

OFFSHORE MINERALS BILL 2001

COMMITTEE

CLAUSE BY CLAUSE NOTES

General Outline

This Bill mirrors the Commonwealth Offshore Minerals Act 1994. It provides the legal framework to be administered by this State for the exploration for, and the production of, minerals other than petroleum within that part of the continental shelf within the 3 nautical mile limit from the territorial sea baseline for the State of Western Australia.

The Bill is a consequence of an agreement between the Commonwealth and State Governments, the Offshore Constitutional Settlement, which provides that Commonwealth legislation alone applies to the mineral resources of that area of Australia's continental shelf beyond the 3 nautical mile limit and the States and the Northern Territory have jurisdiction within the 3 nautical mile limit - known as “*coastal waters*”.

The notes on clauses merely identify the subject matter without paraphrasing the clauses because the wording in the Bill is simple and it is not necessary to explain the clauses in any plainer language.

However, where a clause requires additional explanation, the explanatory note on that clause goes into the necessary detail.

CHAPTER 1 - INTRODUCTION

This covers the usual legislative formalities, the constitutional and political background, the basic principles and concepts flowing from the Offshore Constitutional Settlement.

Part 1.1 - Legislative Formalities and Background

Clause 1 - Short title

The title of the Act is *Offshore Minerals Act 2001*. The Commonwealth Act is called the Offshore Minerals Act 1994.

Clause 2 - Commencement

The Bill comes into effect on a day fixed by a gazetted proclamation.

Clause 3 - Commonwealth-State agreement (the Offshore Constitutional Settlement)

Outlines the main principles of the Offshore Constitutional Settlement by which the States share in the administration of the Commonwealth Act and under which a common mining code will be maintained in the offshore area. The clause also details those Acts which either gave rise to, or flow from the Offshore Constitutional Settlement.

“*Note 2*” explains that some sections of the Commonwealth Act contain provisions which are not relevant to this Bill. Throughout the Bill some clause numbers are not used to maintain uniformity with the Commonwealth Act.

PART 1.2 - Interpretation

Division 1 - General

Clause 4 - Notes in the text

Many of the provisions of this Bill are accompanied by explanatory notes. These notes may explain further the purpose of the particular provision or they may draw attention to another provision which may be relevant to the substance of the original provision. This clause provides that the notes and diagrams which may be included in a clause may assist the understanding but do not form part of that clause.

Clause 5 - Interpretation

Contains the definition of terms referred to in the Bill.

Clause 6 - Shares in a licence

The intention here is to make transparent the shareholders in a licence. It ensures that where a licence has a number of holders it does not automatically mean that all have equal shares, but rather only those percentages that are specified in the Register.

Clause 7 - Transfer of a licence

This makes transparent that when all or any of the percentages of the interest in a licence changes, a transfer of a licence or share in a licence has occurred.

Clause 8 - Successor licences

This provision makes it clear that if a holder of an exploration licence applies for and is granted a retention licence or a mining licence, these latter licences over the same area are defined as *successor licences* to the exploration licence. It also allows for a mining licence to succeed a retention licence which previously succeeded an exploration licence. The intention is that over the life of an offshore minerals project the previous rights of the project owner are, in certain circumstances, continued in the successor licences.

Clause 9 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 10 - Position on the Earth's surface

From time to time it will be necessary to determine various positions upon the continental shelf, for example the position of a particular boundary of a title area. This clause provides for a standard reference point on the Earth's surface to be calculated and prescribed by regulation. Having the prescription of the point in the regulations will enable the description to be readily changed should there be a change in the system used or the datum shifts.

A new geocentric datum for Australia (GDA 94) was adopted in Western Australia in December 2000, which will be incorporated in the regulations.

Subclause (3) provides that any savings and transitional provisions to protect existing titles and applications which may be necessary as a result of any change to the Australian datum may also be prescribed in the regulations.

Clause 11 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 12 - Power to vary and revoke instruments

This ensures that where an instrument issued under this Act is varied in any way, the variation is carried out according to the same procedures and under the same conditions by which the original instrument was issued. The intention is to ensure that there is consistency in the administration of this Act.

Division 2 - Basic concepts

This Division describes the basic concepts under which the administration of this Act will operate. As some of these concepts are sophisticated and difficult to understand, diagrams have been used in order to express these concepts more clearly in a pictorial form.

Clauses 13 to 15 - (Numbers not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 16 - Coastal waters, and effect of change in baseline

“*Coastal waters*” of the State is defined as the first 3 nautical miles of the territorial sea from the baseline - this is the area subject to this Bill. The “*baseline*” is described as effectively being the lowest astronomical tide along the coast, but varies where bays and

other indentations occur. This clause explains the effect on a licence issued under this Bill where there is a change in the baseline:

- If the baseline moves landward and causes a licence to no longer be within coastal waters, the Bill will still apply to the licence as if it was still within coastal waters.
- If the baseline moves seaward and causes a licence issued under the Commonwealth Act to move within coastal waters (covered by this Bill), that licence is not affected by this Bill.

Once a licence (or any successor licence by the same holder) affected by a change in the baseline is no longer in force, the new position of the baseline applies to subsequent licence applications.

Subclause (7) makes reference to a new section in the WA Mining Act 1978 which has the same effect, i.e. if a shift in the baseline towards the land causes a tenement covered by the jurisdiction of the WA Mining Act to then encroach upon coastal waters, the tenement remains within the jurisdiction of the WA Mining Act.

Clause 17 - Blocks

This clause provides that for the purposes of this Bill the offshore area is divided into blocks bounded by one minute of latitude and one minute of longitude. This concept is illustrated by an accompanying diagram. In Australia's offshore areas this results in blocks of about 3.39 sq km at latitude 10^o south, reducing to about 2.64 sq km at latitude 40^o south.

Clause 18 - Reserved block

This provision allows the Minister to withdraw a block entirely from the operation of this Bill, provided the block is not the subject of an existing licence or an application for a licence. The intention is to allow blocks to be reserved for conservation purposes, environmental reasons or any other reason.

Clause 19 - Standard block

This clause defines a standard block as one that is not reserved and is available for any one to apply for either an exploration or a mining licence.

Clause 20 - Tender block

This clause defines a tender block as a reserved block which is made available for an exploration or a mining licence by way of a public invitation to apply for the licence.

Clause 21 - Discrete area

This clause defines a discrete area as a group of blocks where all the blocks join each other at least on one side.

Clause 22 - Minerals

This clause adopts an all embracing descriptive definition of minerals to include all naturally occurring substances or any mixture of them, except petroleum.

Subclause (2) specifically mentions sand, gravel, clay, limestone, rock, evaporites, shale, oil-shale and coal as being minerals. Under the WA Mining Act 1978 these substances are not classified as minerals as, in onshore areas, the extraction of some of these substances are subject to local government rather than State administration. Local government jurisdiction is not relevant to this Bill.

Clause 23 - Exploration

This clause adopts a broad definition of exploration to include any operation directly related to exploration. However, mining activities carried out by means of tunnels driven under the sea from dry land above the low water mark will be covered by the WA Mining Act 1978 and not by the provisions of this legislation.

Clause 24 - Recovery

This clause adopts a broad definition of recovery. It excludes mining by undersea tunnels originating from dry land above the low water mark from the provisions of this Bill.

Clause 25 - Licence holder

This clause defines a licence holder as one whose name appears in the Register.

Clause 26 - Associates

This clause defines “associates” in order to make a distinction between them and the licence holder. Associates may do all the work necessary for the exploration and mining of minerals under agreements with licence holders or other associates. Associates may be contractors, sub-contractors, agents or employees.

Clause 27 - Confidential information

This clause ensures that any information provided to the Minister by the licence holder remains confidential so long as it relates to only those blocks covered by the licence and for so long as that licence or a successor licence remains in force.

Clause 28 - Confidential sample

This ensures that any material recovered as a sample which is provided by the licence holder to the Minister remains confidential so long as it relates to only those blocks covered by the licence and for so long as that licence or a successor licence remains in force.

Part 1.3 - Administration of the Commonwealth-State offshore area

Clause 29 - Definitions

Where “associated revenue Act” and “Commonwealth-State offshore area” are referred to in this Part they have the same meaning as in the Commonwealth Act.

Clause 30 - Minister as member of Joint Authority, or as Designated Authority

This clause provides for the Minister to perform duties under the Commonwealth Act, which applies beyond the 3 nautical mile limit.

Clause 31 - State officer acting under delegation

Similarly, this clause provides for an officer with delegated authority under the Commonwealth Act to perform those duties under that Act

Clauses 32 to 34 - (Numbers not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Part 1.4 - Application of this Act

Clause 35 - Act does not apply to exploration for or recovery of petroleum

This provision supports clause 22 in that petroleum is not covered by this Act.

Clause 36 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 37 - Act applies to all individuals and corporations

This clause makes this Bill applicable to all natural persons whether or not they are Australian citizens or residents, and to all corporations whether or not they are incorporated or carrying out business in Australia or its territories.

