number not used**

See note 2 to section 3(1).

**244. Matters that may be taken into account**

In deciding whether to renew a mining licence, the Minister may have regard to whether the applicant has complied with —

- (a) this Act; and
- (b) the regulations; and
- (c) any licence conditions.

**245. Refusal of application for renewal**

- (1) If the Minister proposes to refuse to renew the licence, the Minister must give the applicant notice of the proposed refusal.
- (2) The notice must —
  - (a) be in writing; and
  - (b) specify the reason for the proposed refusal; and
  - (c) invite the holder to make written submissions in relation to the proposed refusal; and
  - (d) specify the day by which submissions may be given to the Minister; and
  - (e) specify an address where submissions are to be lodged.
- (3) The day specified under subsection (2)(d) must be not less than 30 days after the day on which the notice is given.
- (4) The Minister may refuse to grant the application only if —
  - (a) the holder has been given a notice under subsection (1); and
  - (b) the Minister has considered any submission made by the applicant; and
  - (c) the Minister is satisfied that no special circumstances exist that justify the renewal being granted.

**246. Applicant must be notified**

- (1) The Minister must give the applicant written notice of the Minister's decision under section 242.
- (2) If the Minister provisionally renews the licence under section 242, the notice must contain the following information —
  - (a) notification of the term of the renewal;
  - (b) notification of the conditions of the renewed licence;
  - (c) notification of any determination under section 399 that the applicant must lodge a security or a further security;

- (d) notification that the provisional renewal will lapse unless the applicant, before the end of the primary payment period —
  - (i) gives the Minister a written acceptance of the renewal; and
  - (ii) lodges any security required under section 399; and
  - (iii) pays the fee that must be paid for the renewal under section 425.

Note: Section 254 provides for renewals to be granted subject to conditions.

- (3) The term specified under subsection (2)(a) is not to be more than 21 years.

**247. Amendment of conditions**

- (1) If the licence holder —
  - (a) has been provisionally granted a renewal of the licence under section 242; and
  - (b) is notified of the licence conditions; and
  - (c) is dissatisfied with a condition,the holder may ask the Minister to amend the condition.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 246.
- (3) If a request is made under subsection (1), the Minister may amend the licence condition and, with the consent of the holder, any other licence condition.
- (4) The Minister must give the holder written notice of a decision under this section.

**248. Amendment of security requirements**

- (1) If the licence holder —
  - (a) has been provisionally granted a renewal of the licence under section 242; and



- (b) is notified of a security requirement for the licence; and
  - (c) is dissatisfied with the amount of the security required,
- the holder may ask the Minister to make a new determination under section 399.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 246.
  - (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.
  - (4) The Minister must give the holder written notice of the new determination.

**249. Extension of primary payment period**

- (1) If the licence holder makes a request under section 247 or 248, the holder may ask the Minister to extend the primary payment period.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 246.
- (3) If the Minister agrees to the request, the Minister must —
  - (a) determine the period of the extension; and
  - (b) give the holder a written notice informing the holder of the period of the extension.

**250. Acceptance of renewal of mining licence**

- (1) The provisional renewal of a mining licence is properly accepted by the licence holder if, before the required time, the holder —
  - (a) gives the Minister a written acceptance of the renewal; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid under section 425.

- (2) The required time under subsection (1) is the end of the primary payment period or, if the provisional holder has been granted an extension of the primary payment period under section 249, the end of the secondary payment period.

Note: Under section 233, the renewal of the licence cannot be effective before it is registered (see section 334 for registration).

**251. Conditions applicable to licence on renewal**

If the provisional renewal is properly accepted under section 250, the renewed licence is subject to —

- (a) the conditions specified in the notice given to the licence holder under section 246; or
- (b) if the Minister amended those conditions under section 247, those conditions as amended.

**252. Lapse of provisional renewal of mining licence**

If the provisional renewal of a mining licence is not properly accepted under section 250, the provisional renewal lapses.

Division 7 — Obligations associated with mining licence

**253. General**

- (1) The sources of obligations associated with a mining licence are —
- (a) the licence conditions; and
  - (b) obligations arising from directions under section 387 or 392 given by the Minister; and
  - (c) obligations imposed by this Act and the regulations.
- Note: For paragraph (a) see sections 254 to 256. For paragraph (c) see sections 44, 259 to 262, 372 and 391(1).
- (2) If a mining licence has 2 or more holders, all the holders are jointly and severally bound by the obligations that attach to the licence.

**254. Conditions of mining licence**

- (1) The Minister may grant or renew a mining licence subject to whatever conditions the Minister thinks appropriate.
- (2) If the Minister grants or renews a mining licence subject to conditions, the conditions must be specified in the licence.
- (3) Without limiting subsection (1), the Minister may attach the following kinds of conditions to the grant or renewal of a mining licence —
  - (a) a condition requiring the licence holder to take out insurance as required by the Minister;
  - (b) a condition requiring the holder to carry out certain work in or in relation to the licence area during the term of the licence;
  - (c) a condition requiring the holder to lodge a security with the Minister;
  - (d) a condition requiring the holder to keep specified information;
  - (e) a condition requiring the holder to give to the Minister, on request, specified information;
  - (f) a condition requiring the holder to take steps to protect the environment of the licence area, including conditions relating to —
    - (i) protecting wildlife; or
    - (ii) minimising the effect on the environment of the licence area and the area surrounding the licence area of activities carried out in the licence area;
  - (g) a condition requiring the holder to repair any damage to the environment caused by activities in the licence area;
  - (h) a condition requiring the holder to pay a specified penalty to the State if the holder does not comply with a licence condition.
- (4) A condition under subsection (3)(c) must specify —

- (a) the amount of the security required; and
  - (b) the kind of security required; and
  - (c) the manner and form in which the security is to be lodged.
- (5) Without limiting subsection (3)(c), a condition under that provision may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify —
- (a) the kind of person who is to give the guarantee; and
  - (b) the terms of the guarantee.
- (6) If subsection (2) of section 38A applies to a mining licence, the licence must include any condition specified in a resolution under that subsection.

**255. No conditions requiring payment of money**

- (1) Except for a condition requiring the payment of a penalty or lodgment of security, a licence condition must not require the payment of money to the State.
- (2) Subsection (1) does not limit the conditions that may be included in a resolution referred to in section 38A(2).

**256. Variation of conditions**

- (1) If —
  - (a) a mining licence holder requests the Minister in writing to vary a licence condition; or
  - (b) part of the licence area of a mining licence is surrendered under section 235,the Minister may vary a licence condition.
- (2) If the Minister gives —
  - (a) a direction under section 387; or
  - (b) an approval, consent or exemption under the regulations,

to a mining licence holder, the Minister may vary a licence condition to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.

- (3) The Minister may vary a licence condition subject to whatever conditions the Minister thinks appropriate.
- (4) If the Minister varies a licence condition, the Minister must give the licence holder a written notice that —
  - (a) informs the holder of the variation; and
  - (b) specifies the conditions which have been varied; and
  - (c) specifies any conditions to which the variation is subject.
- (5) This section does not apply to a licence condition that is specified in a resolution referred to in section 38A(2).

**257. Exemption from or suspension of conditions**

- (1) If —
  - (a) a mining licence holder requests the Minister in writing to —
    - (i) suspend a licence condition; or
    - (ii) exempt the holder from complying with a licence condition;
  - or
  - (b) part of the licence area of a mining licence is surrendered under section 235,the Minister may —
  - (c) suspend a licence condition; or
  - (d) exempt the holder from complying with a licence condition.
- (2) If the Minister gives —
  - (a) a direction under section 387; or

- (b) an approval, consent or exemption under the regulations, to a mining licence holder, the Minister may suspend a licence condition, or exempt the holder from compliance with a licence condition, to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.
- (3) The Minister may —
- (a) suspend a licence condition; or
  - (b) exempt the licence holder from complying with a licence condition,
- subject to whatever conditions the Minister thinks appropriate.
- (4) If the Minister —
- (a) suspends a licence condition; or
  - (b) exempts the licence holder from complying with a licence condition,
- the Minister must give the holder a written notice that —
- (c) informs the holder of the exemption or suspension; and
  - (d) specifies the conditions which have been suspended or affected by the exemption; and
  - (e) specifies any conditions to which the suspension or exemption is subject.
- (5) This section does not apply to a licence condition that is specified in a resolution referred to in section 38A(2).

Note: A suspension or exemption of a condition does not take effect until registered (see section 337).

**258. Automatic suspension of conditions if licence rights are suspended**

If —

- (a) the Minister suspends particular rights conferred by a mining licence under section 195; and

(b) a licence condition is affected by the suspension, the licence condition is suspended for the period of the suspension of the rights.

**259. Work practices**

A person who is a mining licence holder or an associate of the holder, in carrying out activities in the licence area that are authorised by the licence, must take all reasonable steps —

- (a) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the mining industry; and
- (b) to maintain in good repair all structures and equipment erected in, or brought into, the licence area by the person; and
- (c) to remove from the licence area any structure, equipment or other property that —
  - (i) belongs to the person, or is under the person's control; and
  - (ii) is not being used, or is not going to be used, in connection with the activities.

Maximum penalty: \$20 000.

Note 1: The safety of offshore exploration and mining activities is governed by the *Mines Safety and Inspection Act 1994* — see the definition of “exploration operations” and paragraphs (a) and (j) of the definition of “mining operations” in section 4(1) of that Act.

Note 2: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

**260. Licence holder must pay royalty**

A mining licence holder must comply with Division 2 of Part 4.4.

**261. Licence holder must keep specified records**

A mining licence holder must —

- (a) keep whatever records and samples; and
- (b) give whatever records and samples to the Minister for inspection; and
- (c) make whatever returns,

are necessary to comply with —

- (d) the regulations; or
- (e) the licence conditions; or
- (f) a direction given by the Minister under section 387.

Note: Under section 386 and 387 the Minister may direct a person to keep records and cores, to collect and retain samples, and to make returns.

Maximum penalty: \$10 000.

**262. Licence holder must assist inspectors**

A mining licence holder must provide an inspector with reasonable facilities and assistance so that the inspector is able to carry out compliance inspections.

Note: See sections 377 to 384 for compliance inspections.

Maximum penalty: \$5 000.

Division 8 — Expiry of mining licence

**263. General**

A mining licence expires if —

- (a) the term of the licence ends without the licence being renewed; or
- (b) the licence holder surrenders the licence; or
- (c) the licence is cancelled.

Note: For paragraph (a) see Division 6. For paragraph (b) see section 264. For paragraph (c) see section 265.



**264. Voluntary surrender of mining licence**

A mining licence holder may surrender the licence.

Note 1: See Division 5 for voluntary surrender of part of a licence area.

Note 2: The surrender takes effect when it is registered under section 337 (see section 337(5)).

**265. Cancellation of mining licence**

- (1) Subject to subsection (5), the Minister may cancel a mining licence if the licence holder —
  - (a) breaches a licence condition; or
  - (b) contravenes a provision of this Act or the regulations; or
  - (c) breaches a condition attached to an approval under section 365(2).
- (2) If the Minister proposes to cancel a licence under subsection (1), the Minister must give the licence holder a written notice that informs the holder of the proposed cancellation.
- (3) The notice must —
  - (a) specify the reason for the proposed cancellation; and
  - (b) invite the holder to make submissions in relation to the proposed cancellation; and
  - (c) specify the day by which submissions may be made to the Minister; and
  - (d) specify an address where submissions are to be lodged.
- (4) The day specified under subsection (3)(c) must be not less than 60 days after the day on which the notice is given.
- (5) The Minister may cancel the licence only if —
  - (a) the holder has been given a notice under subsection (2); and
  - (b) the Minister has considered —

- (i) any submission made by the holder in accordance with subsection (3); and
  - (ii) any steps taken by the holder to remedy the breach or contravention that led to the proposal to cancel the licence and to prevent any similar breach or contravention from happening again;
- and
- (c) the Minister is satisfied that no special circumstances exist that justify the licence not being cancelled.

**266. Obligations of former mining licence holders and former associates**

- (1) Subject to subsection (4), if —
  - (a) a person was —
    - (i) a mining licence holder; or
    - (ii) an associate of a mining licence holder;and
  - (b) the licence —
    - (i) expires; or
    - (ii) is cancelled; or
    - (iii) is surrendered;and
  - (c) an obligation associated with the licence arising out of —
    - (i) a licence condition; or
    - (ii) a direction given under section 387; or
    - (iii) this Act or the regulations,has not been discharged; and
  - (d) the person was bound by that obligation when the person was the licence holder or an associate,

the person remains bound by the obligation until the obligation is discharged.

- (2) Subsection (1) does not continue an obligation to carry out exploration or recovery activities.
- (3) Subsection (1) continues an obligation that a person had to carry out exploration or recovery activities in a particular manner if the person carries them out.
- (4) The Minister may determine that the person is not subject to —
  - (a) a particular obligation under this section; or
  - (b) all the person's remaining obligations under this section.
- (5) A determination under subsection (4) is to be in writing.

## **Part 2.5 — Works licences**

### Division 1 — General

#### **267. Works licences**

- (1) This Part provides for the grant of works licences over blocks in coastal waters.

**Note:** A works licence allows licence-related activities to be carried out on blocks that are outside the licence area of the exploration, retention or mining licence concerned.

- (2) A works licence can only authorise activities that —
- (a) are directly connected with activities that are carried out, or are to be carried out, under an exploration, retention or mining licence; and
  - (b) are necessary or desirable for the exploration, retention or mining licence holder to —
    - (i) effectively exercise the licence rights; or
    - (ii) effectively perform the licence obligations.
- (3) A works licence can be granted over a particular block even though the block is a reserved block or is in someone else's licence area.
- (4) More than one works licence can be granted over a particular block.
- (5) A works licence may be granted so as to allow activities that are connected with 2 or more licences.

#### **268. Activities authorised by a works licence**

A works licence holder may carry out in the licence area the activities that are specified in the licence.

**Note:** Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

**269. Minister may cancel or not renew works licence without compensation**

No compensation is payable because of the cancellation or non-renewal of a works licence by the Minister.

Note 1: The Minister may cancel the licence under section 313.

Note 2: The Minister may refuse under section 294 to renew the licence.

Division 2 — Application for and grant of works licence

**270. Application for works licence**

A person may apply to the Minister for a works licence over a block.