CHAPTER 2 - REGULATION OF OFFSHORE EXPLORATION AND MINING

This Chapter contains the actual mining code itself which governs the application for and grant of all licences and consents, and their renewals, duration, termination and operation.

The *exploration licence* is the first stage title issued under the Bill and confers exclusive rights to explore for minerals in the licence area. This may be followed by a *retention licence* and a *mining licence*.

It should be noted however, that although only the holder of an exploration licence can apply for successor licences over the same area, the Bill does not confer any automatic right to the succeeding licences. In addition to the three main licences there are two other legal instruments, namely the *Works Licence* and the *Special Purpose Consent*. These two instruments are outside the sequence of the three main licences and are issued for specific purposes. The activities of all five licences and consents are outlined in detail later on.

Part 2.1 - General

Clause 38 - General prohibition on exploration and mining without appropriate authorisation

This clause provides for the rationale for this legislation and for the basic control over all offshore minerals activities. It provides that all offshore mineral activity is prohibited unless authorised according to the provisions of this Bill.

Clause 38A - Exploration and mining in marine reserves and fish habitat protection areas

Amendments have been made to the Conservation and Land Management Act 1984 which introduce marine nature reserves, marine parks and marine management areas. This clause provides for mining and exploration activities to be conducted within these areas under the same system as is provided for in the onshore Mining Act 1978, viz:

- the concurrence of the Minister for the Environment and the recommendations of the Ministers for Fisheries and Transport are required before the Minister for Mines may consent to exploration activities within marine nature reserves or marine parks;
- the recommendations of these three ministers are required for operations within marine management areas;

- before a mining licence is granted within a marine nature reserve or marine park the consent of both Houses of Parliament is required; and
- no ground disturbing activities are allowed within a marine nature reserve or any designated restricted area within a marine park.

In respect to a fish habitat protection area, **subclauses (9) and (10)** provide for the recommendations of the Ministers for Fisheries and Transport to be obtained before the Minister for Mines may consent to exploration or mining activities may occur.

Clause 39 - Licences and consents available under this Act

This outlines the five licences and consents which may be granted, their respective purposes and the sequence in which they may be used. The five licences and consents are:

- (a) exploration licence
- (b) retention licence
- (c) mining licence
- (d) works licence
- (e) special purpose consent.

Clause 40 - Steps involved in the grant of a fully effective licence

This outlines the steps that must be taken before a licence becomes fully effective.

Clause 41 - Approval of form and manner of applications etc.

This clause allows the Minister to determine the form and manner in which an application for a licence and any associated documents, such as maps, are to be made and lodged.

Clause 42 - Rights to minerals recovered

This is one of the fundamental clauses in the legislation. It provides that minerals authorised by and recovered under a licence (but not a works licence) are the property of the licence holder.

Clause 43 - Effect of grant of licence or consent on native title

The clause makes it clear that while a licence or consent does not extinguish any native title, the native title rights in the area will be subject to the rights conferred on the holder of a licence or consent. Subject to clause 44, the subordination of native title rights during the life of a licence is consistent with the subordination of any other rights other interested parties may have in the licence area.

Subclause (3) provides that, if compensation under the Native Title Act becomes payable, the person who applied for grant of the licence or consent or the holder is liable to pay the compensation, depending on when compensation is determined. Under subclause (4), if compensation is determined after a licence dies, the last holder of the licence would be liable for any compensation ordered.

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

Licence holder must respect and not interfere with the rights of other persons who may be lawfully in the area including any native title rights and interests.

Part 2.2 - Exploration Licences

Division 1- General

Clause 45 - Exploration licences

This provides that an exploration licence may be granted for blocks that are open for exploration or blocks that have been previously reserved and which have been released for tender.

Clause 46 - Activities authorised by an exploration licence

This outlines in clear terms what a licence holder can, or can not, do under a licence. The licence authorises its holder (subject to compliance conditions and all other legal requirements) to explore the licence area for all minerals except those specifically excluded or for minerals specified in the licence. It also allows the licence holder to recover samples and carry out associated activities.

Clause 47 - Minister may cancel or not renew exploration licence without compensation

A licence can only be cancelled for either a breach of a condition of the licence, a provision of this Act or Regulations or a condition attached to the transfer of a licence.

Clause 48 - Licence rights may be suspended

This provides that any rights conferred by an exploration licence may be suspended in the public interest. It also provides the procedures the Minister must follow if the Minister decides to suspend the licence. They may be later restored and the licence holder must be informed of both events in writing.

Clause 49 - Compensation for acquisition of property due to suspension of rights

This provides that compensation must be paid to a licence holder if property is acquired as a result of suspension of exploration licence rights.

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

All offshore areas that are not already under title are available to anybody who may wish to lodge an application for an exploration licence. This Bill makes a distinction between the application for and the grant of exploration licences for:

- a) a standard block that is openly available, and
- b) for reserved blocks that have been released for tender.

Clause 50 - Application for exploration licence over standard block

This provides that a person may apply for an exploration licence to cover one or more vacant blocks providing they form one discrete area up to a maximum size of 500 blocks.

Clause 51 - Excluded blocks

This provision outlines the various circumstances under which a block can be excluded from being available for an application for an exploration licence. The intention is to allow the Minister the opportunity to reserve a newly vacant block, for whatever reason, if thought necessary.

It is also designed to prevent previous licence holders of, or applicants for those blocks from immediately re-applying for them again so as to give other interested parties the opportunity to apply for them.

Clause 52 - Minister may determine that excluded block is available

This allows a person to apply to the Minister for a determination to enable him or her to apply for an exploration licence over an area covered by an excluded block.

Clause 53 - Minister may allow application for more than one discrete area

This provision allows a person to apply for and the Minister to consider an exploration licence application covering more than one discrete area. It is possible that some applications lodged around the same period may be for over-lapping areas.

This provision gives the Minister the discretion to grant an exploration licence to cover up to three discrete areas, if the severance of the area is caused by a grant of a prior application.

Clause 54 - How to apply

This provision outlines to whom and the manner in which an application for an exploration licence is to be made, as well as the details to be included in the application.

Clause 55 - Effect of inclusion of unavailable block in application

This provides that an application for an exploration licence is not invalid if it includes a block which is not available. This provision allows the application to be considered in relation to those remaining blocks that are available.

Clause 56 - Payment of fee

The licence application fee is prescribed by regulations and is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of the fee is to recover the administrative costs of processing applications wherever possible.

Clause 57 - Application must be advertised

Applicants must advertise the details of their application for an exploration licence in the print media and invite comments on the application which should be lodged with the Minister within 30 days.

Clause 58 - How multiple applications are dealt with

The purpose of this clause is to ensure that as a general rule all exploration licence applications will be considered on a "first come, first considered" basis. The exception to this rule will be where applications for substantially the same area have been received close together in time. On such occasions ballots will be used to determine the priority as to which application will be considered first.

The conduct of such ballots and the rules for determining what constitutes close together in time will be specified in regulations.

Clause 59 - Discussions about blocks applied for

This provision allows the Minister to discuss the shape of the total area comprising a number of blocks sought by an applicant for an exploration licence. Following the discussion the Minister, with agreement of the applicant, may change the shape of the area in the application. The purpose is to prevent an applicant from encircling or closing off small pockets so as to make it difficult or uneconomic for another applicant to explore such areas.

Clause 60 - Advertising revised application

Its purpose and contents are similar to clause 57. Applicants must advertise the details of their revised application.

Clause 61 - Request for further information

This clause empowers the Minister to request any further information about the licence application. The information in the application may be deficient in some aspects or may require further elaboration.

Clause 62 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 63 - Minister may provisionally grant licence

This clause enables the Minister to grant a provisional exploration licence which becomes final upon the applicant paying the prescribed rental fee and accepting other certain conditions.

Clause 64 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 65 - Matters to be specified in the licence

This requires that the exploration licence to specify the area, the terms and conditions of the licence.

Clause 66 - Applicant must be notified

This provision requires the successful applicant to be given the licence which contains the terms and conditions of the provisional grant and a notice of any security deposit and any fees due. The provisional licence will lapse if the applicant does not confirm that it wishes the provisional grant to be made final and if it does not pay the security and all fees associated with the licence.

Clause 67 - Amendment of conditions

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant of an exploration licence, an amendment to a condition of the provisional licence and the Minister may amend that condition or any other condition of the licence.

Clause 68 - Amendment of security requirements

This allows the provisional licence holder to request within 30 days of receiving a written notice of a provisional grant of an exploration licence, an amendment of the security requirement and the Minister may amend the security requirement.

Clause 69 - Extension of primary payment period

This provides for the payment of fees and the confirmation of grant to be deferred to allow time for any conditions or the level of security to be amended if thought necessary.

Clause 70 - Acceptance of grant of exploration licence for standard block

This is the final formal step (subject to registration) in the grant of an exploration licence. The grant becomes final upon the applicant paying the required fees, security and confirming in writing acceptance of the grant.