**271. How to apply**

- (1) The application must —
  - (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) include details of the activities that the applicant proposes to carry out; and
  - (d) be accompanied by a map that shows the proposed location of the activities; and
  - (e) specify an address for service of notices under this Act and the regulations.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

**272. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.

- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**273. Applicant to notify licence holders affected by the application**

- (1) The applicant must notify interested licence holders of the application.
- (2) The notification —
- (a) must be given to the interested licence holder in writing; and
  - (b) must give details of the works licence applied for; and
  - (c) must invite the interested licence holder to give comments to the Minister within 30 days after the day on which the notice is given.
- (3) For the purposes of this section, a licence holder is interested if —
- (a) a block covered by the application is inside the licence area; and
  - (b) the holder is not the applicant.

**274. Application must be advertised**

- (1) The applicant must advertise the application in a newspaper circulating throughout the State.
- (2) The advertisement must contain —
- (a) the applicant's name and address; and
  - (b) a map and description of the blocks covered that are sufficient for the blocks to be identified; and
  - (c) details of the activities that the applicant proposes to carry out; and
  - (d) a map showing the proposed location of those activities; and

- (e) the address of the Minister; and
- (f) a statement that —
  - (i) advises that the applicant has applied for a works licence over the blocks described in the notice; and
  - (ii) invites comment from the public on the application; and
  - (iii) requests that comments be sent to the applicant and to the Minister specified in the notice within 30 days of the day on which the advertisement is published.
- (3) The advertisement must be published —
  - (a) as soon as possible after the applicant makes the application; and
  - (b) in any case, subject to subsection (4), within 14 days after the day on which the applicant makes the application.
- (4) If —
  - (a) the applicant applies to the Minister within the 14 day period referred to in subsection (3) for an extension of the period; and
  - (b) the Minister extends the period,the advertisement must be published within the period as extended by the Minister.

**275. Section number not used**

See note 2 to section 3(1).

**276. Minister may provisionally grant licence**

If the applicant does what is required by sections 271 to 274, the Minister may —

- (a) provisionally grant a works licence to the applicant; or
- (b) refuse the application.

Note: Under section 286, the grant of the licence cannot be effective before it is registered (see section 333 for registration). The grant will not be registered until it has been properly accepted (see section 283 for “proper acceptance”).

**277. Section number not used**

See note 2 to section 3(1).

**278. Matters to be specified in the licence**

- (1) The licence must specify —
  - (a) the blocks covered by the licence; and
  - (b) the activities authorised by the licence; and
  - (c) the area in which the activities are to be carried out; and
  - (d) the term of the licence; and
  - (e) the licence conditions.

Note: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

- (2) The term specified under subsection (1)(d) is not to exceed 5 years.

**279. Applicant must be notified**

- (1) The Minister must give the applicant written notice of a decision under section 276.
- (2) If the Minister provisionally grants a works licence —
  - (a) the Minister must give the licence to the provisional holder; and
  - (b) the notice under subsection (1) must contain the following information —
    - (i) notification of any determination under section 399 that the provisional holder must lodge a security;
    - (ii) notification that the provisional grant will lapse unless the provisional holder, before the end of the primary payment period —



- (I) gives the Minister a written acceptance of the grant; and
- (II) lodges any security required under section 399; and
- (III) pays the fee that must be paid for the licence under section 425.

**280. Amendment of conditions**

- (1) If the provisional holder is dissatisfied with a licence condition, the provisional holder may ask the Minister to amend the condition.
- (2) The request must be made within 30 days after the day on which the provisional holder is given the licence under section 279.
- (3) If a request is made under subsection (1), the Minister may amend the licence conditions and, with the consent of the provisional holder, any other licence condition.
- (4) The Minister must give the provisional holder written notice of a decision under this section.

**281. Amendment of security requirements**

- (1) If the provisional holder —
  - (a) is notified of a security requirement; and
  - (b) is dissatisfied with the amount of the security required,the provisional holder may ask the Minister to make a new determination under section 399.
- (2) The request must be made within 30 days after the day on which the applicant is given notice under section 279.
- (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.
- (4) The Minister must give the provisional holder written notice of the new determination.

**282. Extension of primary payment period**

- (1) If the provisional holder makes a request under section 280 or 281, the provisional holder may ask the Minister to extend the primary payment period.
- (2) The request must be made within 30 days after the day on which the provisional holder is given notice under section 279.
- (3) If the Minister agrees to the request, the Minister must —
  - (a) determine the period of the extension; and
  - (b) give the provisional holder a written notice of the period of the extension.

**283. Acceptance of grant of works licence**

- (1) The provisional grant of a works licence is properly accepted by the provisional holder if, before the required time, the provisional holder —
  - (a) gives the Minister a written acceptance of the grant; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid for the licence under section 425.
- (2) The required time under subsection (1) is the end of the primary payment period or, if the provisional holder has been granted an extension of the primary payment period under section 282, the end of the secondary payment period.

Note: Under section 286, the grant of the licence cannot be effective before it is registered (see section 333 for registration).

**284. Conditions applicable to works licence on grant**

If the provisional grant of the licence is properly accepted under section 283, it is subject to —

- (a) the conditions specified in the licence given to the applicant under section 279; or
- (b) if the Minister amended those conditions under section 280, those conditions as amended.

**285. Lapse of provisional grant of works licence**

If the provisional grant of the licence is not properly accepted under section 283, the provisional grant lapses.

Division 3 — Duration of works licence

**286. Initial term of works licence**

- (1) A works licence comes into force on —
  - (a) the day on which the grant of the licence is registered; or
  - (b) if a day later than the day on which the grant of the licence is registered is specified in the licence as its commencement day, that specified day.
- (2) The initial term of a works licence expires at the end of the period specified in the licence under section 278(1).

Note 1: For the maximum initial term see section 278(2).

Note 2: The licence may be surrendered at any time (see section 312).

- (3) The period is to run from —
  - (a) the day on which the licence is provisionally granted; or
  - (b) if a day later than the day on which the licence is provisionally granted is specified in the licence as the licence's commencement day, that specified day.

**287. Term of renewal of works licence**

- (1) A renewal of a works licence comes into force on —

- (a) the day on which the renewal is registered; or
- (b) the day on which the previous term of the licence expires,

whichever is the later.

Note: See Division 4 for renewal.

- (2) The term of a renewal of a licence expires at the end of the period specified in the notice under section 296.

Note 1: For the maximum term of renewal see section 296(3).

Note 2: The licence may be surrendered at any time (see section 312).

- (3) The period runs from the day on which the previous term of the licence expires.

**288. Effect of application for renewal on term of works licence**

If —

- (a) a works licence holder applies to renew the licence under section 289; and
- (b) the current term of the licence expires; and
- (c) a renewal of the licence does not take effect immediately after the current term expires,

the licence remains in force after the current term expires until —

- (d) a renewal of the licence takes effect; or
- (e) a provisional renewal of the licence lapses; or
- (f) the application for renewal is withdrawn or refused,

whichever happens first.

Division 4 — Application for and grant of renewal of works licence

**289. Application for renewal of works licence**

A works licence holder may apply to the Minister to renew the licence.

Note: At each renewal, the works licence conditions are reviewed (see section 304).

**290. When application to be made**

- (1) Subject to subsection (2), the application must be made at least 30 days before the day on which the licence is to expire.
- (2) The Minister may accept an application that is made later than 30 days before the day on which the works licence is to expire if —
  - (a) the application is made before the day on which the licence expires; and
  - (b) the Minister believes that there are reasonable grounds for accepting the application.

**291. How to apply for renewal**

- (1) The application must —
  - (a) be made in accordance with the approved form; and
  - (b) be made in the approved manner; and
  - (c) include details of —
    - (i) the activities carried out by the applicant under the licence during its current term; and
    - (ii) the amount of money spent by the applicant in relation to the blocks covered by the licence during its current term; and
    - (iii) the activities that the applicant intends to carry out under the licence during the term applied for; and
    - (iv) the amount of money that the applicant intends to spend in relation to the activities authorised by the licence during the term applied for.

Note: For paragraphs (a) and (b) see section 41.

- (2) The applicant may include in the application any other information that the applicant thinks is relevant.

**292. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**293. Section number not used**

See note 2 to section 3(1).

**294. Provisional renewal of works licence**

The Minister may —

- (a) provisionally renew the licence; or
- (b) refuse to renew the licence.

Note 1: Under section 287, the renewal of the licence cannot be effective before it is registered (see section 334 for registration). The renewal will not be registered until it has been properly accepted (see section 300 for “proper acceptance”).

Note 2: Under section 304, new conditions may be imposed on renewal.

**295. Section number not used**

See note 2 to section 3(1).

**296. Applicant must be notified**

- (1) The Minister must give the applicant written notice of the Minister’s decision under section 294.
- (2) If the Minister provisionally renews the works licence under section 294, the notice must contain the following information —
  - (a) notification of the term of the renewal;
  - (b) notification of the conditions of the renewed licence;
  - (c) notification that the provisional renewal will lapse unless the applicant, before the end of the primary payment period —

- (i) gives the Minister a written acceptance of the renewal; and
- (ii) lodges any security required by the Minister under section 399; and
- (iii) pays the fee that must be paid under section 425.

Note: Paragraph (b): section 304 provides for renewals to be granted subject to conditions.

- (3) The term specified under subsection (2)(a) is not to exceed 5 years.

**297. Amendment of conditions**

- (1) If the licence holder —
  - (a) has been provisionally granted a renewal of the licence under section 294; and
  - (b) is notified of the licence conditions; and
  - (c) is dissatisfied with a licence condition,the holder may ask the Minister to amend the condition.
- (2) The request must —
  - (a) be made within 30 days after the day on which the holder is given notice under section 296; and
  - (b) be lodged with the Minister.
- (3) If a request is made under subsection (1), the Minister may amend the licence condition and, with the consent of the holder, any other licence condition.
- (4) The Minister must give the holder written notice of a decision under this section.

**298. Amendment of security requirements**

- (1) If the licence holder —
  - (a) has been provisionally granted a renewal of the licence under section 294; and

- (b) is notified of a security requirement; and
- (c) is dissatisfied with the amount of security required,

the holder may ask the Minister to make a new determination under section 399.

- (2) The request must be made within 30 days after the day on which the holder is given notice under section 296.
- (3) If a request is made under subsection (1), the Minister may make a new determination under section 399.
- (4) The Minister must give the holder written notice of the new determination.

**299. Extension of primary payment period**

- (1) If the licence holder makes a request under section 297 or 298, the holder may ask the Minister to extend the primary payment period.
- (2) The request must be made within 30 days after the day on which the holder is given notice under section 296.
- (3) If the Minister agrees to the request, the Minister must —
  - (a) determine the period of the extension; and
  - (b) give the holder written notice informing the holder of the period of the extension.

**300. Acceptance of renewal of works licence**

- (1) The provisional renewal of a works licence is properly accepted by the licence holder if, before the required time, the holder —
  - (a) gives the Minister a written acceptance of the renewal; and
  - (b) lodges any security required under section 399; and
  - (c) pays the fee that must be paid for the licence under section 425.



- (2) The required time under subsection (1) is the end of the primary payment period or, if the provisional holder has been granted an extension of the primary payment period under section 299, the end of the secondary payment period.

Note: Under section 287, the renewal of the licence cannot be effective before it is registered (see section 334 for registration).

**301. Conditions applicable to works licence on renewal**

If the provisional renewal is properly accepted under section 300, the renewed licence is subject to —

- (a) the conditions specified in the notice given to the licence holder under section 296; or
- (b) if the Minister amended those conditions under section 297, those conditions as amended.

**302. Lapse of provisional renewal of works licence**

If the provisional renewal of the licence is not properly accepted under section 300, the provisional renewal lapses.

Division 5 — Obligations associated with works licence

**303. General**

- (1) The sources of obligations associated with a works licence are —
- (a) the licence conditions; and
  - (b) obligations arising from directions under section 387 or 392 given by the Minister; and
  - (c) obligations imposed by this Act and the regulations.

Note: For paragraph (a) see sections 304 to 306. For paragraph (c) see sections 44, 308 to 310, 372 and 391(1).

- (2) If a works licence has 2 or more holders, all the holders are jointly and severally bound by the obligations that attach to the licence.

**304. Conditions of works licence**

- (1) The Minister may grant or renew a works licence subject to whatever conditions the Minister thinks appropriate.
- (2) If the Minister grants or renews a works licence subject to conditions, the conditions must be specified in the licence.
- (3) Without limiting subsection (1), the Minister may attach the following kinds of conditions to the grant or renewal of a works licence —
  - (a) a condition requiring the licence holder to take out insurance as required by the Minister;
  - (b) a condition requiring the holder to carry out certain work in or in relation to the licence area during the term of the licence;
  - (c) a condition requiring the holder to lodge a security with the Minister;
  - (d) a condition requiring the holder to keep specified information;
  - (e) a condition requiring the holder to give the Minister, on request, specified information;
  - (f) a condition requiring the holder to take steps to protect the environment of the licence area, including conditions relating to —
    - (i) protecting wildlife; or
    - (ii) minimising the effect on the environment of the licence area and the area surrounding the licence of activities carried out in the licence area;
  - (g) a condition requiring the holder to repair any damage to the environment caused by activities in the licence area;
  - (h) a condition requiring the holder to pay a specified penalty to the State if the holder does not comply with a licence condition.
- (4) A condition under subsection 3(c) must specify —

- (a) the amount of the security required; and
  - (b) the kind of security required; and
  - (c) the manner and form in which the security is to be lodged.
- (5) Without limiting subsection (3)(c), a condition under that provision may require the lodgment of a security in the form of a guarantee and if a guarantee is required the condition may specify —
- (a) the kind of person who is to give the guarantee; and
  - (b) the terms of the guarantee.

**305. No conditions requiring payment of money**

Except for a condition requiring the payment of a penalty or lodgment of a security, a licence condition must not require the payment of money to the State.

**306. Variation of conditions**

- (1) If a works licence holder requests the Minister in writing to vary a licence condition, the Minister may vary the condition.
- (2) If the Minister gives —
  - (a) a direction under section 387; or
  - (b) an approval, consent or exemption under the regulations,to a works licence holder, the Minister may vary a licence condition to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.
- (3) The Minister may vary a licence condition subject to whatever conditions the Minister thinks appropriate.

- (4) If the Minister varies a licence condition, the Minister must give the licence holder a written notice that —
- (a) informs the holder of the variation; and
  - (b) specifies the conditions which have been varied; and
  - (c) specifies any conditions to which the variation is subject.