If the confirmation of the grant is made after any amendments to the conditions or security requirements during the payment extension period, the date of the confirmed grant remains the date of the original conditional grant. This means that when discussions are held on possible amendments to the conditions or security requirements, the "clock still ticks away" so as to provide an incentive to the provisional licence holder to conclude discussions as soon as possible.

Clause 71 - Conditions applicable to licence on grant

This ensures that the conditions specified in the licence become legally binding on the licence holder.

Clause 72 - Lapse of provisional grant of exploration licence

A provisional grant of an exploration licence lapses if acceptance and payment of relevant fees and securities are not made within 30 days or, if an extension is granted, within this extended period.

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

The Minister may decide to reserve an area for a number of reasons. One reason could be that the Minister knows that an area is prospective for minerals and has some measurable monetary value. In such circumstances the Minister may decide to reserve an area and release it at a later date for tender.

This Division outlines the procedures to be followed in respect of exploration licences applications for reserved blocks that have been released and made available for application by way of the tender process.

Clause 73 - Matters to be determined before applications for exploration licence over tender blocks invited

It is intended to ensure that the potential applicants are made aware of the "ground rules" under which the tender process will be conducted. It requires the Minister to determine the amount of security that will be required to be lodged, the conditions of the licence and the procedures that it will adopt in allocating the licence. This provision will allow the Minister to determine whether the licence will be allocated on the basis of program bidding or cash bidding

Clause 74 - Minister may invite applications for exploration licence over tender blocks

In Division 2 the initiative for making an application over a standard block lies with the applicant for a vacant area and at a time of the applicant's own choosing. Under this clause the initiative lies with the Minister who invites applications to be lodged within a specified time frame for a reserved area which has been released for exploration by way of tender.

Clause 75 - Tender block licence notice - exploration licence

The Minister must publicly specify the criteria the applicants will need to meet and the procedures the Minister will use in selecting the successful applicant. It also limits the size of an exploration licence to 500 blocks. The intention is to ensure that the potential applicants are made aware of the conditions and procedures against which their applications will be assessed.

Clause 76 - Application for licence over tender blocks

This provides that a person may apply for an exploration licence according to the public notice of invitation.

Clause 77 - How to apply

This is a procedural provision. It outlines to whom and the manner in which an application for an exploration licence is to be made, as well as the details to be included in the application.

Clause 78 - Payment of fee

This allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 79 - Request for further information

This provision allows the Minister to request further information in relation to the application which may be thought necessary to assist in the consideration of the application.

Clause 80 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 81 - Minister may provisionally grant licence

The Minister may grant a provisional exploration licence subject to the procedures as advertised in the public tender notice being observed.

Clause 82 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 83 - Successful applicant must be notified

It requires the successful applicant to be advised in writing of the terms and conditions of the provisional grant of the exploration licence which will expire if they are not met.

Clause 84 - Acceptance of grant of exploration licence over tender blocks

This is the final formal step in the grant of an exploration licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, security and confirming in writing acceptance of the grant.

Clause 85 - Conditions applicable to licence on grant

This ensures that the conditions specified in the licence become legally binding on the licence holder.

Clause 86 - Lapse of provisional grant of exploration licence

This provides that a provisional grant of an exploration licence lapses if it is not properly accepted.

Clause 87 - Provisional grant to next applicant if grant lapses

This is a new provision. If there is more than one application as a result of the tender process this allows the Minister to provisionally grant an exploration licence to the next best applicant should the first chosen licence holder allow its provisional licence to lapse.

Division 4 - Duration of Exploration Licence

This Division covers the term of an exploration licence which will only be valid for a strictly limited period. An exploration licence may be renewed, extended, suspended or cancelled by the Minister. The combined effect of these provisions allows the Minister to police the activities of the licence holder to ensure that all obligations associated with the licence are met.

Clause 88 - Initial term of exploration licence

The term of an exploration licence is four years. The date of the provisional grant is when the licence commences and it is this date that determines the expiry date, however the licence does not come into effect until it is registered.

The time difference, in normal circumstances, will be approximately one month during which time the provisional licence holder can decide whether to accept the provisional grant and pay the required fees and level of security. The period could be longer if the provisional licence holder wishes to negotiate any changes to the conditions of the licence.

Clause 89 - Term of renewal of exploration licence

The term of a renewal is two years, and the maximum number of renewals is three. This clause, taken together with clause 88, ensures that the maximum period of an exploration licence is ten years.

Clause 90 - Effect of suspension of rights on term of exploration licence

This provision empowers the Minister to extend the term of an exploration licence by the same period as licence rights have been suspended. The intension is to ensure that the licence holder is not penalised by the suspension and is able to carry out the exploration program within the same period of time once the licence rights have been restored.

Clause 91 - Effect of application for renewal on term of exploration licence

This provision allows an exploration licence to continue in force until the Minister either grants or refuses a renewal.

Clause 92 - Effect of application for retention licence or mining licence on term of exploration licence

This provision allows an exploration licence to continue until the minister grants or refuses a retention licence or a mining licence applied for by way of conversion.

Clause 93 - Effect of application for extension on term of licence

This allows an existing exploration licence to remain in force beyond its due expiry date so that any application for an extension can be considered by the Minister.

Clause 94 - Extension of licence - activities disrupted

This covers the situation where an exploration licence holder has not been able to complete its exploration program during the maximum time allowed because of circumstances beyond the licence holder's control. In this situation the licence holder can ask for extra time to compensate for the time lost and thus complete the original exploration program.

Clause 95 - Grant of licence extension - activities disrupted

This provision makes it mandatory for the Minister to extend the licence term if the Minister is satisfied that the unforeseen circumstances did affect the exploration program. The Minister may attach conditions to the extension and there are restrictions on the term of the extension.

Clause 96 - Extension of licence - other circumstances

This allows a licence holder to request a licence extension in circumstances other than those outlined in clause 94, that is for circumstances other than those beyond its control such as suspension of licence or exemptions from licence conditions.

Clause 97 - Grant of licence extension - other circumstances

This empowers the minister to grant a licence extension and to impose whatever conditions it thinks appropriate. This is considered necessary as the circumstances may indicate that the licence holder may need to comply with additional conditions.

Clause 98 - Notification of decision

This clause provides that the applicant is to be advised in writing of the grant or refusal of extension, and of any conditions that may be attached to it.

Division 5 - Voluntary surrender of part of exploration licence area

The clauses in this Division are intended to cover the situation where a licence holder wishes to surrender part of the area covered by the exploration licence. One possible reason could be that the licence holder, as a result of the exploration program, realises that part of the area concerned is not prospective for minerals.

Clause 99 - Voluntary surrender of blocks if discrete area remains

This provision allows a licence holder to voluntarily surrender some of the area covered by a licence if the remaining portion forms a discrete area. Under this clause the notification constitutes surrender.

Clause 100 - Voluntary surrender of blocks if up to 3 discrete area remain

This clause requires the consent of the Minister before a licence holder can surrender blocks leaving two or three discrete areas. This allows the Minister the opportunity to examine the proposed surrender so as to avoid undue fragmentation of the remaining title area. If the Minister does not agree, then consultations can proceed to decide on the final shape of the areas to be surrendered. In the event of agreement the applicant is advised in writing.

Division 6 - Application for and grant of renewal of exploration licence

The clauses in this Division cover the procedures for the processing of applications for renewal of an exploration licence. In many respects they are similar to the procedural type clauses in Division 2 covering the application and grant of an exploration licence.

Clause 101 - Application for renewal of exploration licence

This allows for an exploration licence holder to lodge an application to renew the licence.

Clause 102 - When application is to be made

This specifies that an application to renew an exploration licence must be made at least 30 days before the licence expires. It also allows the Minister discretion to accept a later application if the circumstances warrant it.

Clause 103 - How to apply for renewal

This is a procedural provision which outlines to whom and the manner in which an application for an exploration licence is to be made, as well as the details to be included in the application.

Clause 104 - Mandatory reduction of licence area on renewal of exploration licence

This clause provides that the licence area must be reduced by 50% for each renewal. If a renewal is sought for more than one discrete area then the application must not exceed 3 discrete areas. This is to avoid undue fragmentation of the licence area. The clause also gives the minister the discretion to reduce the mandatory reduction in the licence area by less than 50% if it thinks that circumstances warrant it. The flexibility provided by this clause will allow the Minister to treat special cases on their merits.

Clause 105 - Request for further information

This provision empowers the Minister to request any further information about the licence renewal application which may be thought necessary to assist in the consideration of the renewal application.

Clause 106 - Payment of Fee

This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 107 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 108 - Provisional renewal of an exploration licence

This provision sets out the circumstances under which the Minister must provisionally renew an exploration licence.

Clause 109 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 110 - Applicant must be notified

This provision sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant.

Clause 111 - Amendment of conditions

This allows the provisional licence holder to request within 30 days, of receiving a written notice of a provisional grant, an amendment of the conditions. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 112 - Amendment of security requirements

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment of any security requirements. It also provides that the Minister may amend the security requirements and confirm this to the licence holder in writing.

Clause 113 - Extension of primary payment period

This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended if thought necessary.

Clause 114 - Acceptance of renewal of exploration licence

This is the final formal step in the grant of a renewal of an exploration licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees, security and confirming in writing the acceptance of the grant.

Clause 115 - Conditions applicable to licence on renewal

This ensures that the conditions of the licence become legally binding on the licence holder.

Clause 116 - Lapse of provisional renewal of exploration licence

A provisional grant of a renewal of an exploration licence lapses if it is not properly accepted.

Division 7 - Obligations associated with exploration licences

Clause 117 - General

This clause outlines the sources of the obligations associated with an exploration licence. In addition, the clause provides that where there is more than one shareholder in an exploration licence, each shareholder will be held 100% responsible for all obligations of the licence in the event of failure by any one of them to meet their obligations.

Clause 118 - Conditions of exploration licence

Under this clause an exploration licence may be granted subject to such conditions as the Minister thinks fit.

Clause 119 - No conditions requiring payment of money

Apart from the payment of a penalty or lodgement of security this clause prevents the possibility that a tax may be imposed by way of a condition.

Clause 120 - Variation of conditions

This clause enables the Minister to vary any of the conditions of the licence in any of the circumstances specified.

Clause 121 - Exemption from or suspension of conditions

This clause enables the Minister to suspend or exempt any of the conditions of the licence in any of the circumstances specified. Where the Minister grants a suspension or exemption the Minister can extend the term of the licence by a period not exceeding the suspension or exemption period if the Minister considers the circumstances so warrant it. Whatever extension time is given, it must not be such as to extend the operative life of the licence.

Clause 122 - Automatic suspension of conditions if licence rights are suspended

If a licence is suspended, this clause frees the licence holder from complying with the licence conditions for the duration of the suspension.

Clause 123 - Work practices

The fundamental principle contained in this provision is that exploration operations are to be carried out at a standard accepted in the industry and other provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also imposes on the operator the responsibility of securing the safety, health, and welfare of individuals engaged in the licence area. It also requires the operator to maintain in good condition and repair all structures, equipment and other property in the licence area which are used in connection with the operations. All structures, plant and equipment that are not or no longer going to be used are to be removed from the operations area.

Clause 124 - Licence holder must keep specified records etc

This empowers the Minister to require the licence holder to maintain, and provide when required, any records or samples resulting from exploration activities. This provision is also necessary so that the Minister has the information necessary for the proper and efficient administration of the legislation.

Clause 125 - Licence holder must assist inspectors

This requires the licence holder to allow inspectors access to its operations and records.

Division 8 - Expiry of exploration licence

Clause 126 - General

This clause outlines the circumstances when a licence expires.

Clause 127 - Voluntary surrender of exploration licence

This provision allows the licence holder to surrender the licence.

Clause 128 - Automatic expiry of exploration licence when retention licence takes effect

This clause provides that an existing exploration licence covering the same area as a newly granted retention licence automatically expires to the extent of the overlapping blocks. This is to ensure that no area is covered by more than one licence.

Clause 129 - Automatic expiry of exploration licence when mining licence takes effect

This is similar in substance and intent as the previous provision, clause 128.

Clause 130 - Cancellation of exploration licence

The clause outlines the circumstances under which a licence may be cancelled and ensures that the licence holder receives natural justice prior to any moves to cancellation. It gives the licence holder the opportunity to make submissions within a specified time or to take remedial action. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 131 - Obligations of former exploration licence holders and former associates

This clause provides that any outstanding obligations must be discharged by the licence holder after the expiry of the licence no matter what the circumstances were which gave rise to the termination. It is intended, among other things to ensure that the licence holder's environmental obligations are met.

Part 2.3 - Retention licences

A retention licence is an intermediate form of tenure, between the exploration licence and the mining licence. Its primary purpose is to allow the holder of an exploration licence to retain for a strictly limited time, title to an area:

- on which a significant mineral deposit has been delineated;
- which is not a commercially viable proposition in the short term; and
- there is reasonable prospect for development in the longer term.

The retention licence allows the licence holder to retain the area under strict conditions until market or technological developments make exploitation of the resource possible.

Division 1 - General

Clause 132 - Retention licences

This clause provides for the grant of a retention licence and the accompanying notes outline the reasons for the licence.

Clause 133 - Activities authorised by a retention licence

This outlines what a licence holder can, or can not, do under a retention licence. It also prohibits using the licence for recovery of minerals for commercial purposes. This is to ensure that the licence holder applies for a mining licence should it wish to commence commercial operations.

Clause 134 - Minister may cancel or not renew retention licence without compensation

This empowers the Minister to cancel or not renew a retention licence without the need for compensation. A licence can only be cancelled for either a breach of a condition of the licence, a provision of this Act or regulations or a condition attached to the transfer of a licence.

Clause 135 - Licence rights may be suspended

This provides that any rights conferred by a retention licence may be suspended if the Minister is satisfied it is in the public interest to do so. It also provides the procedures the Minister must follow if the Minister decides to suspend the licence. It may be later restored and the licence holder must be informed in writing of both events as they occur.

Clause 136 - Compensation for acquisition of property due to suspension of rights

This provides that compensation must be paid to a licence holder if property is acquired as a result of suspension of retention licence rights.

Division 2 - Application for and grant of retention licence

Clause 137 - Application for retention licence

This provides that a holder of an existing exploration licence may apply for a retention licence or licences covering a group of blocks and each must form a discrete area up to a maximum of 20 blocks.

Clause 138 - How to apply

This is a procedural provision. It outlines to whom and the manner in which an application for a retention licence is to be made, as well as the details to be included in the application.

Clause 139 - Payment of fee

This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this provision is to recover the administrative costs of processing applications wherever possible.

Clause 140 - Application must be advertised

This provides that the applicant must advertise the details of the application for a retention licence in the print media and invite comments which should be lodged with the minister within 30 days. The purpose of the provision is to improve the transparency and accountability of the administration of the Act.

Clause 141 - Request for further information

This provision empowers the Minister to request any further information about the licence application. This requirement is necessary as the information in the application may be deficient in some aspects or may require further elaboration.

Clause 142- (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 143 - Minister may provisionally grant licence

This clause gives the Minister a discretion to grant or refuse a retention licence.

Clause 144 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 145 - Grounds for granting retention licence

This provision outlines the various grounds on which a retention licence may be granted.

Clause 146 - Matters to be specified in the licence

This details what the licence must include and limits the term of the licence to 5 years. The licence may specify what activities are authorised by the licence.

Clause 147 - Applicant must be notified

This provision requires the successful applicant to be given the licence which contains the terms and conditions of the provisional grant and a notice of any security deposit and any fees due. The provisional licence will lapse if the applicant does not confirm that it wishes the provisional grant to be made final and if it does not pay the security and all fees associated with the licence.

Clause 148 - Amendment of conditions

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment to a condition of the provisional licence. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 149 - Amendment of security requirements

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment of the security requirement. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 150 - Extension of primary payment period

This clause provides for the payment of fees and the confirmation of the grant to be deferred to allow time for any conditions to be amended if thought necessary.

Clause 151 - Acceptance of grant of retention licence

This is the final formal step in the grant of a retention licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, lodging the security and confirming in writing the acceptance of the grant.

Clause 152 - Conditions applicable to licence on grant

This ensures that the licence conditions become legally binding on the licence holder.

Clause 153 - Lapse of provisional grant of retention licence

This provides that a provisional grant of a retention licence lapses if it is not properly accepted.

Division 3 - Duration of retention licence

This Division covers the term of the retention licence which may be renewed on application.

Clause 154 - Initial term of retention licence

This provision outlines the date of commencement and the initial term of a retention licence.

Clause 155 - Term of renewal of licence

This provision specifies the date when the renewal of a retention licence comes into force and refers the reader to clause 169 which provides that a each renewal may not exceed 5 years.

Clause 156 - Effect of application for renewal on term of retention licence

This provides that where an application for renewal has been made the initial retention licence continues in force even though it has expired. This will allow licence related activities to continue until an application for a renewal is approved, not accepted by the applicant or is refused by the Minister.

Clause 157 - Effect of application for mining licence on term of retention licence

This allows a retention licence to continue until the Minister grants or refuses a mining licence.

Division 4 - Voluntary surrender of part of retention licence area

Clause 158 - Voluntary surrender of blocks if discrete area remains

This allows a licence holder to voluntarily surrender some of the area covered by a licence if the remaining portion forms a discrete area.

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

Clause 159 - Application for renewal of retention licence

This clause allows for an application to be made to renew a retention licence.

Clause 160 - When application to be made

This specifies that an application to renew a retention licence must be made at least six months before the licence expires. It also allows the Minister discretion to accept a later application if the circumstances warrant it.

The intention of the provision is to encourage the licence holder to make an application well before the expiry date of the initial licence and not wait until it is due to expire.

Clause 161 - How to apply for renewal

This is a procedural provision. It outlines to whom and the manner in which an application for an exploration licence is to be made, as well as the details to be included in the application.

Clause 162 - Request for further information

This clause empowers the Minister to request any further information about the licence renewal application.