**307. Exemption from or suspension of conditions**

- (1) If a works licence holder requests the Minister in writing to —
- (a) suspend a licence condition; or
  - (b) exempt the holder from complying with a licence condition,

the Minister may —

- (c) suspend a licence condition; or
  - (d) exempt the holder from complying with a licence condition.
- (2) If the Minister gives —
- (a) a direction under section 387; or
  - (b) an approval, consent or exemption under the regulations,
- to a works licence holder, the Minister may suspend a licence condition, or exempt the holder from compliance with a licence condition, to the extent necessary to avoid inconsistency between the licence conditions and the direction, approval, consent or exemption.
- (3) The Minister may —
- (a) suspend a licence condition; or
  - (b) exempt the licence holder from complying with a licence condition,

subject to whatever conditions the Minister thinks appropriate.

- (4) If the Minister —

- (a) suspends a licence condition; or
- (b) exempts the licence holder from complying with a licence condition,

the Minister must give the holder a written notice that —

- (c) informs the holder of the exemption or suspension; and
- (d) specifies the conditions which have been suspended or affected by the exemption; and
- (e) specifies any conditions to which the suspension or exemption is subject.

Note: A suspension or exemption of a condition does not take effect until registered (see section 337).

### **308. Work practices**

A person who is a works licence holder or an associate of the holder, in carrying out activities in the licence area that are authorised by the licence, must take all reasonable steps —

- (a) to ensure that the activities are carried out at a standard that is accepted as reasonable and proper in the mining industry; and
- (b) to maintain in good repair all structures, equipment and other property erected in, or brought into, the licence area by the person; and
- (c) to remove from the licence area any structure, equipment or other property that —
  - (i) belongs to the person, or is under the person's control; and
  - (ii) is not being used, or is not going to be used, in connection with the activities.

Maximum penalty: \$20 000.

Note 1: The safety of offshore exploration and mining activities is governed by the *Mines Safety and Inspection Act 1994* — see the definition of “exploration operations” and paragraphs (a) and (j) of the definition of “mining operations” in section 4(1) of that Act.

Note 2: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

**309. Licence holder must keep specified records etc.**

A works licence holder must —

- (a) keep whatever records; and
- (b) give whatever records to the Minister for inspection; and
- (c) make whatever returns,

are necessary to comply with —

- (d) the regulations; or
- (e) the licence conditions; or
- (f) a direction given by the Minister under section 387.

Note: Under sections 386 and 387 the Minister may direct a person to keep records and to make returns.

Maximum penalty: \$10 000.

**310. Licence holder must assist inspectors**

A works licence holder must provide an inspector with reasonable facilities and assistance so that the inspector is able to carry out compliance inspections.

Note: See sections 377 to 384 for compliance inspections.

Maximum penalty: \$5 000.

Division 6 — Expiry of works licence

**311. General**

A works licence expires if —

- (a) the term of the licence ends without the licence being renewed; or
- (b) the licence holder surrenders the licence; or
- (c) the licence is cancelled.

Note: For paragraph (a) see Division 4. For paragraph (b) see section 312. For paragraph (c) see section 313.

**312. Voluntary surrender of works licence**

The holder of a works licence may surrender the licence.

Note: The surrender takes effect when it is registered under section 337 (see section 337(5)).

**313. Cancellation of works licence**

- (1) Subject to subsection (5), the Minister may cancel a works licence if the licence holder —
  - (a) breaches a licence condition; or
  - (b) contravenes a provision of this Act or the regulations; or
  - (c) breaches a condition attached to an approval under section 365(2).
- (2) If the Minister proposes to cancel a works licence under subsection (1), the Minister must give the licence holder a written notice that informs the holder of the proposed cancellation.
- (3) The notice must —
  - (a) specify the reason for the proposed cancellation; and
  - (b) invite the holder to make submissions in relation to the proposed cancellation; and
  - (c) specify the day by which submissions may be made to the Minister; and
  - (d) specify an address where submissions are to be lodged.
- (4) The day specified under subsection (3)(c) must be not less than 60 days after the day on which the notice is given.
- (5) The Minister may cancel a works licence only if —
  - (a) the holder has been given a notice under subsection (2); and
  - (b) the Minister has considered —

- (i) any submission made by the holder in accordance with subsection (3); and
  - (ii) any steps taken by the holder to remedy the circumstances that led to the proposal to cancel the licence and to prevent any similar breach or contravention from happening again;
- and
- (c) the Minister is satisfied that no special circumstances exist that justify the licence not being cancelled.

**314. Obligations of former works licence holders and former associates**

- (1) Subject to subsection (2), if —
  - (a) a person was —
    - (i) a works licence holder; or
    - (ii) an associate of a works licence holder;and
  - (b) the licence —
    - (i) expires; or
    - (ii) is cancelled; or
    - (iii) is surrendered;and
  - (c) an obligation associated with the licence arising out of —
    - (i) a licence condition; or
    - (ii) a direction given under section 387; or
    - (iii) this Act or the regulations,has not been discharged; and
  - (d) the person was bound by that obligation when the person was the works licence holder or an associate,



the person remains bound by the obligation until the obligation is discharged.

- (2) The Minister may determine that the person is not subject to —
  - (a) any particular obligation under this section; or
  - (b) all the person's remaining obligations under this section.
- (3) A determination under subsection (2) is to be in writing.

### **Part 2.6 — Special purpose consents**

#### **315. Special purpose consents**

- (1) A special purpose consent may be granted over —
  - (a) a standard block; or
  - (b) a reserved block; or
  - (c) a tender block.
- (2) A special purpose consent may be granted over a block even if the block is in the licence area of a licence or the consent area of another special purpose consent.
- (3) A special purpose consent can only be granted for —
  - (a) a scientific investigation; or
  - (b) a reconnaissance survey; or
  - (c) the collection of small amounts of minerals.
- (4) A reconnaissance survey is the exploration of an area to work out whether the area is sufficiently promising to justify more detailed exploration under an exploration licence.

#### **316. Activities authorised by a special purpose consent**

- (1) A special purpose consent holder may —
  - (a) explore for minerals; and
  - (b) take samples of or recover minerals,

in the consent area, in accordance with the consent.

Note 1: Under section 23(1) the concept of “exploration” extends to activities that are directly related to exploration.

Note 2: Under section 24(1) the concept of “recovery” extends to activities that are directly related to the recovery of minerals.

- (2) The grant of a consent does not give the consent holder —
  - (a) any exclusive or proprietary rights over the blocks covered by the consent; or
  - (b) any option or preference when it comes to the grant of a licence over blocks covered by the consent.

**317. Application for a consent**

A person may apply to the Minister for a special purpose consent.

**318. How to apply**

- (1) The application must —
  - (a) be made in writing; and
  - (b) include details of the activities for which consent is being sought; and
  - (c) specify the blocks for which the consent is being sought.
- (2) If the activity involves the collection of only small amounts of minerals (see section 315(3)(c)), the application must also specify —
  - (a) any mineral to be recovered; and
  - (b) the proposed quantity of any mineral to be recovered.

**319. Payment of fee**

- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Minister may refund any fee paid under subsection (1) but only if the Minister is satisfied that special circumstances exist that justify the refund of the fee.

**320. Applicant must obtain agreement of exploration, retention and mining licence holders affected by the application**

- (1) Subject to subsection (3), the applicant must obtain the agreement of interested licence holders to the application.
- (2) The agreement must be in writing.
- (3) The agreement of an interested licence holder is not necessary if —
  - (a) the application is for a scientific investigation; and
  - (b) Australia has obligations under international conventions to allow the investigation.
- (4) For the purposes of this section, a licence holder is interested if —
  - (a) the holder holds an exploration, retention or mining licence; and
  - (b) the block concerned is inside the licence area.

**321. Applicant to notify works licence holders affected by the application**

- (1) The applicant must notify interested works licence holders of the application.
- (2) The notification —
  - (a) must be given to the interested works licence holders in writing; and
  - (b) must give details of the special purpose consent applied for; and
  - (c) must invite the interested works licence holder to give comments to the Minister within 30 days after the day on which the notice was given.
- (3) For the purposes of this section, a works licence holder is interested if the block concerned is inside the works licence area.

**322. Section number not used**

See note 2 to section 3(1).

**323. Minister may grant special purpose consent**

If the applicant does what is required by sections 318 to 321, the Minister may —

- (a) grant a special purpose consent to the applicant; or
- (b) refuse the application.

**324. Section number not used**

See note 2 to section 3(1).

**325. Matters to be specified in the consent**

- (1) The consent must specify —
  - (a) the blocks covered by the consent; and
  - (b) the activities authorised by the consent; and
  - (c) the period for which the consent is to have effect; and
  - (d) the consent conditions.

Note: Under section 38A(3) and (5) the consent of the Minister is required to the carrying out of offshore exploration or mining activities in a marine nature reserve, marine park or marine management area. Section 38A(7) and (8) also contain provisions about the disturbance of certain parts of marine nature reserves and restricted areas.

- (2) If the activity involves the collection of only small amounts of minerals (see section 315(3)(c)), the consent must also specify —
  - (a) the minerals to be collected; and
  - (b) the quantities to be collected.
- (3) The period specified under subsection (1)(c) is not to be more than 12 months.

**326. Duration of consent**

A consent has effect for the period specified under section 325(1)(c).

**327. Conditions of consent**

- (1) The Minister may grant a special purpose consent subject to whatever conditions the Minister thinks are appropriate.
- (2) Without limiting subsection (1), the Minister may impose conditions that relate to —
  - (a) reports to be provided by the consent holder about activities carried out under the consent; and
  - (b) environmental matters.

## Chapter 3 — Registration and Dealings

### Part 3.1 — Registration

#### Division 1 — Preliminary

#### **328. Register to be kept**

(1) The Minister must keep a register for the purposes of this Part.

Note: The main matters entered in the register are —

- the grant or renewal of a licence (see sections 333 and 334);
- details of instruments that affect a licence (see section 337);
- details of instruments that affect an interest in a licence (see sections 338 and 339);
- details of interests in a licence that are acquired by devolution (see section 340);
- details of caveats (see section 345).

(2) The register is to be known as the State Offshore Mining Register.

#### **329. Document files to be kept**

(1) The Minister must keep a document file for the purposes of this Part.

(2) In the document file are to be kept the documents that the Minister is required to keep under this Part.

Note: The documents to be kept in the document file are —

- copies of licences (see section 333(6));
- copies of instruments that affect licences (see section 337(4));
- copies of transfers of licences (see section 338(6));
- copies of other dealings in licences (see section 339(4));
- caveats (see section 345(3));
- withdrawals of caveats (see section 346(2));
- consents to dealings given under section 350 (see section 350(6));
- copies of court orders (see section 351).

**330. Form of register and document file**

- (1) The offshore mining register is to be kept in the form and manner determined by the Minister.
- (2) Without limiting subsection (1), the offshore mining register may be kept in the form of a computer record.
- (3) The document file is to be kept in the form and manner determined by the Minister.

**331. Correction of errors in the register**

- (1) Subject to subsection (4), the Minister may correct the offshore mining register if the Minister is satisfied that —
  - (a) there is an omission of an entry from the register; or
  - (b) an entry in the register should not have been made; or
  - (c) there is an error or defect in an entry in the register.
- (2) A person may apply to the Minister for correction of the offshore mining register under subsection (1).
- (3) The application —
  - (a) must be in writing; and
  - (b) must specify the correction that is being requested.
- (4) If —
  - (a) the Minister intends to correct the offshore mining register under subsection (1); and
  - (b) the correction relates to a licence; and
  - (c) the correction is not to be made in response to an application under subsection (2) by the licence holder,the Minister must notify the holder that the Minister intends to correct the register.
- (5) The notice —
  - (a) must be in writing; and



- (b) must specify the correction the Minister intends to make; and
  - (c) must invite the holder to make submissions to the Minister about the proposed correction within the period specified in the notice.
- (6) The period specified under subsection (5)(c) is to be at least 14 days after the day on which the notice is given.
- (7) If a notice is given under subsection (4) —
- (a) the Minister is not to correct the register until the period specified in the notice has ended; and
  - (b) the Minister is to have regard to any submissions made by the licence holder before the end of that period in exercising the power under subsection (1) to correct the register.

**332. Inspection of register and documents**

- (1) A person may inspect the offshore mining register and the document file if the person pays the fee prescribed by the regulations.
- (2) The Minister must make the offshore mining register and the document file available for inspection at all convenient times.

Division 2 — Matters to be entered in register

**Subdivision A — Licences**

**333. Licences**

- (1) If the provisional grant of a licence is properly accepted, the Minister must register —
  - (a) the holder's name; and
  - (b) if there is more than one licence holder, the share in the licence held by each holder; and

- (c) a description of the licence area, including a map or map reference; and
  - (d) the term of the licence; and
  - (e) the date of the provisional grant of the licence; and
  - (f) the date of registration of the licence; and
  - (g) an address for the service of notices under this Act on the licence holder.
- (2) The address registered under subsection (1)(g) is to be the address specified by the licence holder by notice in writing to the Minister.
- (3) If the holder has not given a notice under subsection (2), the address to be registered under subsection (1)(g) is to be the address specified in the application that the holder made for the licence.
- (4) If the Minister registers a licence under subsection (1) —
- (a) the licence holder must give the licence to the Minister; and
  - (b) the Minister must endorse the date of registration on the licence.
- (5) The Minister may include in the register any other information about the holder or the terms and conditions of the licence that the Minister thinks is appropriate.
- (6) The Minister must keep a copy of the licence.
- (7) A licence is taken to be registered as soon as an entry complying with subsection (1) is made in the register.

**334. Renewal of licences**

- (1) If the Minister receives an application for the renewal of a licence, the Minister must register the fact.
- (2) If the provisional renewal of a licence is properly accepted, the Minister must register —

- (a) the renewal; and
  - (b) the term of the renewal; and
  - (c) the date of the provisional renewal; and
  - (d) the date of registration of the renewal.
- (3) If the Minister registers the renewal of a licence under subsection (2) —
- (a) the licence holder must give the licence to the Minister; and
  - (b) the Minister must endorse on the licence —
    - (i) the term of the renewal; and
    - (ii) the date of registration of the renewal.
- (4) If the Minister refuses to renew a licence, the Minister must register the refusal.

**335. Extension of exploration licences**

- (1) If the Minister receives an application for the extension of the term of an exploration licence, the Minister must register the fact.
- (2) If the Minister refuses to extend the term of an exploration licence, the Minister must register the refusal.

Note 1: For extensions of the term of a licence see sections 94 to 98.

Note 2: The grant of the extension of the term of an exploration licence is registered under section 337(1).

**336. Expiry of licences**

- (1) If a licence expires because —
  - (a) its term ends; or
  - (b) a retention licence or mining licence is granted to the licence holder,the Minister must register the expiry of the licence.

Note: Cancellation is dealt with under section 337.

- (2) In subsection (1)(a) the reference to the term of a licence includes any period during which the licence is in force under section 90, 91, 92 or 93.
- (3) If the Minister registers the expiry of a licence under subsection (1) —
- (a) the licence holder must give the licence to the Minister; and
  - (b) the Minister must endorse the expiry and the date of the expiry on the licence.

**337. Variations etc. to licences**

- (1) The Minister must register —
- (a) the details of any document under this Act that varies, surrenders, cancels or otherwise affects a licence; and
  - (b) the details of any document that varies or revokes a document referred to in paragraph (a).

Note: The documents referred to in paragraph (a) are —

- suspension of licence rights (see sections 48 (exploration licence), 135 (retention licence) and 195 (mining licence));
- amendment of licence conditions between provisional grant and registration (see sections 67 (exploration licence), 148 (retention licence), 211 (mining licence) and 280 (works licence)) — these need to be registered at the same time as the grant is registered because if the conditions are amended between provisional grant and registration a replacement licence reflecting the change in conditions is not issued to the provisional holder;
- extension of term (see sections 90, 95 and 97 (exploration licence));
- surrender of the whole or a part of a licence (see sections 99 and 127 (exploration licence), 158 and 187 (retention licence), 235 and 264 (mining licence) and 312 (works licence));
- voluntary surrender — special approval (see section 100 (exploration licence));
- mandatory reduction of licence area — special permission (see section 104 (exploration licence));
- amendment of licence conditions between provisional renewal and registration (see sections 111 (exploration licence), 170 (retention licence), 247 (mining licence) and 297 (works licence)) — these need to be registered at the same time as the renewal because if the licence conditions are amended between provisional renewal and registration a replacement licence reflecting the changed conditions is not issued to the holder;

- variation of conditions (see sections 120 (exploration licence), 179 (retention licence), 256 (mining licence) and 306 (works licence));
  - exemption from or suspension of condition (see sections 121 (exploration licence), 180 (retention licence), 257 (mining licence) and 307 (works licence));
  - cancellation (see sections 130 (exploration licence), 189 and 190 (retention licence), 265 (mining licence) and 313 (works licence));
  - directions (see sections 387 and 392);
  - security requirements (see section 399);
  - approvals of transfers (see section 365).
- (2) Subsection (1)(a) applies to a document that suspends the rights of a holder of a licence.
- (3) Details of a document may be registered by registering a summary of the contents of the document.
- (4) The Minister must keep a document referred to in subsection (1), or a copy of the document.
- (5) A document referred to in subsection (1) —
- (a) has no effect until it is registered; and
  - (b) is taken to be registered as soon as an entry complying with subsection (1) is made in the register.

**338. Transfer of licences**

- (1) The Minister must register the transfer of a licence or a share in a licence if —
- (a) a party to the transfer lodges the instrument of transfer for registration; and
  - (b) a party to the transfer lodges a copy of the instrument of transfer; and
  - (c) the transfer has been approved by the Minister; and
  - (d) the licence is lodged with the Minister for annotation under subsection (5); and
  - (e) the fee provided for in the Registration Fees Act is paid; and

- (f) the fee prescribed by the regulations is paid; and
- (g) section 341 (caveats) does not prevent the registration of the transfer.

Note: Paragraph (c): the Minister's approval is endorsed on the transfer (see section 365(3)).

- (2) The Minister must also register the date and time of registration of the transfer.
- (3) If an instrument purports to transfer a licence or a share in a licence, the Minister must register the instrument under this section without inquiring into or being concerned as to the legal effectiveness of the instrument.
- (4) If an instrument that transfers a licence or a share in a licence is registered, the Minister must register the name of the transferee as a licence holder.
- (5) If the Minister registers the transfer of a licence or a share in a licence, the Minister must annotate the licence to show the transferee as a licence holder.
- (6) The Minister must —
  - (a) keep the copy of the transfer;
  - (b) return the transfer to the person who lodged it; and
  - (c) return the annotated licence to the person who lodged it.
- (7) The registration of a document under this section does not give the document any greater effect than it would have had apart from this Act.

**339. Other dealings in licences**

- (1) The Minister must register a document (other than a transfer of a licence or a share in a licence) that creates, transfers, affects or otherwise deals with an interest in a licence if —
  - (a) a party to the dealing lodges the document for registration; and
  - (b) a party to the dealing lodges a copy of the document; and

- (c) the fee provided for in the Registration Fees Act is paid; and
  - (d) the fee prescribed by the regulations is paid; and
  - (e) section 341 (caveats) does not prevent the registration of the dealing.
- (2) The Minister must also register the date and time of registration of the dealing.
- (3) If a document purports to create, transfer, affect or otherwise deal with an interest in a licence, the Minister is to register the document under this section without inquiring into or being concerned as to the legal effectiveness of the document.
- (4) The Minister must keep the copy of the document.
- (5) The Minister must return the document to the person who lodged it.
- (6) The registration of a document under this section does not give the document any greater effect than it would have had apart from this Act.

**340. Devolution of licences**

- (1) If—
- (a) the rights of a licence holder have devolved to a person by operation of law; and
  - (b) the person applies to the Minister in writing to be registered as a licence holder; and
  - (c) the licence is lodged with the Minister for annotation under subsection (3); and
  - (d) the person pays the fee prescribed by the regulations; and
  - (e) the Minister is satisfied that the applicant is entitled to those rights; and
  - (f) section 341 (caveats) does not prevent the registration of the person as a licence holder,

the Minister must register the person as a licence holder.

- (2) If the Minister registers a person as a licence holder under subsection (1), the Minister must also register the date and time of registration.
- (3) If the Minister registers a person as a licence holder under subsection (1), the Minister must annotate the licence accordingly.
- (4) The Minister must return the annotated licence to the person who lodged it.
- (5) This section applies to 2 or more persons to whom rights have devolved in the same way as it applies to a single person to whom rights have devolved.

#### **Subdivision B — Caveats**

#### **341. Effect of a caveat**

- (1) If a caveat is in force on a licence, the Minister must not register a dealing in the licence unless —
  - (a) the Minister is not required to give the caveat holder notice of the particular dealing; or
  - (b) the caveat holder consents to the registration of the dealing under section 350; or
  - (c) a court of competent jurisdiction orders the Minister to register the dealing under section 338 or 339 despite the caveat.

Note 1: For “dealing” see section 5.

Note 2: Once the caveat holder has been given notice of the dealing, the caveat will lapse at the end of 30 days unless the caveat holder consents to the registration of the dealing or gets a court order extending the life of the caveat (see section 348).

Note 3: The Minister may not be required to give the caveat holder notice of the dealing because the caveat holder is a party to the dealing or because the dealing falls outside the class of dealings that the caveat holder has specified under section 343(2) (see section 349(6)).



- (2) If a caveat is in force on a licence, the Minister must not register a person under section 340 as a licence holder unless —
- (a) the caveat holder consents to the registration under section 350; or
  - (b) a court of competent jurisdiction orders the Minister to register the person under section 340 despite the caveat.

Note: Once the caveat holder has been given notice, the caveat will lapse at the end of 30 days unless the caveat holder consents to the registration or gets a court order extending the life of the caveat.

**342. Lodgment of caveats**

- (1) A person who claims a legal or equitable interest in or affecting a licence may lodge with the Minister a caveat on the licence.
- (2) A person may claim a legal or equitable interest in or affecting a licence even if the interest claimed arises under a document that has not been registered under section 338 or 339.

**343. Form of caveat**

- (1) A caveat must —
- (a) be in accordance with the form approved by the Minister; and
  - (b) set out —
    - (i) the full name and address of the person claiming the interest; and
    - (ii) details of the interest claimed;and
  - (c) be signed by the person claiming the interest; and
  - (d) specify an address for service of notices within the State.
- (2) A caveat may specify the particular dealings that the caveat holder wants to be given notice of under section 349.

**344. Payment of fee**

The person lodging a caveat must pay the caveat fee that is prescribed by the regulations.

**345. Caveat to be registered**

(1) If —

- (a) a caveat is lodged for registration; and
- (b) the caveat complies with section 343; and
- (c) the person lodging the caveat pays the fee required by section 344,

the Minister must, subject to subsection (4), register the caveat.

(2) The Minister must register the date and time of lodgment.

(3) The Minister must keep the original of the caveat and endorse on it the date and time of lodgment.

(4) Subsection (1) does not apply if —

- (a) a court has made an order under section 351(2); and
- (b) the order requires the court's consent to the registration of the caveat; and
- (c) the court has not consented to the registration of the caveat.

**346. Withdrawal of caveat**

(1) A caveat holder may withdraw the caveat at any time by lodging a written withdrawal with the Minister.

(2) The Minister must —

- (a) register details of the withdrawal; and
- (b) endorse details of the withdrawal on the original of the caveat; and
- (c) keep the original of the withdrawal.

**347. Form of withdrawal**

A withdrawal of a caveat must —

- (a) be in accordance with the approved form; and
- (b) give details of the caveat; and
- (c) be signed by the caveat holder.

**348. Duration of caveat**

- (1) A caveat that is registered is taken to have had effect from the time at which it is lodged with the Minister.
- (2) A caveat on a licence ceases to have effect if —
  - (a) a court of competent jurisdiction makes an order for the removal of the caveat under section 351; or
  - (b) the caveat is withdrawn under section 346; or
  - (c) the caveat holder is given notice under section 349(1), (2) or (3) and 30 days have passed since the caveat holder was given the notice.
- (3) Subsection (2)(c) does not apply if, before the end of the 30 days, the caveat holder consents to the registration of the dealing or to the registration under section 340.
- (4) Subsection (2)(c) does not apply if, before the end of the 30 days —
  - (a) the caveat holder applies to a court of competent jurisdiction for an order under section 351 that the caveat be extended beyond the period; and
  - (b) the court makes an order extending the period.
- (5) If a court makes an order under section 351(1)(c), the caveat ceases to have effect at the end of the extended period.
- (6) Subsection (5) does not apply if, before the end of the extended period, the caveat holder consents to the registration of the dealing under section 350 or to the registration under section 340.

**349. Notice to caveat holder**

(1) If —

- (a) a transfer of a licence or a share in a licence is lodged with the Minister under section 338; and
- (b) a caveat is in force on the licence,

the Minister must, subject to subsection (6), notify the caveat holder that the transfer has been lodged for registration.

(2) If —

- (a) a dealing in a licence (other than a transfer of the licence or a share in the licence) is lodged with the Minister under section 339; and
- (b) a caveat is in force on the licence,

the Minister must, subject to subsection (6), notify the caveat holder that the dealing has been lodged for registration.

(3) If —

- (a) a person applies to the Minister under section 340 to be registered as a licence holder; and
- (b) a caveat is in force on the licence,

the Minister must notify the caveat holder that the application has been made.

(4) If —

- (a) a licence holder surrenders the licence or surrenders a block or some of the blocks covered by the licence; and
- (b) a caveat is in force on the licence,

the Minister must notify the caveat holder of the surrender.

(5) Notification under subsection (1), (2), (3) or (4) must be by certified mail.

(6) Notice is not to be given under subsection (1) or (2) if —

- (a) the caveat holder is a party to the transfer or dealing concerned; or
- (b) the caveat holder has specified the class of dealings the caveat holder wants to receive notice of (see section 343(2)) and the transfer or dealing falls outside that class.

**350. Caveat holder may consent to registration**

- (1) If a caveat holder is given notice under section 349(1), the caveat holder may consent to the registration of the transfer.
- (2) If a caveat holder is given notice under section 349(2), the caveat holder may consent to the registration of the dealing.
- (3) If a caveat holder is given notice under section 349(3), the caveat holder may consent to the registration of the person as a licence holder.
- (4) A consent under this section must be in writing and must be lodged with the Minister.
- (5) A consent under this section is only effective if it is given within 30 days after the day on which the caveat holder receives the notice concerned.
- (6) The Minister must —
  - (a) register details of the consent; and
  - (b) endorse details of the consent on the original of the caveat; and
  - (c) keep the original of the consent.

**351. Orders that can be made by a court in relation to caveats**

- (1) The Supreme Court may —
  - (a) order the removal of a caveat from a licence; or
  - (b) order the Minister to register a dealing despite a caveat; or
  - (c) extend the period provided for by section 348(2)(c).

- (2) If —
- (a) a court makes an order under subsection (1)(a) or (b) in relation to the licence; and
  - (b) the court is satisfied that caveats are being used vexatiously to delay the registration of a document,
- the court may also make an order that the Minister is not to register any caveats in respect of the licence unless the court has consented to the registration.
- (3) An order under subsection (2) may be for an indefinite period or for a specified period.
- (4) An order under subsection (2) may provide that the court's consent is not required in any specified case or class of case.
- (5) If an application is made to the court for an order under subsection (2), the Minister becomes a party to the proceedings.
- (6) If a court makes an order under this section, the Minister must —
- (a) register details of the order; and
  - (b) keep a copy of the order.

Division 3 — Miscellaneous

**352. Fees for registration**

- (1) The Minister is to determine the amount of the fee payable under the Registration Fees Act for registration of any document or fact.
- (2) If —
- (a) a document creates, transfers, affects or otherwise deals with a licence or an interest in a licence; and
  - (b) the Minister determines under subsection (1) the amount of the fee payable under the Registration Fees Act on the basis of the information contained in the document; and

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**s. 352A. Exemption from duty**

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- (c) the Minister subsequently becomes satisfied that the document does not fully and truly set out —
  - (i) the consideration for the transaction it relates to; or
  - (ii) all the other facts and circumstances (if any) that affect the amount of the fee payable under the Registration Fees Act in respect of the document,

the Minister may make a fresh determination under subsection (1) of the amount of the fee.

**352A. Exemption from duty**

Duty under the *Duties Act 2008* is not chargeable —

- (a) on a licence; or
- (b) on any instrument that creates, transfers, affects or otherwise deals with an interest in a licence.

*[Section 352A amended by No. 12 of 2008 Sch. 1 cl. 25.]*

**353. Protection from legal actions**

- (1) This section applies to —
  - (a) the Minister; and
  - (b) a delegate of the Minister; and
  - (c) a person acting under the direction or authority of the Minister or a delegate of the Minister.
- (2) A person to whom this section applies is not liable to an action, suit or proceeding in relation to an act or matter if —
  - (a) the act or matter is done or omitted to be done in the exercise or purported exercise of a power or authority given by this Part; and
  - (b) the act or matter is done or omitted to be done in good faith.