Clause 163 - Payment of fee

The provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this amendment is to recover the administrative costs of processing applications wherever possible.

Clause 164- (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 165 - Provisional renewal of retention licence

This provision states that the Minister can provisionally renew or refuse a retention licence.

Clause 166 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 167 - Matters that may be taken into account

Empowers the Minister to take into account the applicants past record in complying with the various legal, operational and administrative requirements of the offshore minerals mining code.

Clause 168 - Refusal of application for renewal

This specifies the procedures the Minister must follow if the Minister proposes to refuse an application for a renewal of the retention licence. The intention is to ensure that the applicant is not denied natural justice and is given the opportunity to restate its case for a licence renewal.

Clause 169 - Applicant must be notified

This sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant and specifies that the term of a renewal is not to be more than 5 years.

Clause 170 - Amendment of conditions

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment of the conditions. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 171 - Amendment of security requirements

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment of the security requirement. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 172 - Extension of primary payment period

This provides for the payment of fees to be deferred to allow time for any conditions or security requirement to be amended if thought necessary.

Clause 173 - Acceptance of renewal of retention licence

This is the final formal step in the grant of a renewal of a retention licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees and security and confirming in writing acceptance of the grant.

Clause 174 - Conditions applicable to licence on renewal

This ensures that the conditions of the licence are legally binding on the licence holder.

Clause 175 - Lapse of provisional renewal of retention licence

This provides that a provisional grant of a renewal of a retention licence lapses if payment is not made within 30 days or if an extension is granted, within the extended period.

Division 6 - Obligations associated with retention licence

Clause 176 - General

This clause outlines the sources of the obligations associated with a retention licence. In addition, this clause provides that where there is more than one shareholder in a retention licence, each shareholder will be held 100% responsible for all obligations of the licence in the event of failure by any one of them to meet its obligations.

Clause 177 - Conditions of retention licence

Under this clause a retention licence may be granted subject to such conditions as the Minister thinks fit.

Clause 178 - No conditions requiring payment of money

With the exception of payment of penalty or lodgement of securities, this clause prevents the possibility that a tax may be imposed by way of a condition.

Clause 179 - Variation of conditions

This clause enables the Minister to vary any of the conditions of the licence in any of the circumstances specified.

Clause 180 - Exemption from or suspension of conditions

This enables the Minister to suspend or exempt any of the conditions of the licence in any of the circumstances specified.

Clause 181 - Automatic suspension of conditions if licence rights are suspended

If a licence is suspended, this clause frees the licence holder from complying with the licence conditions for the duration of the suspension.

Clause 182 - Significant changes in circumstances to be reported to Minister

This imposes an obligation on the licence holder to notify changes in the circumstances which significantly affect the long term viability of mining activities in the licence area.

Clause 183 - Work Practices

The fundamental principle contained in this provision is that operations are to be carried out at an acceptable industry standard and provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also imposes on the operator the responsibility of securing the safety, health, and welfare of individuals engaged in the licence area. It also requires the operator to maintain in good condition and repair all structures, equipment and other property in the licence area which are used in connection with the operations. All structures, plant and equipment that are not, or no longer going to be used, are to be removed from the operations area.

Clause 184 - Licence holder must keep specified records etc

This empowers the Minister to require the licence holder to maintain, and provide when required, any records or samples resulting from exploration or development activities. This provision is also necessary so that the Minister has the information necessary for the proper and efficient administration of the legislation.

Clause 185 - Licence holder must assist inspectors

This provides that the licence holder must allow inspectors access to its operations and records.

Division 7 - Expiry of retention licences

Clause 186 - General

This clause outlines the circumstances when a licence expires.

Clause 187 - Voluntary surrender of retention licence

This provision allows the licence holder to surrender the licence.

Clause 188 - Automatic expiry of retention licence when mining licence takes effect

This provides that a retention licence automatically expires when a mining licence over the area is granted and registered. This is to ensure that no area is covered by more than one licence.

Clause 189 - Cancellation of retention licence - breach of condition etc.

The clause outlines the circumstances under which a licence may be cancelled and ensures that the licence holder receives natural justice prior to any moves to cancellation. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 190 - Cancellation of retention licence - mining activities viable

This provision allows the Minister to request the licence holder to show cause as to why it should not be granted a mining licence if the Minister thinks that mining is viable.

It is intended to ensure that the licence holder does not just sit on the area under the licence without making attempts to develop the licence area to the point where commercial operations can commence at the appropriate time.

Clause - 191 - Obligations of former retention licence holders and former associates

This provision provides that any outstanding obligations must be discharged by the licence holder after the termination of the licence no matter what the circumstances were which gave rise to the termination. It is intended, among other things, to ensure that the licence holders' environmental obligations are honoured.

PART 2.4 - Mining licences

The clauses in this Part deal with the third stage title, the mining licence. This licence authorises and controls the recovery of minerals, except for any mineral which might be excluded from the mining licence's coverage.

Division 1 - General

Clause 192 - Mining licences

This clause outlines the kind of blocks in coastal waters that may be covered by a mining licence. The licence authorises its holder (subject to compliance conditions and all other legal requirements) to exploit the licence area for all minerals except those specifically excluded or for minerals specified in the licence.

Clause 193 - Activities authorised by a mining licence

This outlines what a licence holder can, or can not, do under a mining licence.

Clause 194 - Minister may cancel or not renew mining licence without compensation

This empowers the minister to cancel or not renew a mining licence without the need for compensation. A licence can only be cancelled for either a breach of a condition of the licence, a provision of this Act or regulations or a condition attached to the transfer of a licence.

Clause 195 - Licence rights may be suspended

This provides that rights conferred by a mining licence must be suspended in the public interest if it is thought necessary by the Minister. The rights may be restored later and the licence holder must be informed of both events in writing.

Clause 196 - Compensation for acquisition of property due to suspension of rights

This provides that compensation must be paid to a licence holder if property is acquired as a result of suspension of mining licence rights.

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

All offshore areas that are not already under title, or the subject of an application for a title, are available to anybody who may wish to lodge an application for a mining licence.

Clause 197 - Application for mining licence over vacant standard block

This provides that a person may apply for a mining licence to cover any area that is vacant and not covered by an existing licence. The maximum size of an area covered by a licence is 20 blocks which must form a discrete area. A person does not have to be a holder a previous exploration or a retention licence to make an application under this clause.

Clause 198 - Holder of exploration licence or retention licence may apply for mining licence

This provides that only the holder of either an exploration licence or a retention licence may apply for mining licences to cover areas which are the subject of the existing titles. Each licence to cover a maximum area of 20 blocks which must form a discrete area.

Clause 199 - How to apply

This provision outlines to whom and the manner in which an application for a mining licence is to be made, as well as the details to be included in the application. There is also

a requirement that each application must be accompanied by maps which show the general location of the area sought.

Clause 200 - Effect of inclusion of unavailable block in application

An application for a mining licence is not invalid if it inadvertently includes a block which is not available. It is possible that an applicant may not be aware that a block is already under title or is a reserved block. In such circumstances the application should not be considered invalid and this provision allows the application to be considered in relation to those remaining blocks that are available.

Clause 201 - Payment of fee

This provision is similar to those elsewhere in the Bill. It allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose is to recover the administrative costs of processing applications wherever possible.

Clause 202 - Application must be advertised

Applicant must advertise the fact that it has lodged an application for a mining licence and comments are invited. The purpose is to improve the transparency and accountability of the administration of the Act.

Clause 203 - How multiple applications are dealt with

The purpose of this provision is to ensure that as a general rule all mining licence applications will be considered on a "first come, first considered" basis. The exception to this rule will be where applications for substantially the same area have been received close together in time. On such occasions ballots will be used to determine the priority as to which application will be considered first. The conduct of such ballots and the rules for determining what together close in time is will be specified in regulations.

Clause 204 - Request for further information

This is a new provision. It empowers the Minister to request any further information about the licence application. The information may be deficient in some aspects or may require further elaboration.

Clause 205 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 206 - Minister may provisionally grant licence

This provision empowers the Minister to grant a provisional mining licence which becomes final upon the applicant paying the prescribed rental fee and accepting other certain conditions.

Clause 207 - Restriction in case of marine nature reserve or marine park

A mining lease may be provisionally granted over a marine nature reserve or marine park only after resolution of both Houses of Parliament, as provided for in clause 38A(2).

Clause 208 - Refusal of application for mining licence made under section 198

This specifies the procedures the minister must follow if the Minister proposes to refuse an application for a mining licence. The intention is to ensure that the applicant is not denied natural justice and is given the opportunity to restate its case for a licence.

Clause 209 - Matters to be specified in the licence

This specifies the items that are to be included in the licence. It also limits the term of the licence to 21 years.

Clause 210 - Applicant must be notified

This is an amended provision. This provision requires the successful applicant to be notified of the terms and conditions of the provisionally granted mining licence and a notice of any security deposit. The provisional licence will lapse if the applicant does not accept the grant and if it does not pay the security and all fees associated with the licence.