**354. Application to court for correction of register**

- (1) The Supreme Court, on the application of a person aggrieved by —
  - (a) the omission of an entry from the offshore mining register; or
  - (b) an entry wrongly existing in the register; or
  - (c) an error or defect in an entry in the register,may make any order it thinks appropriate directing correction of the register.
- (2) In any proceedings under subsection (1), the Supreme Court may decide any necessary or expedient question concerning the rectification of the register.
- (3) A copy of a Supreme Court order may be served on the Minister.
- (4) In any proceedings under subsection (1) —
  - (a) the Minister may appear; or
  - (b) if the Supreme Court so directs, the Minister must appear.
- (5) If the Minister receives a copy of an order under subsection (3), the Minister must amend the register so that the register accords with the order.

**355. Appeals against determinations under section 352**

- (1) If a person is dissatisfied with a determination by the Minister under section 352, the person may appeal to the Supreme Court against the determination.
- (2) Written notice of an appeal under subsection (1) must be given to the Minister.
- (3) In any proceedings under this section —
  - (a) the Minister may appear; or



- (b) if the Supreme Court so directs, the Minister must appear.
- (4) On hearing an appeal under subsection (1), the Supreme Court may affirm, revoke or amend the determination of the Minister.

**356. Section number not used**

See note 2 to section 3(1).

**357. Evidentiary value of register**

- (1) The offshore mining register is admissible in proceedings as evidence of the matters registered in it.
- (2) If the register is kept by the use of a computer, the Minister may issue a document containing the details of a matter taken from the register.
- (3) The document issued under subsection (2) is admissible in proceedings as evidence of the matter.
- (4) The Minister may give a person a certified copy of, or extract from, the register if the person pays the fee prescribed by the regulations.
- (5) The certified copy is admissible in proceedings without any further proof of, or the production of, the original.

**358. Certified copy of document on document file**

- (1) The Minister may give a person a certified copy of a document that is kept on the document file if the person pays the fee prescribed by the regulations.
- (2) The certified copy is admissible in proceedings without any further proof of, or the production of, the original.

**359. Certification of registration action**

- (1) The Minister may give a person a signed certificate that —
  - (a) a thing required or allowed by this Part has been done;or

(b) a thing required or allowed by this Part has not been done,

if the person pays the fee prescribed by the regulations.

(2) The certificate is admissible in proceedings as evidence of the facts stated in the certificate.

### **Part 3.2 — Dealings in licences**

#### Division 1 — Dealings in licences to be in writing and registered

**360. Dealings in licences to be in writing**

- (1) An interest in a licence may be created, transferred, affected or otherwise dealt with only by a written document.

Note: A transfer must be in writing because it is a dealing.

- (2) Subsection (1) does not apply to the rights of a licence holder that devolve to a person by operation of law.

Note 1: Rights might devolve to a person, for example, by operation of the laws relating to intestacy or bankruptcy.

Note 2: For the registration of rights that devolve to a person by operation of law see section 340.

**361. Dealings in interests in licences not effective until registered**

A document that creates, transfers, affects or otherwise deals with an interest in a licence has no effect until it is registered under Part 3.1.

Note 1: A transfer is a dealing and does not take effect until registered.

Note 2: Transfers are registered under section 338 and other dealings under section 339.

#### Division 2 — Approval of transfer of licences

**362. Transfers require approval by Minister**

- (1) The transfer of a licence is not to be registered under section 338 unless it has been approved by the Minister.

Note 1: For “transfer” of a licence see section 7(1).

Note 2: A transfer is a dealing and under section 361 does not take effect until registered.

- (2) The transfer of a share in a licence is not to be registered under section 338 unless it has been approved by the Minister.

Note 1: For “transfer” in a share of a licence see section 7(2) and (3).

Note 2: A transfer is a dealing and under section 361 does not take effect until registered.

**363. Application for approval of transfer**

- (1) A person may apply to the Minister for approval of the transfer.
- (2) The application must be in writing.
- (3) The application must be accompanied by —
- (a) the transfer document (duly signed or executed); and
  - (b) a copy of the transfer document; and
  - (c) if a caveat holder has consented to the registration of the transfer under section 350(1), a copy of the consent.
- (4) The application may include a statement of any matter that the applicant wants the Minister to take into account in deciding whether to approve the transfer.
- (5) Without limiting subsection (4), the application may include a statement about —
- (a) the technical qualifications of a party to the transfer; or
  - (b) the technical qualifications of the employees of a party to the transfer; or
  - (c) the technical advice available to a party to the transfer; or
  - (d) the financial resources of a party to the transfer.
- (6) The application must be accompanied by the fee prescribed by the regulations.

**364. Minister may ask for further information**

- (1) If —

- (a) an application is made under section 363 for approval of a transfer; and
  - (b) the Minister has reason to believe that a person possesses or controls a document that relates to —
    - (i) the transfer document; or
    - (ii) the transfer transaction; or
    - (iii) the application for approval of the transfer,the Minister may ask the person —
    - (c) to give the document to the Minister; or
    - (d) to make the document available for inspection by or on behalf of the Minister.
- (2) The request under subsection (1) must be made by giving to the person a written notice containing the request.
- (3) A person must not fail to comply with a request under subsection (1) without reasonable excuse.
- Maximum penalty: \$5 000.

**365. Minister's response to application for approval**

- (1) If an application is made under section 363, the Minister may —
  - (a) approve the transfer; or
  - (b) refuse to approve the transfer.
- (2) The Minister may, under subsection (1)(a), approve the transfer on conditions that the Minister considers necessary or desirable in the public interest.
- (3) If the Minister approves the transfer, the Minister must endorse on —
  - (a) the transfer document; and
  - (b) a copy of the transfer document,a record of the approval.

Note: A record of the approval will also be entered in the offshore mining register (see section 338(1)).

**366. Protection from legal actions**

- (1) This section applies to —
  - (a) the Minister; and
  - (b) a delegate of the Minister; and
  - (c) a person acting under the direction or authority of the Minister or a delegate of the Minister.
  
- (2) A person to whom this section applies is not liable to an action, suit or proceeding in relation to an act or matter if —
  - (a) the act or matter is done or omitted to be done in the exercise or purported exercise of a power or authority given by this Part; and
  - (b) the act or matter is done or omitted to be done in good faith.

## Chapter 4 — Administration

### Part 4.1 — Information management

#### **367. Minister may ask person for information**

- (1) The Minister may ask a person to give the Minister information if —
- (a) the information is relevant to the operation of this Act; and
  - (b) the Minister has reasonable grounds for believing that the person is able to give the information.

Note: The person must comply with the request (see section 372).

- (2) The Minister may ask the person to give the information to —
- (a) the Minister; or
  - (b) an inspector nominated by the Minister.
- (3) The request must —
- (a) be made by written notice given to the person; and
  - (b) specify the person to whom the information is to be given; and
  - (c) specify the period within which the information is to be given.
- (4) The information must be given —
- (a) in writing; and
  - (b) before the end of the period specified in the request.
- (5) The document containing the information must be signed by —
- (a) if the information is given by a body corporate, an authorised officer of the body corporate; or
  - (b) if the information is provided by an individual, the individual.

**368. Power to ask person to appear**

- (1) If the Minister has reasonable grounds for believing that a person is able to give information that is relevant to the operation of this Act, the Minister may ask the person to appear personally to —
  - (a) give the information; and
  - (b) answer questions about the activity to which the information relates.

Note: The person must comply with the request (see section 372).

- (2) The Minister may ask a person to appear before —
  - (a) the Minister; or
  - (b) an inspector nominated by the Minister.
- (3) The request must —
  - (a) be made by written notice given to the person; and
  - (b) specify the activity about which the information is sought or questions will be asked; and
  - (c) specify the address at which the person is to attend; and
  - (d) specify the day on which and the time at which the person is to attend; and
  - (e) indicate whether the appearance is to be before the Minister or before a nominated inspector.

**369. Power to examine on oath or affirmation**

- (1) Where, following a notice under section 368, a person appears before the Minister or a nominated inspector, the Minister or the inspector may —
  - (a) administer an oath or affirmation to the person; and
  - (b) request the person to answer any question that comes within the terms of the notice.



- (2) The oath or affirmation to be administered is an oath or affirmation that the person will truthfully answer the questions put by the Minister or the inspector.

**370. Minister may ask for documents**

- (1) The Minister may ask a person to produce a document if —
- (a) the document is relevant to the operation of this Act; and
  - (b) the Minister has reasonable grounds for believing that the person is able to produce the document.

Note: The person must comply with the request (see section 372).

- (2) The Minister may ask the person to produce the document to —
- (a) the Minister; or
  - (b) an inspector nominated by the Minister.
- (3) The request —
- (a) must be made by written notice given to the person; and
  - (b) must specify the person to whom, and the address at which, the document is to be produced; and
  - (c) must specify —
    - (i) the period within which the document is to be produced; or
    - (ii) the day on which and the time at which the document is to be produced;
- and
- (d) may specify whether the original or a copy of the document is to be produced.
- (4) The regulations may provide for the manner in which the Minister is to deal with the document.
- (5) Without limiting subsection (4), the regulations may authorise the Minister or inspector to take a copy of the document.

**371. Minister may ask for samples**

- (1) The Minister may ask a person to produce a sample taken from the seabed or subsoil in coastal waters if —
  - (a) the sample is relevant to the operation of this Act; and
  - (b) the Minister has reasonable grounds for believing that the person is able to produce the sample.

Note: The person must comply with the request (see section 372).

- (2) The Minister may ask the person to give the sample to —
  - (a) the Minister; or
  - (b) an inspector nominated by the Minister.
- (3) The request —
  - (a) must be made by written notice given to the person; and
  - (b) must specify the person to whom, and the address at which, the sample is to be given; and
  - (c) must specify —
    - (i) the period within which the sample is to be given; or
    - (ii) the day on which and the time at which the sample is to be given.
- (4) The regulations may provide for the manner in which the Minister or inspector is to deal with the sample.
- (5) Without limiting subsection (4), the regulations may authorise the Minister or inspector to test or analyse the sample.

**372. Obligation to comply with request under section 367, 368, 369, 370 or 371**

- (1) A person must not, without reasonable excuse, fail to comply with a request under section 367, 368, 369, 370 or 371.

Maximum penalty: \$10 000.

- (2) A person is not excused from complying with the request on the ground that complying with the request might tend to incriminate the person or make the person liable to a penalty.

Note: Section 373 provides immunity for the response to the request.

- (3) A person must not give false or misleading information —
- (a) in response to a request under section 367, 368, 370 or 371; or
  - (b) in response to a question asked under section 369(1).

Maximum penalty: \$10 000.

**373. Immunity from use of information etc. given in response to request under section 367, 368, 369, 370 or 371**

- (1) Where a person gives the Minister information in response to a request under section 367 or 368, or to a question under section 369(1), the following are not admissible in evidence against the person in any proceedings —
- (a) the document containing the information given in response to the request;
  - (b) the answer to the question; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or answer.
- (2) If a person produces a document in response to a request under section 370, the following are not admissible in evidence against the person in any proceedings —
- (a) the document;
  - (b) the fact of the production of the document by the person;
  - (c) any information, document or thing obtained as a direct or indirect consequence of the production of the document.

- (3) If a person produces a sample in response to a request under section 371, the following are not admissible in evidence against the person in any proceedings —
- (a) the sample;
  - (b) the fact of the production of the sample by the person;
  - (c) any information, document or thing obtained as a direct or indirect consequence of the production of the sample.
- (4) The immunity provided by subsections (1), (2) and (3) does not apply to proceedings for an offence against section 372(3).

**374. Restrictions on release of confidential material**

- (1) Subject to sections 375 and 376, if the Minister holds confidential information —
- (a) the Minister; and
  - (b) a Commonwealth or State Minister who is given the information under section 375; and
  - (c) a person acting on behalf of the Minister or of a Minister referred to in paragraph (b); and
  - (d) a person who is given the information under section 375(3),

must not —

- (e) publish the information; or
- (f) make the information available to a person.

Maximum penalty: Imprisonment for 2 years.

- (2) Subject to section 375, if the Minister holds a confidential sample —
- (a) the Minister; and
  - (b) a Commonwealth or State Minister who is given access to the sample under section 375; and
  - (c) a person acting on behalf of the Minister or of a Minister referred to in paragraph (b); and

- (d) a person who is given access to the sample under section 375(4),

must not —

- (e) allow a person to inspect the sample; or
- (f) publish information about the sample.

Maximum penalty: Imprisonment for 2 years.

**375. Circumstances in which confidential material may be released**

- (1) If —
  - (a) a licence holder gives confidential information to the Minister; and
  - (b) the holder —
    - (i) makes the information publicly available; or
    - (ii) consents in writing to the information being made publicly available,

the Minister, or another State Minister or a Commonwealth Minister who is given access to the information, may make the information available to any person.

- (2) If —
  - (a) a licence holder gives a confidential sample to the Minister; and
  - (b) the holder —
    - (i) publishes details of the sample; or
    - (ii) consents in writing to the details being made publicly available; or
    - (iii) consents in writing to the sample being made available for public inspection,

the Minister, or another State Minister or a Commonwealth Minister who is given access to the sample, may —

- (c) make details of the sample available to any person; or

(d) allow any person to inspect the sample.

Note: For “confidential information” and “confidential sample” see sections 27 and 28.

- (3) Confidential information may be made available to a person if the information is made available for the purposes of the administration of this Act or the Registration Fees Act.
- (4) A person may be given access to a confidential sample if the access is given for the purposes of the administration of this Act or the Registration Fees Act.

**376. Certain reports to be made available**

If —

- (a) in order to comply with —
  - (i) the regulations; or
  - (ii) a direction under section 387 or 392; or
  - (iii) a licence condition,a licence holder gives the Minister a report; and
- (b) the report relates to blocks that are no longer covered by the licence or by a successor licence to the licence; and
- (c) another person requests the Minister to make the report available to the person,

the Minister must make the report available to the person.

## **Part 4.2 — Monitoring and enforcement**

### Division 1 — Inspections

#### **377. Compliance inspections**

For the purposes of this Act, a compliance inspection is an inspection carried out to determine whether —

- (a) a licence holder, a special purpose consent holder or an associate has complied with or is complying with —
  - (i) this Act or the regulations; or
  - (ii) the Registration Fees Act or regulations made under that Act; or
  - (iii) the licence or consent conditions; or
  - (iv) a direction under section 387 or 392;

or

- (b) a person is exploring for or recovering minerals in breach of section 38.