Clause 211 - Amendment of conditions

This allows the provisional licence holder to request within 30 days an amendment to a condition of the provisional licence.

Clause 212 - Amendment of security requirements

This allows the provisional licence holder to request within 30 days an amendment of the security requirement.

Clause 213 - Extension of primary payment period

This clause provides for the payment of fees to be deferred to allow time for any conditions or security levels to be amended if thought necessary.

Clause 214 - Acceptance of grant of mining licence for standard block

This is the final formal step in the grant of a mining licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, security and confirming in writing acceptance of the grant. If the acceptance of the grant is made after any amendments to the conditions or security requirements during the payment extension period, the date of the confirmed grant remains the date of the original conditional grant. This means that when discussions are held on possible amendments to the conditions or security requirements, the "clock still ticks away" so as to provide an incentive to the provisional licence holder to conclude discussions as soon as possible.

Clause 215 - Conditions applicable to licence on grant

This ensures that the conditions of the licence become legally binding on the licence holder.

Clause 216 - Lapse of provisional grant of mining licence

A provisional grant of a mining licence lapses if it is not properly accepted.

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

Clause 217 - Matters to be determined before applications for mining licence over tender blocks invited

This provision ensures that potential applicants are made aware of the "ground rules" under which the tender process will be conducted. It requires the Minister to determine the amount of security that will be required to be lodged, the conditions of the licence and the procedures that it will adopt in allocating the licence. This provision will allow the Minister to determine whether the licence will be allocated on the basis of program bidding or cash bidding. Depending on the option chosen, the application must specify either the work program proposed or the amount of the cash bid.

Clause 218 - Minister may invite applications for mining licence over tender blocks

Under this clause the Minister may invite applications to be lodged within a specified time frame for a reserved area which has been released for mining.

Clause 219 - Tender block licence notice - mining licence

The Minister must publicly specify the criteria the applicants will need to meet and the procedures it will use in selecting the successful applicant. It also sets the maximum size to the licence to 20 blocks. The intention is to ensure that the potential applicants are

made aware of the conditions and the procedures under which their applications will be assessed.

Clause 220 - Application for mining licence over tender blocks

This clause provides that a person may apply for a mining licence according to the public notice of invitation.

Clause 221 - How to apply

This is a procedural provision. It outlines to whom and the manner in which an application for a mining licence is to be made, as well as the details to be included in the application.

Clause 222 - Payment of fee

This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this amendment is to recover the administrative costs of processing applications wherever possible.

Clause 223 - Request for further information

This provision allows the Minister to request further information in relation to the application.

Clause 224 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 225 - Minister may provisionally grant licence

This provides that the Minister may grant a provisional mining licence in accordance with the procedures advertised in the public tender.

Clause 226 - Restriction in case of marine nature reserve or marine park

Similar to clause 207, a mining lease may be provisionally granted over tender blocks within a marine nature reserve or marine park only after resolution of both Houses of Parliament, as provided for in clause 38A(2).

Clause 227 - Successful applicant must be notified

This requires the successful applicant to be advised in writing of the terms and conditions of the provisional grant of the mining licence.

Clause 228 - Acceptance of grant of mining licence for tender blocks

This is the final formal step in the grant of a mining licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, security and confirming in writing acceptance of the grant.

Clause 229 - Conditions applicable to licence on grant

This clause is similar to those covering exploration and retention licences. It is to ensure that the conditions of the licence become legally binding on the licence holder.

Clause 230 - Lapse of provisional grant of mining licence

This provides that a provisional grant of a mining licence lapses if it is not properly accepted and payments of security and fees are not made within 30 days.

Clause 231 - Provisional grant to next applicant if grant lapses

If there is more than one application as a result of the tender process it allows the Minister to provisionally grant an exploration licence to the next best applicant should the first provisional licence holder allow its provisional licence to lapse.

Division 4- Duration of mining licence

Clause 232 - Initial term of mining licence

This outlines the date of commencement of a licence as well as the expiry date.

Clause 233 - Term of renewal of licence

This outlines the date of commencement of a renewal of a mining licence as well as the expiry date.

Clause 234 - Effect of application for renewal on term of mining licence

This allows the mining licence to continue in force until the Minister grants or refuses a renewal of the mining licence.

Division 5- Voluntary surrender of part of licence area

Clause 235 - Voluntary surrender of blocks if discrete area remains

This is similar in intent to the provision in the existing Act. It allows a licence holder to voluntarily surrender some of the area covered by a licence if the remaining portion forms a discrete area.

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

Clause 236 - Application for renewal of mining licence

This clause allows for an existing licence holder to apply for a renewal of the existing mining licence.

Clause 237 - When application is made

This specifies that an application to renew a mining licence must be made at least six months before the licence expires. It also allows the Minister discretion to accept a later application if the circumstances warrant it and are acceptable to it.

The intention of the provision is to encourage the licence holder to make an application as soon as possible and not wait until the licence is due to expire.

Clause 238 - How to apply for renewal

This provision outlines to whom and the manner in which an application to renew a mining licence is to be made, as well as the details to be included in the application.

Clause 239 - Request for further information

This provision empowers the minister to request any further information about the licence renewal application which may be thought necessary to assist in the consideration of the renewal application.

Clause 240 - Payment of Fee

The provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this amendment is to recover the administrative costs of processing applications wherever possible.

Clause 241 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 242 - Provisional renewal of mining licence

This provides that the Minister can provisionally renew a mining licence or refuse to renew it.

Clause 243 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 244 - Matters that may be taken into account

Empowers the Minister to take into account the applicants past record in complying with the various legal, operational and administrative requirements of the offshore minerals mining code.

Clause 245 - Refusal of application for renewal

This specifies the procedures which the Minister must follow if the Minister proposes to refuse an application for a renewal of a mining licence. The intention is to ensure that the applicant is not denied natural justice and is given the opportunity to restate its case for a licence renewal.

Clause 246 - Applicant must be notified

This sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant.

Clause 247- Amendment of conditions

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a renewal, an amendment of the conditions. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 248 - Amendment of security requirements

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a renewal, an amendment of the security requirement. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 249 - Extension of primary payment period

This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended if thought necessary.

Clause 250 - Acceptance of renewal of mining licence

This is the final formal step in the grant of a renewal of a mining licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees, security and confirming in writing acceptance of the grant.

Clause 251 - Conditions applicable to licence on renewal

This ensures that the conditions of the licence become legally binding on the licence holder.

Clause 252 - Lapse of provisional renewal of mining licence

This provides that a provisional grant of a renewal of a mining licence lapses if payment is not made within 30 days or, if an extension is granted, within this extended period.

Division 7- Obligations associated with mining licence

Clause 253 - General

This clause outlines the sources of the obligations associated with a mining licence. In addition, this clause also provides that where there is more than one shareholder in a mining licence, each shareholder will be held 100% responsible for all obligations of the licence in the event of failure by any one of them to meet its obligations.

Clause 254 - Conditions of mining licence

Under this clause a mining licence may be granted subject to such conditions as the Minister thinks fit.

Clause 255 - No conditions requiring payment of money

With the exception of the payment of penalties or lodgement of securities this clause prevents the possibility that a tax may be imposed by way of a condition.

Clause 256 - Variation of conditions

This clause enables the Minister to vary any of the conditions of the licence in the circumstances specified.

Clause 257 - Exemption from or suspension of conditions

This clause enables the Minister to suspend or exempt any of the conditions of the licence in the circumstances specified.

Clause 258 - Automatic suspension of conditions if licence rights are suspended

This provides that if a licence is suspended, the licence holder is relieved from complying with the licence conditions for the duration of the suspension.

Clause 259- Work practices

The fundamental principle contained in this provision is that operations are to be carried out at an acceptable industry standard and other provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also imposes an obligation on the operator the responsibility of securing the safety, health, and welfare of individuals engaged in the licence area.

It also requires the operator to maintain in good condition and repair all structures, equipment and other property in the licence area which are used in connection with the operations. All structures, plant and equipment that are not or no longer going to be used are to be removed from the operations area.

Clause 260 - Licence holder must pay royalty

Division 2 of Part 4.4 specifies royalty rates and time for payment.

Clause 261 - Licence holder must keep specified records

This empowers the Minister to require the licence holder to maintain, and provide when required, any records or samples resulting from mining activities. This will ensure that the Minister has the information necessary for the proper and efficient administration of the legislation.

Clause 262 - Licence holder must assist inspectors

This provides that a licence holder must allow inspectors access to its operations and records.

Division 8- Expiry of mining licence

Clause 263 - General

This clause outlines the circumstances when a licence expires.

Clause 264 - Voluntary surrender of mining licence

This provision allows the licence holder to surrender the licence.

Clause 265 - Cancellation of mining licence

This clause outlines the circumstances under which a licence may be cancelled and ensures that the licence holder receives natural justice prior to any moves to cancellation. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 266 - Obligations of former mining licence holders and former associates

Under this provision any outstanding obligations must be discharged by the licence holder after the expiry of the licence no matter what the circumstances were which gave rise to the termination. It is intended, among other things, to ensure that the licence holder's environmental obligations are met.

PART 2.5 - Works Licences

The clauses in this Part deal with works licences which can be granted to any person to carry out licence-related operations. This provides for situations where it becomes necessary for the holder of any of the three main licences issued under this legislation (or a contractor to the licence holder) to gain access to or make use of areas which are outside the licence area. For example a licence holder may need to construct a wharf or some other structure outside the licence area in order to support the operations allowed under the licence.

Division 1 - General

Clause 267 - Works licences

This provides that a works licence may be granted for blocks which are outside the licence area to carry out major licence-related operations. Works licences may be granted even over areas that are the subject to another works licence or an existing major licence.

Clause 268 - Activities authorised by a works licence

This outlines what a works licence holder can do.

Clause 269 - Minister may cancel or not renew works licence without compensation

This empowers the Minister to cancel or not renew a works licence without the need for compensation. A licence can only be cancelled for either a breach of a condition of the licence, a provision of this Act or regulations or a condition attached to the transfer of a licence.

Division 2- Application for and grant of works licence

Clause 270 - Application for works licence

This provides that a person may apply for a works licence to cover any block.

Clause 271 - How to apply

This is a procedural provision and outlines to whom and the manner in which an application for a works licence is to be made, as well as the details to be included in the application.

Clause 272 - Payment of fee

The provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this amendment is to recover the administrative costs of processing applications wherever possible.

Clause 273 - Applicant to notify licence holders affected by the application

This clause provides that the applicant must notify in writing any other holders of licences which may be affected by the application. The notification must invite any comments to the Minister within 30 days of the notice being given.

Clause 274 - Application must be advertised

Applicants must advertise within 14 days of making the application the details of their application in the print media and any objections to the application should be lodged with the Minister within 30 days. the purpose of the new provision is to improve the public accountability of the administration of the legislation.

Clause 275 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 276 - Minister may provisionally grant licence

The provision empowers the Minister to grant a provisional works licence which becomes final upon the applicant paying the prescribed rental fee.

Clause 277 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 278 - Matters to be specified in the licence

Ensures that the licence contains all the required information necessary to ensure that the licence holder is aware of the terms, conditions and obligations pertaining to the licence. The maximum term of the licence is 5 years.

Clause 279 - Applicant must be notified

This provision requires the successful applicant to be given the works licence which contains the terms and conditions of the provisional grant and a notice of any security deposit. The provisional works licence will lapse if the applicant does not confirm that it accepts the provisional grant and if it does not pay the security and all fees associated with the licence.

Clause 280 - Amendment of conditions

This allows the provisional works licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment to a condition of the provisional licence. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 281 - Amendment of security requirements

This allows the provisional works licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment of the security requirement. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 282 - Extension of primary payment period

This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended if thought necessary.

Clause 283 - Acceptance of grant of works licence

This is the final formal step (subject to registration) in the grant of a works licence. The grant becomes final upon the applicant paying the required fees, security and confirming in writing acceptance of the grant.

Clause 284 - Conditions applicable to works licence on grant

Ensures that the conditions of the licence become legally binding on the licence holder.

Clause 285 - Lapse of provisional grant of works licence

This provides that a provisional grant of a works licence lapses if payment is not made within 30 days or, if an extension is granted, within this extended period.

Division 3 - Duration of works licence

Clause 286 - Initial term of works licence

This outlines the date of commencement of a licence as well as the expiry date.

Clause 287 - Term of renewal of works licence

This outlines the date of commencement of a renewal of a mining licence as well as the expiry date.

Clause 288 - Effect of application for renewal on term of works licence

This provision allows a works licence to continue until the Minister grants or refuses a works licence renewal.

Division 4- Application for and grant of renewal of works licence

Clause 289- Application for renewal of works licence

This clause allows for an application be made to renew a works licence.

Clause 290 - When application to be made

This specifies that an application to renew a works licence must be made at least one month before the works authority expires. It also allows the Minister discretion to accept a later application if the circumstances warrant it and are acceptable to it. The intention of the provision is to encourage the works licence holder to make an application as soon as possible and not wait until the works licence is due to expire.

Clause 291 - How to apply for renewal

This is a procedural provision and outlines to whom and the manner in which an application for the renewal of a works licence is to be made, as well as the details to be included in the application.

Clause 292 - Payment of fee

This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this amendment is to recover the administrative costs of processing applications wherever possible.

Clause 293 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 294 - Provisional renewal of works licence

This provision empowers the Minister to provisionally renew a works licence.

Clause 295 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 296 - Applicant must be notified

This provision sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant.

Clause 297 - Amendment of conditions

This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant, an amendment of the conditions. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 298 - Amendment of security requirements

This allows the provisional licence holder to request within 30 days of receiving a written notice of a provisional grant, an amendment of the security requirements. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 299 - Extension of primary payment period

This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended if thought necessary.

Clause 300 - Acceptance of renewal of works licence

This is the final formal step in the grant of a renewal of a works licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees, security and confirming in writing acceptance of the grant.

Clause 301 - Conditions applicable to works licence on renewal

Ensures that the conditions of the licence become legally binding on the licence holder.

Clause 302 - Lapse of provisional renewal of works licence

A provisional grant of a renewal of a works licence lapses if payment is not made within 30 days or, if an extension is granted, within this extended period.

Division 5- Obligations associated with works licence

Clause 303 - General

This clause outlines the sources of the obligations associated with a works licence. In addition, this clause now also provides that where there is more than one shareholder in a works authority, each shareholder will be held 100% responsible for all obligations of the works licence in the event of failure by any one of them to meet its obligations.

Clause 304 - Conditions of works licence

Under this clause a works licence may be granted subject to such conditions as the Minister thinks fit. However, the Minister is empowered to include only such conditions as conform to the general scope and objects of the Bill.

Clause 305 - No conditions requiring payment of money

With the exception of the payment of penalties or lodgement of securities this clause prevents the possibility that a tax may be imposed by way of a condition.

Clause 306 - Variation of conditions

This clause enables the Minister to vary any of the conditions of the works licence in any of the circumstances specified.

Clause 307 - Exemption from or suspension of conditions

This clause enables the Minister to suspend or exempt any of the conditions of the licence in the circumstances specified.

Clause 308 - Work practices

The fundamental principle contained in this provision is that operations are to be carried out at an acceptable industry standard and other provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also imposes an obligation on the operator the responsibility of securing the safety, health, and welfare of individuals engaged in the licence area. It also requires the operator to maintain in good condition and repair all structures, equipment and other property in the area of the works licence which are used in connection with the operations. All structures, plant and equipment that are not or no longer going to be used are to be removed from the operations area.

Clause 309 - Holder of works licence must keep specified records

This empowers the Minister to require the works licence holder to maintain, and provide when required, any record as required by regulations or directions by the Minister.

Clause 310 - Licence holder must assist inspectors

This obliges the works licence holder to allow inspectors access to its operations and records.

Division 6- Expiry of works licence

Clause 311 - General

This clause outlines the circumstances when a works licence expires.

Clause 312 - Voluntary surrender of works licence

This allows the works licence holder to surrender the works authority.

Clause 313 - Cancellation of works licence

The clause outlines the circumstances under which a works licence may be cancelled and ensures that the works authority holder receives natural justice prior to any moves to cancellation. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 314 - Obligations of former works licence holders and former associates

It provides that any outstanding obligations must be discharged by the works licence holder after the termination of the works licence no matter what the circumstances were which gave rise to the termination.

Part 2.6 - Special Purpose Consents

The clauses in this Part provide for the issuing of special purpose consents to cover scientific investigations, reconnaissance surveys or small scale mineral collection operations

Clause 315 - Special purpose consents

This clause provides for the grant of a special consent for the purposes outlined. Unlike licences, the special purpose consent may be granted over areas which may be reserved or are the subject of an existing licence.

Clause 316 - Activities authorised by a special purpose consent

This outlines what a consent holder can or can not do. This provision highlights the difference between a consent and the other licences issued under this legislation. The consent is different in that it does not give the holder any exclusive rights over the area covered by the consent, nor does it give any preference when it comes to the grant of a licence for the same area.

Clause 317 - Application for a consent

This is a procedural provision and provides that any person can apply for a consent.

Clause 318 - How to apply

This is a procedural provision and outlines to whom and the manner in which an application for a consent is to be made, as well as the details to be included in the application.

Clause 319 - Payment of fee

The provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this amendment is to recover the administrative costs of processing applications wherever possible.

Clause 320 - Applicant must obtain agreement of exploration, retention and mining licence holders affected by the application

This provision obliges the applicant to obtain the agreement of other licence holders to the application. It also provides that such agreement is not necessary for scientific investigation which may be covered by international agreements. As the special purpose consent does not confer exclusive rights to the consent holder, the restriction of only one title over an area does not apply.

Clause 321 - Applicant to notify works licence holders affected by application

This provision obliges the applicant to notify any interested works licence holders about the application and invite them to lodge any comments they may have with the Minister within 30 days.