Note: An inspector may carry out a compliance inspection under —

- section 379 (inspection of licence-related premises etc. without a warrant);
- section 380 (inspection of other premises etc. with consent of the occupier);
- section 381 (inspection of premises etc. with a warrant).

#### **378. Powers exercisable in course of inspection**

- (1) If an inspector may carry out a compliance inspection, the inspector may do anything that is reasonable and necessary to carry out the inspection.
- (2) Without limiting subsection (1), the inspector may —
  - (a) examine things that are being used for exploration or mining purposes and things that appear to the inspector to be intended to be used for those purposes; and
  - (b) test equipment (for example, by operating it); and
  - (c) examine, and copy, documents; and

- (d) remove documents; and
  - (e) take photographs and videotapes; and
  - (f) examine, and take samples from the seabed or subsoil; and
  - (g) enter or go onto any land, building or structure; and
  - (h) enter or board any vehicle, vessel or aircraft.
- (3) If the compliance inspection is being carried out under a warrant under section 382, subsection (2) has effect subject to the restrictions that are specified in the warrant.
- (4) Subject to subsections (5) and (6), if an inspector removes a document under subsection (2)(d), the inspector may retain the document for as long as is necessary to determine whether the licence holder, the consent holder or the associate has complied with or is complying with —
- (a) this Act and the regulations; or
  - (b) the Registration Fees Act or regulations made under that Act; or
  - (c) the licence or consent conditions; or
  - (d) a direction under section 387 or 392.
- (5) Subject to subsection (6), the inspector must not retain the document for more than 60 days.
- (6) If —
- (a) proceedings for an offence against a provision of this Act or the regulations are commenced within that period of 60 days; and
  - (b) the document may afford evidence of the commission of the offence,

the inspector may retain the document until the proceedings are completed.



- (7) For the purposes of subsection (6) the proceedings for an offence are taken to include any appeal to a court in relation to those proceedings.
- (8) While an inspector is retaining the document under subsection (4), the inspector must allow a person to inspect the document if the person would have a right to inspect the document if it were not in the inspector's possession.

**379. Inspection of licence-related premises etc. without warrant**

- (1) Subject to subsections (2), (3) and (4), an inspector may, without a warrant, carry out a compliance inspection of —
  - (a) licence-related land; or
  - (b) a licence-related building, structure, vehicle, vessel or aircraft,if the inspection is reasonably necessary.
- (2) An inspection under subsection (1) must be made at a reasonable time.
- (3) An inspector may not enter premises under subsection (1) if —
  - (a) the premises are a residence; and
  - (b) the occupier has not consented to the entry.
- (4) An inspector may not carry out a compliance inspection under subsection (1) if —
  - (a) the person occupying or in charge of the land, building, structure, vehicle, vessel or aircraft concerned asks the inspector to produce the inspector's identity card for inspection by the person; and
  - (b) the inspector does not comply with the person's request.
- (5) For the purposes of this section, land or a building, structure, vehicle, vessel or aircraft is licence-related if —
  - (a) it is used in connection with activities carried out under a licence or special purpose consent; or

- (b) records about activities of that kind are kept there.

**380. Inspection of other premises etc. with occupier's consent**

An inspector may carry out a compliance inspection of land or a building, structure, vehicle, vessel or aircraft with the consent of the person who occupies or is in charge of the land, building, structure, vehicle, vessel or aircraft.

**381. Inspection of other premises etc. with warrant**

An inspector may carry out a compliance inspection in accordance with a warrant issued under section 382.

**382. Procedure for obtaining warrant**

- (1) An inspector may apply to a magistrate for a warrant to carry out a compliance inspection of land or of a building, structure, vehicle, vessel or aircraft.
- (2) The application must be supported by a statement on oath or affirmation that sets out the grounds on which the inspector is applying for the warrant.
- (3) If the magistrate is satisfied that the compliance inspection is reasonably necessary, the magistrate may issue a warrant to the inspector to carry out the inspection.
- (4) The warrant must state —
  - (a) the name of the inspector; and
  - (b) whether the inspection may be carried out at any time or only during specified hours of the day; and
  - (c) the day on which the warrant ceases to have effect; and
  - (d) the purposes for which the warrant is issued.
- (5) The day specified under subsection (4)(c) is not to be more than 7 days after the day on which the warrant is issued.
- (6) The purposes specified under subsection (4)(d) must include the identification of —

- (a) the land, building, structure, vehicle, vessel or aircraft to be inspected; and
- (b) any equipment that the inspector may test; and
- (c) any documents that the inspector may examine and copy; and
- (d) any cores or cuttings from the seabed or subsoil that the inspector may examine and take samples of.

**383. Further provisions as to exercise of powers under warrant**

- (1) If a warrant for a compliance inspection is issued to an inspector under section 382, the warrant authorises the inspector to carry out the inspection —
  - (a) with such assistance as is reasonable and necessary; and
  - (b) by such force as is reasonable and necessary.
- (2) An inspector may not carry out a compliance inspection under a warrant if —
  - (a) the person occupying or in charge of the land, building, structure, vehicle, vessel or aircraft concerned asks the inspector to produce the inspector's identity card for inspection by the person; and
  - (b) the inspector does not comply with the person's request.

**384. Occupier to cooperate with inspector**

If an inspector carries out a compliance inspection of land or of a building, structure, vehicle, vessel or aircraft under section 379 or 381, the person who occupies or is in charge of it must provide the inspector with the facilities and assistance that the inspector reasonably requires for carrying out the inspection.

Maximum penalty: \$5 000.

Division 2 — Directions

**385. Directions by Minister must be obeyed**

- (1) A person must comply with a direction under section 387 or 392.

Maximum penalty: \$10 000.

- (2) A person must comply with a supplementary direction given under section 391(2).

Maximum penalty: \$5 000.

**386. Scope of directions**

- (1) The Minister may give a direction under section 387 or 392 if it is necessary or convenient to do so to carry out or give effect to this Act or the regulations.

- (2) Without limiting subsection (1), directions may be given in relation to —

- (a) the control of offshore exploration or mining activities; and
- (b) the conservation and protection of the mineral resources in coastal waters; and
- (c) the remedying of —
  - (i) damage caused to the seabed or subsoil in coastal waters by offshore exploration or mining activities; or
  - (ii) damage caused by the escape of substances as a result of offshore exploration or mining activities;

and

- (d) the protection of the environment; and
- (e) the keeping of records and samples; and
- (f) the giving of records and samples to the Minister for inspection; and

(g) the making of returns.

Note: For "offshore exploration or mining activities" see section 5.

- (3) For the purposes of subsection (2), the control of offshore exploration or mining activities extends to the control of —
- (a) the construction, maintenance and operation of installations used in or for use in exploration or mining activities in coastal waters; and
  - (b) the flow or discharge of fluids arising from exploration or mining activities in coastal waters; and
  - (c) the safety, health and welfare of persons working in offshore exploration or mining activities; and
  - (d) the maintenance of structures, equipment and property used in or for use in offshore exploration or mining activities.

Note: For "offshore exploration or mining activities" see section 5.

**387. Minister may give directions**

- (1) Subject to subsections (2), (3) and (4), the Minister may direct a licence holder or special purpose consent holder to do or not to do the thing specified in the direction.
- (2) The direction must be in writing and is given by serving it on the holder.
- (3) The Minister must not give a direction of a permanent or standing nature except after consultation with the responsible Commonwealth Minister.
- (4) A failure to comply with subsection (3) does not affect the validity of the direction concerned.

**388. Direction may incorporate material in another document**

- (1) A direction under section 387 may apply, adopt or incorporate a code of practice or a standard that is contained in another document.

- (2) The application, adoption or incorporation of the other document may be made with or without modification.
- (3) The other document may be one issued outside Australia.
- (4) The direction may apply, adopt or modify the other document —
  - (a) as in force at the time when the direction is given; or
  - (b) as in force from time to time.
- (5) If a direction applies, adopts or incorporates material in another document, a copy of the document must be attached to the direction when it is given to the licence holder or special purpose consent holder.

**389. Direction may impose absolute prohibition**

Without limiting section 387 a direction under that section may —

- (a) prohibit absolutely the doing of a thing; or
- (b) prohibit the doing of a thing unless a person's consent or approval is obtained.

**390. Direction may extend to associates**

- (1) A direction under section 387 to a licence holder or special purpose consent holder may extend to an associate specified in the direction.
- (2) An associate may be specified by name or by class.
- (3) The direction may provide that only particular obligations specified in the direction extend to a particular associate.

**391. Holder to give notice of direction to associates**

- (1) If a direction under section 387 extends to an associate, the licence holder or special purpose consent holder must either —
  - (a) give a copy of the direction to the associate; or

- (b) display a copy of the direction at a place that the associate goes to in the course of carrying out activities under the licence or consent.

Maximum penalty: \$5 000.

- (2) The Minister may give the licence holder or special purpose consent holder a supplementary direction that specifies the manner in which, or the places at which, copies of a direction are to be displayed under subsection (1)(b).
- (3) A supplementary direction is to have effect as if it were part of the original direction.

**392. Power to give directions after licence etc. ends**

- (1) If a person is bound by an obligation because of section 131, 191, 266 or 314, the Minister may direct the person to do a thing or not to do a thing specified in the direction.
- (2) A direction may be given only for the following purposes —
  - (a) to ensure that the obligation is complied with;
  - (b) a purpose that is incidental to the purpose in paragraph (a).

Note: Sections 131, 191, 266 and 314 provide for undischarged obligations to continue to bind a former licence holder or associate after the licence ends.

- (3) A direction must be in writing and is given by serving it on the person bound by the obligation.

**393. Effect of directions on other instruments**

- (1) A later direction under section 387 or 392 overrides an earlier direction if they are inconsistent.
- (2) A direction has effect despite anything in —
  - (a) the regulations; or
  - (b) a licence condition that relates to safety or environmental matters.

**394. Minister may specify time for compliance**

- (1) If the Minister gives a direction under section 387 or 392 to a person, the Minister may —
  - (a) specify in the direction a time for compliance with the direction; or
  - (b) give the person a supplementary direction specifying a time for compliance with the direction.
- (2) A supplementary direction is to have effect as if it were part of the original direction.

**395. Minister may take action if holder fails to comply**

- (1) The Minister may do all or any of the things required by a direction under section 387 or 392 if —
  - (a) the time for compliance specified under section 394 has ended; and
  - (b) the person to whom the direction was given or to whom it extended has not complied with the direction.
- (2) If the direction required consultation under section 387(3), the Minister must not take action under subsection (1) without similar consultation.

**396. Costs incurred by Minister in taking action under section 395**

- (1) If —
  - (a) the Minister takes action under section 395 in relation to a direction under section 387 given to a licence holder or special purpose consent holder; and
  - (b) the direction does not extend to an associate of the holder,

the costs and expenses incurred by the Minister in taking that action are a debt due to the State by the holder.

- (2) If —



- (a) a direction under section 387 specifies that a particular associate of a licence holder or special purpose consent holder is subject to a particular obligation; and
- (b) the Minister takes action under section 395 in relation to that obligation,

the costs and expenses incurred by the Minister in taking that action are a debt due to the State by the holder and the associate.

- (3) The associate and the holder are jointly and severally liable to pay the debt arising under subsection (2).
- (4) A debt under this section is recoverable in a court of competent jurisdiction.

**397. Defences to actions to recover debts**

- (1) It is a defence to an action to recover the debt from the licence holder, special purpose consent holder or the associate if —
  - (a) the holder or associate produces evidence that the holder or associate took all reasonable steps to comply with the direction; and
  - (b) the evidence is not rebutted.
- (2) It is a defence to an action to recover the debt from the associate if —
  - (a) the associate produces evidence that the associate did not know of, and could not reasonably be expected to know of, the existence of the direction; and
  - (b) the evidence is not rebutted.

Division 3 — Securities

**398. Securities**

- (1) A person may be required to lodge a security with the Minister under —

- (a) section 399 (security as prerequisite for proper acceptance of provisional grant or provisional renewal); or
  - (b) section 118 (exploration licence conditions), 177 (retention licence conditions), 254 (mining licence conditions) or 304 (works licence conditions).
- (2) Securities are required as a way of ensuring compliance with this Act and with licence conditions.
- (3) Securities may only be used for the purposes laid down in section 400.

**399. Determination of requirement to lodge security**

- (1) The Minister may determine that a person who has been provisionally granted a licence must lodge a security with the Minister.

Note 1: The provisional holder will be given notice of the determination under section 66 or 83 (exploration licence), 147 (retention licence), 210 or 227 (mining licence) or 279 (works licence).

Note 2: If the provisional holder does not lodge the security within a particular time provided for in this Act, the provisional grant will lapse (see section 72 or 86 (exploration licence), 153 (retention licence), 216 or 230 (mining licence) or 285 (works licence)).

- (2) If the Minister provisionally renews a licence, the Minister may determine that the licence holder must lodge a security with the Minister.

Note 1: The licence holder will be given notice of the determination under section 110 (exploration licence), 169 (retention licence), 246 (mining licence) or 296 (works licence).

Note 2: If the holder does not lodge the security within a particular time provided for in this Act, the provisional renewal will lapse (see section 116 (exploration licence), 175 (retention licence), 252 (mining licence) or 302 (works licence)).

- (3) A determination under subsection (1) or (2) must specify —
- (a) the amount of the security required; and
  - (b) the kind of security required; and

- (c) the manner and form in which the security is to be lodged.
- (4) Without limiting subsections (1) and (2), a determination may require the lodgment of a security in the form of a guarantee and if a guarantee is required the determination may specify —
  - (a) the kind of person who is to give the guarantee; and
  - (b) the terms of the guarantee.
- (5) The determination is to be in writing.
- (6) If a person is provisionally granted a licence over a tender block, the amount determined as a security under subsection (1) is to be the amount of security referred to in the tender block licence notice.
- (7) This section does not limit the terms and conditions that may be included in a resolution referred to in section 38A(2).

Note: For the contents of a tender block licence notice see sections 75 and 219.

#### **400. Application of security**

- (1) If —
  - (a) a person is or was a licence holder; and
  - (b) the person has lodged a security with the Minister,the Minister may use the security to discharge the person's obligations arising from a failure to comply with —
  - (c) this Act or the regulations; or
  - (d) the licence conditions; or
  - (e) a direction under section 387 or 392.
- (2) Without limiting subsection (1), the holder's financial obligations include the obligation to pay a penalty imposed under the licence conditions.
- (3) Subject to subsection (1), the Minister is to deal with a security in accordance with the regulations.

Division 4 — Restoration of environment

**401. Removal of property from coastal waters**

- (1) The regulations may provide for —
- (a) the removal from coastal waters of property that —
    - (i) has been brought into coastal waters for use in offshore exploration or mining activities; and
    - (ii) is not being used and is not intended to be used in exploration or mining activities in accordance with a licence;
  - and
  - (b) the disposal by the Minister of property removed under regulations made for the purposes of paragraph (a); and
  - (c) the recovery of costs and expenses incurred by the Minister or another person in removing or disposing of property in accordance with regulations made for the purposes of paragraphs (a) and (b).

Note: For “offshore exploration or mining activities” see section 5.

- (2) Regulations made for the purposes of subsection (1)(a) may provide for removal by the Minister or by someone else.
- (3) Regulations made for the purposes of subsection (1)(c) may provide for the recovery of costs by way of deduction from the proceeds of the disposal.
- (4) Subject to the regulations, no action lies in respect of the removal or disposal of property in accordance with the regulations.
- (5) In this section —  
*property* includes a structure or equipment.

**402. Rehabilitation of damaged areas**

- (1) The regulations may provide for —

- (a) the rehabilitation of an area in coastal waters that has been damaged or affected by offshore exploration or mining activities of a licence holder; and
  - (b) the recovery of costs and expenses incurred by the Minister in rehabilitating an area under regulations made for the purposes of paragraph (a).
- (2) Regulations made for the purposes of subsection (1)(a) may provide for the rehabilitation to be carried out by the Minister or someone else.
- (3) Regulations made for the purposes of subsection (1)(b) may provide for the recovery of costs and expenses by way of deduction from the licence holder's security.

#### Division 5 — Safety zones

**403. Declaration of safety zone around a structure or equipment**

- (1) The Minister may, by order published in the *Gazette*, establish a safety zone around a structure or equipment in coastal waters.
- (2) A safety zone may only be established for the purpose of protecting the structure or equipment.
- (3) The safety zone may extend not more than 500 metres from the outer edge of the structure or equipment.
- (4) The order may apply to —
  - (a) all vessels; or
  - (b) all vessels except those specified in the order.

**404. Effect of declaration of safety zone**

- (1) If a safety zone is established by order under section 403, a vessel to which the order applies is not to enter or remain in the safety zone without the written consent of the Minister.

- (2) If a consent is given under subsection (1) on conditions, a vessel to which the consent applies is to enter or remain in the safety zone only in accordance with the conditions.
- (3) The owner of a vessel and the person in command or in charge of a vessel each commit a crime if the vessel enters or remains in a safety zone in contravention of subsection (1) or (2), and are liable to imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years or a fine of \$10 000 or both.

*[(4), (5) repealed]*

- (6) It is a defence to a prosecution of a person for an offence against subsection (3) if the person satisfies the court that —
  - (a) an unforeseen emergency made it necessary for the vessel to enter or remain in the safety zone to attempt to secure the safety of —
    - (i) a human life; or
    - (ii) the vessel; or
    - (iii) another vessel; or
    - (iv) a well, pipeline, structure or equipment;
  - or
  - (b) the vessel entered or remained in the safety zone in circumstances beyond the control of the person who was in command or in charge of the vessel (for example, adverse weather).
- (7) It is a defence to a prosecution of the owner of a vessel for an offence against subsection (3) if the owner satisfies the court that the owner —
  - (a) did not aid, abet, counsel or procure the vessel's entering or remaining in the safety zone; and
  - (b) was not in any way, directly or indirectly, knowingly concerned in, or party to, the vessel's entering or remaining in the safety zone.

*[Section 404 amended by No. 4 of 2004 s. 58.]*

**405. – 420. Section numbers not used**

See note 2 to section 3(1).

### **Part 4.3 — Inspectors**

#### **421. Appointment of inspectors**

- (1) The Minister may appoint a person who is a public service officer within the meaning of the *Public Sector Management Act 1994* to be an inspector for the purposes of this Act and the regulations.

Note: Inspectors have powers under sections 367, 368, 369, 370, 371, 378, 379, 380 and 381.

- (2) The appointment must be in writing.

#### **422. Identity cards**

- (1) The Minister must issue an inspector with an identity card.
- (2) The card must —
  - (a) contain a recent photograph of the inspector; and
  - (b) be in the form approved by the Minister.

#### **423. Return of identity card**

- (1) A person who stops being an inspector must, as soon as is practicable, return the person's identity card to the Minister or to an official specified by the Minister in a written notice given to the person.
- (2) A person must not contravene subsection (1) without reasonable excuse.

Maximum penalty: \$100.



## **Part 4.4 — Licence fees and royalty**

### Division 1 — Licence fees

#### **424. Definition**

In this Division —

*year*, in relation to the period when a licence is in force,  
means —

- (a) the period of 12 months commencing on (and including) the day on which the provisional grant of the licence is properly accepted; or
- (b) a period of 12 months commencing on (and including) an anniversary of that day; or
- (c) a period of less than 12 months that —
  - (i) commences on (and includes) —
    - (I) the day on which the provisional grant of the licence is properly accepted; or
    - (II) an anniversary of that day;
  - and
  - (ii) ends on the expiry of the licence.

#### **425. Licence fees**

- (1) A licence holder must pay a fee to the Minister for each year during which the licence is in force.
- (2) Subject to section 426, the amount of the fee for each kind of licence is to be as prescribed by the regulations for that kind of licence.
- (3) If the licence has 2 or more holders, the holders are jointly and severally liable to pay the fee.

#### **426. Limit on amount of fees**

- (1) The amount of the fee for an exploration licence for a year is not to exceed whichever is the greater of —

- (a) \$2 000; or
  - (b) the amount obtained by multiplying \$100 by the number of blocks covered by the licence at the beginning of the year.
- (2) The amount of the fee for a retention licence for a year is not to exceed the amount obtained by multiplying \$1 000 by the number of blocks covered by the licence at the beginning of the year.
- (3) The amount of the fee for a mining licence for a year is not to exceed the amount obtained by multiplying \$1 000 by the number of blocks covered by the licence at the beginning of the year.
- (4) The amount of the fee for a works licence for a year is not to exceed \$100 for each hectare or part of a hectare of the area specified in the licence under section 278(1)(c).

**427. Time for payment**

The fee for a year becomes payable one month after the day on which the year begins.

Division 2 — Royalty

**428. Definition**

In this Division —

***royalty period***, in relation to a mining licence, means —

- (a) the period from (and including) the day on which the licence takes effect to (and including) the next 30 June or 31 December whichever is the earlier; and
- (b) each period of 6 months after that period.

**429. Royalty**

A person who is or has been a mining licence holder must pay to the Minister a royalty for all minerals recovered by the holder under the licence.

**430. Rate of royalty**

- (1) Subject to this section, the Minister may, by instrument in writing, determine the rate of royalty payable for a mineral of a kind specified in the instrument.
- (2) Without limiting subsection (1), the rates of royalty determined under that subsection may include a rate that is related to the landed value, or to the quantity, of the mineral.
- (3) A rate of royalty determined under subsection (1) applies in relation to any mineral of the relevant kind recovered under a mining licence during the period when the rate is in force.
- (4) A determination of a rate of royalty under subsection (1) takes effect on the day on which the instrument of determination is published in the *Gazette*.

**431. Reduction of royalty in certain cases**

- (1) The Minister may determine a rate of royalty that is lower than the rate determined under section 430 for —
  - (a) a particular kind of mineral; or
  - (b) all minerals recovered under a particular mining licence.
- (2) A determination is to be made by instrument in writing and is to specify the period for which the lower rate is to be in force.
- (3) A determination may only be made under this section if the Minister is satisfied that recovery of the kind of mineral to which it applies would be uneconomic at the rate determined under section 430.

**432. Fixing of landed value**

For the purposes of this Division, the landed value of a mineral is —

- (a) an amount agreed between the mining licence holder and the Minister; or
- (b) if there is no agreement within such period as the Minister allows, an amount determined by the Minister by instrument in writing.

**433. Fixing of quantity**

For the purposes of this Division, the quantity of any mineral recovered by a mining licence holder during a royalty period is —

- (a) the quantity agreed between the holder and the Minister; or
- (b) if there is no agreement within such period as the Minister allows, the quantity determined by the Minister by instrument in writing.

**434. Time for payment**

Royalty for any mineral recovered during a royalty period is payable within one month after the last day of that royalty period.

**435. State to pay 40% of royalties to Commonwealth**

- (1) The State is to pay to the Commonwealth 40% of royalties received under this Division.
- (2) Payments under subsection (1) are to be made not later than the end of the month that follows the month in which the royalties were received.
- (3) In this section —  
*royalty* includes any penalty for late payment of royalty.

Division 3 — Penalties and recovery

**436.    Penalty if fee or royalty overdue**

- (1) Subject to this section, a licence holder must pay a penalty to the Minister in respect of any fee or amount of royalty that the holder fails to pay when it becomes payable.
- (2) The penalty is to be calculated —
  - (a) on the amount of the fee or royalty that remains unpaid; and
  - (b) at the rate of 0.33% for each day during which the fee or royalty is unpaid.
- (3) A penalty is not payable under subsection (1) on an amount of royalty in respect of any period until 7 days after —
  - (a) the landed value of the mineral has been agreed or determined under section 432, where the rate of royalty is related to the landed value of the mineral; or
  - (b) the quantity of the mineral has been agreed or determined under section 433, where the rate of royalty is related to the quantity of the mineral recovered.

**437.    Fees etc. recoverable as debts**

The State may recover the amount of any fee, royalty or penalty payable under this Part in a court of competent jurisdiction as a debt due to the State.

## Chapter 5 — Miscellaneous

### 438. State functions under Part 5.1 of Commonwealth Act

- (1) A State court may exercise any jurisdiction that is conferred on the court by the Commonwealth Act.
- (2) A State authority may perform any function that it is necessary for the authority to perform to give effect to Part 5.1 of the Commonwealth Act.
- (3) In this section —

*State authority* means —

- (a) the Governor in Executive Council;
- (b) a Minister of the Crown in right of the State;
- (c) a department of the Public Service of the State;
- (d) an agency, authority or instrumentality established under a written law of the State;
- (e) a person holding or exercising the powers of an office established under a written law of the State;
- (f) an officer or employee of —
  - (i) an agency, authority or instrumentality referred to in paragraph (d); or
  - (ii) a person referred to in paragraph (e);
- (g) an officer appointed, or a person employed, under any other written law of the State;
- (h) any other person or entity prescribed by the regulations to be a State authority for the purposes of this section;

*State court* means a court or other tribunal of the State.

### 439. Minister's approval required for certain transactions under *Land Administration Act 1997*

No Crown land that is in coastal waters is to be leased, transferred in fee simple, or otherwise disposed of, under the

*Land Administration Act 1997* without the approval of the Minister.

**440. Delegation by Minister**

- (1) The Minister may by signed instrument delegate to a person the performance of all or any of the functions of the Minister under —
- (a) this Act; or
  - (b) the Registration Fees Act; or
  - (c) regulations made under this Act.

Note: See also sections 58 and 59 of the *Interpretation Act 1984*.

- (2) A delegation under this section may be made to the person who holds, or performs the duties of, a specified office under the Commonwealth or the State.
- (3) If the Minister delegates the performance of a function under this section, the delegation continues in force despite —
- (a) a vacancy in the office of Minister; or
  - (b) a change in the identity of the holder of the office of Minister.
- (4) A copy of each instrument making, varying or revoking a delegation under this section must be published in the *Gazette*.

**441. False statements**

A person must not in connection with —

- (a) any application or request to the Minister; or
- (b) the lodgment of any document,

under this Act give any information or make any statement —

- (c) that the person knows to be false in a material particular; or

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- (d) that is false in a material particular and that the person does not believe to be true.

Penalty: \$10 000.

**442. Service of documents on licence holders etc.**

- (1) A document that is to be given to a licence holder may be given to the holder by posting it to the address that is the holder's registered address for service.

Note: See section 333 for registration of an address for service.

- (2) A document that is to be given to an applicant for a licence may be given to the applicant by posting it to the address that the applicant specified in the applicant's application for the licence.

**443. Regulations**

- (1) The Governor may make regulations prescribing all matters —
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for —
  - (a) the control of offshore exploration and mining activities; and
  - (b) procedures for giving notice to persons whose interests might be affected by the grant of a licence or special purpose consent; and
  - (c) the conservation and protection of the mineral resources of coastal waters; and



- (d) the remedying of—
  - (i) damage caused to the seabed or subsoil in coastal waters by offshore exploration and mining activities; or
  - (ii) damage caused by the escape of substances as a result of offshore exploration and mining activities;
- and
- (e) the protection of the environment; and
- (f) the keeping of records and samples; and
- (g) the giving of records and samples to the Minister for inspection; and
- (h) the making of returns; and
- (i) the imposition and recovery of fees for access to reports under section 376.

Note: For “offshore exploration or mining activities” see section 5.

- (3) For the purposes of subsection (2), the control of offshore exploration and mining activities extends to the control of—
  - (a) the construction, maintenance and operation of installations used in or for use in offshore exploration and mining activities; and
  - (b) the flow or discharge of fluids arising from offshore exploration and mining activities; and
  - (c) the safety, health and welfare of persons working in offshore exploration and mining activities; and
  - (d) the maintenance of structures, equipment and property used in or for use in offshore exploration and mining activities.

Note: For “offshore exploration or mining activities” see section 5.

- (4) For the purposes of subsection (2)(b), interests that might be affected by the grant of a licence include native title rights and interests that might be affected by the grant of the licence.

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- (5) Subject to section 124, the regulations may provide for offences against the regulations.
- (6) The penalties provided for offences against the regulations are not to exceed —
  - (a) a fine of \$1 000; or
  - (b) a fine of \$1 000 for each day on which the offence is taken to continue.
- (7) In this section —  
*control* includes restrict.

**444. Savings and transitional provisions**

Schedule 2 has effect.

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**Schedule 1 — Area in which coastal waters are situated**

[s. 16(1)]

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the States of South Australia and Western Australia and runs thence southerly along the geodesic to a point of Latitude 31° 45' South, Longitude 129° East, thence southerly along the meridian of Longitude 129° East to its intersection by the parallel of Latitude 44° South, thence westerly along that parallel to its intersection by the meridian of Longitude 110° East, thence northerly along that meridian to its intersection by the parallel of Latitude 17° South, thence north-easterly along the geodesic to a point of Latitude 12° 24' South, Longitude 121° 24' East, thence south-easterly along the geodesic to a point of Latitude 12° 56' South, Longitude 122° 06' East, thence south-easterly along the geodesic to a point of Latitude 13° 20' South, Longitude 122° 41' East, thence easterly along the geodesic to a point of Latitude 13° 19' 30" South, Longitude 123° 16' 45" East, thence easterly along the parallel of Latitude 13° 19' 30" South to its intersection by the meridian of Longitude 124° 27' 45" East, thence north-easterly along the geodesic to a point of Latitude 13° 13' 15" South, Longitude 124° 36' 15" East, thence north-easterly along the geodesic to a point of Latitude 12° 46' 15" South, Longitude 124° 55' 30" East, thence north-easterly along the geodesic to a point of Latitude 11° 51' South, Longitude 125° 27' 45" East, thence north-easterly along the geodesic to a point of Latitude 11° 44' 30" South, Longitude 125° 31' 30" East, thence north-easterly along the geodesic to a point of Latitude 10° 21' 30" South, Longitude 126° 10' 30" East, thence north-easterly along the geodesic to a point of Latitude 10° 13' South, Longitude 126° 26' 30" East, thence north-easterly along the geodesic to a point of Latitude 10° 05' South, Longitude 126° 47' 30" East, thence south-easterly along the geodesic to a point of Latitude 11° 13' 15" South, Longitude 127° 32' East, thence south-easterly along the geodesic to a point of Latitude 11° 48' South, Longitude 127° 53' 45" East, thence south-easterly along the geodesic to a point of Latitude 12° 26' 30" South, Longitude 128° 22' East, thence south-easterly along the geodesic to a point of Latitude 12° 32' 45" South, Longitude 128° 24' East, thence south-easterly along the geodesic to a point of Latitude 12° 55' 30" South, Longitude 128° 28' East, thence southerly along the meridian of Longitude 128° 28' East to its intersection by the parallel of Latitude 13° 15' 30" South, thence south-easterly along the geodesic to a point of Latitude 13° 39' 45" South, Longitude 128° 30' 45" East, thence south-easterly along the geodesic to a point of Latitude 13° 49' 45" South, Longitude 128° 33' 15" East, thence south-easterly along the geodesic to a point

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**Schedule 1** Area in which coastal waters are situated

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of Latitude 14° South, Longitude 128° 42' 15" East, thence south-easterly along the geodesic to a point of Latitude 14° 19' 30" South, Longitude 128° 53' East, thence south-easterly along the geodesic to a point of Latitude 14° 32' 30" South, Longitude 129° 01' 15" East, thence southerly along the geodesic to a point of Latitude 14° 37' 30" South, Longitude 129° 01' 45" East, thence southerly along the geodesic to the intersection of the coastline at mean low water by the boundary between the Northern Territory of Australia and the State of Western Australia, thence along the coastline of the State of Western Australia at mean low water to the point of commencement.

## **Schedule 2 — Savings and transitional provisions**

[s. 444]

### **1. Interpretation**

- (1) In this Schedule, unless the contrary intention appears —  
*Mining Act* means the *Mining Act 1978*;  
*commencement* means the day on which this Act comes into operation.
- (2) References in this Schedule to the limits of the State are to land and waters to which the Mining Act applies.

### **2. Existing exploration licences under Mining Act for coastal waters**

- (1) This clause applies to an exploration licence under the Mining Act that —
  - (a) is in force immediately before the commencement; and
  - (b) is applicable only to an area that is within the coastal waters.
- (2) This clause has effect despite any provision of the licence concerned.
- (3) On the commencement, an exploration licence to which this clause applies ceases to be governed by the Mining Act but has effect as if it were an exploration licence under this Act.
- (4) Despite subclause (3), the holder of such an exploration licence must continue, during the term of the licence, to comply with the provisions from time to time of regulations made under the Mining Act relating to expenditure conditions, as defined in section 8(1) of that Act, for exploration licences under that Act.
- (5) The conditions in force immediately before the commencement in respect of a licence to which this clause applies are to be treated, after the commencement, as if they were licence conditions specified under section 118 in the exploration licence under this Act referred to in subclause (3).
- (6) The term of an exploration licence under this Act referred to in subclause (3) that has been in force for more than 3 years but less than 4 years ends 4 years after the day on which it was granted, and may be renewed in accordance with section 89.

**cl. 3**

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- (7) The term of an exploration licence under this Act referred to in subclause (3) that has been in force for more than 4 years ends 5 years after the day on which it was granted, and may be renewed as follows —
- (a) for a term of one year after the day on which that 5 years ends;
  - (b) for a term of 2 years after the day on which that one year ends; and
  - (c) for a term of 2 years after the day on which that 2 years ends,
- but the day on which the term of 2 years referred to in paragraph (b) ends is not to be treated as a surrender day under section 104.
- (8) If, before the commencement, section 65(1)(a) of the Mining Act has not become applicable to an exploration licence to which this clause applies because the 3rd year of the term of the licence has not ended, the licence holder must on the day on which the 4th year of the term of the licence ends comply with section 104 as if that day were a surrender day under that section.
- (9) If an application under section 65(1a) of the Mining Act in respect of an exploration licence to which this clause applies —
- (a) has been made; but
  - (b) has not been determined by the Minister before the commencement,
- the application is to be determined under that section as if sections 4(2) and 8 of the *Offshore Minerals (Consequential Amendments) Act 2003* had not come into force.
- (10) If an application referred to in subclause (9) is refused, the holder of the exploration licence is to comply with section 104 not later than the day provided for by section 65(1b) of the Mining Act as if that day were a surrender day under section 104.

**3. Existing mining leases under Mining Act for coastal waters**

- (1) This clause applies to a mining lease under the Mining Act that —
- (a) is in force immediately before the commencement; and
  - (b) is applicable only to an area that is within the coastal waters.
- (2) This clause has effect despite any provision of the lease concerned.

- (3) On the commencement, a mining lease to which this clause applies ceases to be governed by the Mining Act but has effect as if it were a mining licence under this Act.
- (4) Despite subclause (3), the holder of such a mining licence must continue, during the term of the licence, to comply with the provisions from time to time of regulations made under the Mining Act relating to expenditure conditions, as defined in section 8(1) of that Act, for mining leases under that Act.
- (5) The conditions in force immediately before the commencement in respect of a mining lease to which this clause applies are to be treated, after the commencement, as if they were licence conditions specified under this Act in the mining licence referred to in subclause (3).
- (6) The term of a mining licence referred to in subclause (3) expires when the mining lease would have expired if it had not ceased to be governed by the Mining Act.

**4. Existing exploration licences under Mining Act that relate both to coastal waters and to other areas**

- (1) This clause applies to an exploration licence under the Mining Act that —
  - (a) is in force immediately before the commencement; and
  - (b) is applicable to an area that is partly within coastal waters and partly within the limits of the State.
- (2) On the commencement, an exploration licence to which this clause applies is to be treated as if it were separate licences in respect of —
  - (a) the part of the coastal waters to which it is applicable; and
  - (b) the part of land and waters within the limits of the State to which it is applicable.
- (3) The separate exploration licence created by subclause (2)(a) is to be treated for the purposes of this Schedule as one to which clause 2 applies.
- (4) Despite subclause (3) —
  - (a) a separate exploration licence created by subclause (2) is not to specify a condition that is inapplicable to the area to which the licence applies; and

**cl. 5**

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- (b) the person who holds the exploration licence that by operation of clause 2 represents the separate exploration licence created by subclause (2)(a) is not required, in respect of that licence —
  - (i) to pay licence fees (or prescribed rent referred to in clause 9(2)); or
  - (ii) to comply with the provisions referred to in clause 2(4),so long as the licence created by subclause (2)(b) is also held by that person.
- (5) The Minister must, on production under subclause (6) of a licence to which this clause applies —
  - (a) endorse on the licence, and enter in the register of mining tenements kept under the Mining Act, a memorial showing the effect of this Schedule on the licence; and
  - (b) issue a separate exploration licence for the coastal waters concerned.
- (6) The holder of a licence to which this clause applies must, at the request of the Minister, produce the licence to the Minister for the purposes of subclause (5).

**5. Existing mining leases under Mining Act that relate both to coastal waters and to other areas**

- (1) This clause applies to a mining lease under the Mining Act that —
  - (a) is in force immediately before the commencement; and
  - (b) is applicable to an area that is partly within coastal waters and partly within the limits of the State.
- (2) On the commencement, a mining lease to which this clause applies is to be treated as if it were separate mining leases in respect of —
  - (a) the part of the coastal waters to which it is applicable; and
  - (b) the part of land and waters within the limits of the State to which it is applicable.
- (3) The separate mining lease created by subclause (2)(a) is to be treated for the purposes of this Schedule as one to which clause 3 applies.
- (4) Despite subclause (3) —



- (a) a separate mining lease created by subclause (2) is not to specify a condition that is inapplicable to the area to which the lease applies; and
  - (b) the person who holds the mining licence that by operation of clause 3 represents the separate mining lease created by subclause (2)(a) is not required, in respect of that mining licence —
    - (i) to pay licence fees (or prescribed rent referred to in clause 9(2)); or
    - (ii) to comply with the provisions referred to in clause 3(4),so long as the separate mining lease created by subclause (2)(b) is also held by that person.
- (5) The Minister must, on production under subclause (6) of a mining lease to which this clause applies —
- (a) endorse on the lease and enter in the register of mining tenements kept under the Mining Act, a memorial showing the effect of this Schedule on the lease; and
  - (b) issue a separate mining licence for the coastal waters concerned.
- (6) The holder of a mining lease to which this clause applies must, at the request of the Minister, produce the lease to the Minister for the purposes of subclause (5).

## **6. Registration**

- (1) The Minister must, as soon as is practicable after the commencement, enter in the State Offshore Mining Register provided for by section 328 —
- (a) the particulars specified in section 333(1); and
  - (b) particulars of any instrument or document (including a caveat) registered under the Mining Act,
- in respect of each exploration licence and mining licence that comes under this Act by virtue of clause 2 or 3, including a licence to which clause 2 or 3 applies by operation of clause 4 or 5.
- (2) Section 333(2) to (7) apply for the purposes of registration under this clause.

**cl. 7**

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- (3) Section 88 does not apply to an exploration licence or a mining licence referred to in subclause (1).

**7. Document file**

The Minister must, as soon as is practicable after the commencement, establish a document file under Part 3.1 for each exploration licence and mining licence that comes under this Act by virtue of clause 2 or 3, including a licence to which clause 2 or 3 applies by operation of clause 4 or 5.

**8. Securities**

- (1) The Minister may in writing determine that a licensee is to lodge with the Minister a new security in respect of —
- (a) an exploration licence referred to in clause 4(3); and
  - (b) a mining licence that by operation of clause 3 represents the separate mining lease referred to in clause 5(3).
- (2) A determination under subclause (1) is to specify —
- (a) the amount of the security required;
  - (b) the kind of security required; and
  - (c) the manner and form in which and the time within which the security is to be lodged.
- (3) Sections 399(4) and 400 apply to a security lodged under this clause.

**9. Licence fees**

- (1) Despite clause 2 or 3, Part 4.4 does not apply to an exploration licence or a mining licence that comes under this Act by virtue of clause 2 or 3 (including a licence to which clause 2 or 3 applies by operation of clause 4 or 5) until the next anniversary, after the commencement, of the day on which the term of the licence began.
- (2) Until that anniversary the prescribed rent is payable under the Mining Act as if that Act continued to apply to the licence.

**10. Pending applications under Mining Act that relate only to coastal waters**

- (1) This clause applies to an application for an exploration licence or a mining lease under the Mining Act —

- (a) that has been made before the commencement and not withdrawn or finally disposed of by the grant or refusal of the licence or lease; and
  - (b) that relates only to an area that is within the coastal waters.
- (2) An application to which this clause applies is to continue to be governed by the Mining Act as if sections 4(2) and 8 of the *Offshore Minerals (Consequential Amendments) Act 2003* had not come into force.
- (3) If an application to which this clause applies results in the grant of an exploration licence or a mining lease under the Mining Act, the licence or lease, after it is granted, ceases to be governed by the Mining Act but has effect as if it were an exploration licence or mining licence under this Act, and the provisions of this Act apply accordingly.

**11. Pending applications under Mining Act that relate both to coastal waters and other areas**

- (1) This clause applies to an application for an exploration licence or a mining lease under the Mining Act —
  - (a) that has been made before the commencement and not withdrawn or finally disposed of by the grant or refusal of the licence or lease; and
  - (b) that relates to an area that is partly within the coastal waters and partly within the limits of the State.
- (2) An application to which this clause applies is to continue to be governed by the Mining Act as if sections 4(2) and 8 of the *Offshore Minerals (Consequential Amendments) Act 2003* had not come into force.
- (3) If an application to which this clause applies results in the grant of an exploration licence or a mining lease under the Mining Act, the licence or lease is to be treated as if it were a separate licence or lease in respect of —
  - (a) the part of the coastal waters to which it is applicable; and
  - (b) the part of land and waters within the limits of the State to which it is applicable.

**cl. 12**

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- (4) A separate exploration licence created by subclause (3)(a), after it is granted, ceases to be governed by the Mining Act but has effect as if it were an exploration licence under this Act, and the provisions of this Act apply accordingly.
- (5) A separate mining lease created by subclause (3)(a), after it is granted, ceases to be governed by the Mining Act but has effect as if it were a mining licence under this Act, and the provisions of this Act apply accordingly.

**12. Powers in relation to transitional provisions**

- (1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the transition from the Mining Act to this Act the Governor may make that provision by order published in the *Gazette*.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of the provisions of this Schedule the Governor may by order published in the *Gazette*—
  - (a) modify those provisions to remove the anomaly; and
  - (b) make such provision as is necessary or expedient to carry out the intention of those provisions.
- (3) An order under this clause may be made so as to have effect from the commencement.
- (4) To the extent that a provision of an order published under this clause after the commencement has effect from the commencement, the provision does not operate so as —
  - (a) to affect, in a manner prejudicial to any person (other than the State) the rights of that person existing before the day of its publication; or
  - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.
- (5) The Minister must cause an order under this clause to be laid before each House of Parliament within 6 sitting days of that House after its publication in the *Gazette*

## Notes

- <sup>1</sup> This is a compilation of the *Offshore Minerals Act 2003* and includes the amendments made by the other written laws referred to in the following table.

## Compilation table

Short title	Number and year	Assent	Commencement
<i>Offshore Minerals Act 2003</i>	10 of 2003	17 Apr 2003	1 Jan 2011 (see s. 2 and <i>Gazette</i> 17 Dec 2010 p. 6350)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Duties Legislation Amendment Act 2008</i> Sch. 1 cl. 25	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))