Clause 322 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 323 - Minister may grant special purpose consent

This provision empowers the Minister to grant a special purpose consent.

Clause 324 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 325 - Matters to be specified in the consent

This ensures that the special purpose consent contains all the required information that is necessary so that the consent holder will be aware of the terms, conditions and obligations pertaining to the consent.

Clause 326 - Duration of the consent

When taken together with clause 325, this provision limits the period of consent to not more than 12 months.

Clause 327 - Condition on consent

Empowers the Minister to impose any conditions, including reporting and environmental conditions, on the Special Purpose Consent if it thinks it is appropriate.

CHAPTER 3 - REGISTRATION AND DEALINGS

Part 3.1 - Registration

This Part provides for the keeping of a Register and specifies the details that are to be entered into it. It is necessary for the effective operation of any scheme in which rights are granted and regulated by documents, that provision should be made for the keeping of proper records of the grant of, and dealings with such documents.

The importance of the register is that, unless it is otherwise specified, the grant, refusal, renewal, suspension or cancellation of licences, as well as all dealings in licences have no legal effect until the relevant details are entered into the register.

Division 1 - Preliminary

Clause 328 - Register to be kept

The clause directs the Minister to set up a register of licences issued in respect of each offshore area.

Document files to be kept

The clause directs the Minister to create and maintain an associated document file for each licence. The document file will only contain those documents listed in the register and will be separate from the normal departmental working file which is created when an application for a licence is lodged with the Minister.

Clause 330 - Form of Register and document file

This is a new provision. It allows the Minister to maintain the register and document file in any form or manner it so decides. It allows the register to be kept in computer or electronic form

Clause 331 - Correction of errors in the register

This allows the Minister to correct any errors of omission or commission in the register. The Minister may act either on its own initiative or on an application by a person affected by the error. The clause also specifies the procedure the Minister must follow if any correction is planned or contemplated.

Clause 332 - Inspection of register and documents

This clause is fundamental to the whole concept of registration of titles. It allows a person to inspect the register and documents file on payment of the prescribed fee. It also obliges the Minister to make the register available to the public at all convenient times.

Division 2 - Matters to be entered in Register

Subdivision A - Licences

Clause 333 - Licences

This provision specifies the various particulars which are to be entered in the register and which documents are to be kept in the document file when a provisional grant of a licence has been accepted.

Clause 334 - Renewal of licences

This provision specifies the various particulars which are to be entered into the register when an application for a renewal is made, when provisional renewal of a licence has been accepted or when a renewal application has been refused.

Clause 335 - Extension of exploration licences

This clause directs the Minister to register an application for an extension to an exploration licence or a refusal of an extension application.

Clause 336 - Expiry of licences

This clause directs the Minister to register the fact that a licence has expired. It also places an obligation on the licence holder to give the licence to the Minister for endorsement that it has expired.

Clause 337 - Variations etc. to licences

This specifies the various particulars which are to be entered in the register when a variation is made to a licence.

Clause 338 - Transfer of licences

This provision specifies the various particulars which are to be entered in the register when there is a transfer of a licence.

Clause 339 - Other dealings in licences

This provision specifies the various particulars which are to be entered in the register when there is a document that deals in a licence.

Clause 340 - Devolution of licences

Under this clause a person or persons upon whom the rights of the registered holder of a title have devolved by operation of law may have their name or names entered into the register in place of the original registered holder. This is dependent on the person making an application, accompanied by the prescribed fee, to the Minister.

Subdivision B - Caveats

The clauses in this subdivision deal with the procedure and effect of lodging a caveat by persons claiming to have an interest in or affecting a title. While a caveat is in force the Minister is prevented from registering instruments by which interests in title are created.

Clause 341 - Effect of a caveat

This clause provides that while a caveat remains in force the Minister shall not register a dealing in a licence unless otherwise exempted by the provisions of this clause.

Clause 342 - Lodgement of caveats

This provides for the lodgement of a caveat by anybody claiming an interest in a licence.

Clause 343 - Form of caveat

This outlines the form of a caveat and the particulars to be specified in the caveat.

Clause 344 - Payment of fee

This provides that a lodgement of caveat is to be accompanied with the prescribed fee.

Clause 345 - Caveat to be registered

Unless otherwise directed by a court this clause directs the Minister to register the caveat and retain it after it has been endorsed accordingly.

Clause 346 - Withdrawal of caveat

This allows the caveat holder to withdraw the caveat at any time and outlines the actions to be undertaken by the Minister.

Clause 347 - Form of withdrawal

This outlines the form of withdrawal of the caveat.

Clause 348 - Duration of caveat

This provides that a caveat has effect from the date it is lodged with the Minister. It also outlines the various circumstances when a caveat will cease to have effect.

Clause 349 - Notice to caveat holder

This outlines the circumstances when the Minister must notify a caveat holder of dealings in licences.

Clause 350 - Caveat holder may consent to registration

This outlines the circumstances when a caveat holder may give consent to registration of a dealing. The consent must be registered by the Minister.

Clause 351 - Orders that can be made by a court in relation to caveats

This outlines the jurisdiction of the courts in relation to caveats. The provision includes a power for the court to deal with vexatious, successive caveats which seek to frustrate or delay actions to be undertaken by the Minister.

Division 3 - Miscellaneous

Clause 352 - Fees for registration

This provides for the determination by the Minister of the fee payable under the Offshore Minerals (Registration Fees) Act 2001 for the registration of dealings or documents against licences.

Clause 352A – Exemption from stamp duty

This provides that stamp duty is not payable on any licence issued under this Act, nor any dealing arising therefrom. Under the Coastal Waters (State Powers) Act of 1980 the State's jurisdiction is up to the territorial sea and, as a consequence, the "coastal waters" covered by the operation of the Offshore Minerals Bill is not within the jurisdiction of the State Stamp Act.

As a consequence, the provisions of the Offshore Minerals (Registration Fees) Bill 2001 will replace the payment of State stamp duty. The same provision applies to offshore petroleum legislation.

Clause 353 - Protection from legal actions

This provides that a Minister, a delegate of the Minister or a person acting under their direction, is not liable to actions or suits in respect of matters done or omitted to be done in good faith in the exercise of any powers or authority conferred by this Part.

Clause 354 - Application to court for correction of register

This provides for an application to be made by a person to the Supreme Court if it is desired to have an omission or error in the Register rectified. The Minister must be notified of such application, and shall rectify the Register in accordance with any Supreme Court order.

Clause 355 - Appeals against determination under section 352

This clause provides an appeal mechanism for person who is not satisfied with the determination by the Minister of the fee payable under the Registration Fees Act.

Clause 356 - (Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 357 - Evidentiary value of register

Provides that the register, a computer record, a certified copy of, or an extract from the register are admissible as evidence in legal proceedings.

Clause 358 - Certified copy of document on associated document file

Provides that a certified copy of any document which is registered can be provided on the payment of a fee and it is admissible as evidence in any legal proceedings.

Clause 359 - Certification of registration action

Provides that a certificate about any actions which may or may not be have been done may be issued on the payment of a fee. Such a certificate will be admissible as evidence in any legal proceedings.

Part 3.2 - Dealings In Registered Licences

Division I - Dealings in licences to be in writing and registered

Clause 360 - Dealings in licences to be in writing

This clause provides that any dealings in a licence must be done in writing.

Clause 361 - Dealings in interests in licences not effective until registered

Provides that any such dealings in a licence has no effect until the details have been entered into the Register.

Division 2 - Approval of transfer of licences

Clause 362 - Transfers require approval by Minister

This provides that all transfers, or the transfer of part of a licence has no effect until approved by the minister. This provision is required because the Minister in granting the original licence in effect approved the percentage holding in the original title. Therefore, any subsequent change in the percentage holding of the title will need approval before being registered.

The intent is to prevent any person considered as being unacceptable by the Minister from gaining a part of a licence through the "backdoor" by way of a transfer of a share in a licence.

Clause 363 - Application for approval of transfer

This a procedural provision. It outlines the manner in which an application for a transfer is to be made and that it must be accompanied by the prescribed fee.

Clause 364 - Minister may ask for further information

This provision empowers the Minister to request the production of documents in respect to an application for a transfer in a licence.

Clause 365 - Minister's response to application for approval

This provides the Minister with the discretion to approve or reject an application for a transfer. It also outlines the actions the Minister is to take in the event of the transfer being approved.

Clause 366 - Protection from legal actions

This clause provides that a Minister, a delegate or a person acting under their direction, is not liable to actions or suits in respect of matters done or omitted to be done in good faith in the exercise of any powers conferred by this Part.

CHAPTER 4 - ADMINISTRATION

Part 4.1 - Information Management

The clauses in this Part empower the Minister to request information to be provided to it which the minister believes is necessary for the proper, efficient administration of the legislation. The clauses provide the circumstances when the minister may release certain information which has been provided to it on a confidential basis.

Clause 367 - Minister may ask person for information

This clause enables the Minister to require the production of information in connection with any activity authorised under this legislation and outlines the procedures to be followed in making such a request.

These provisions would be used to obtain information which is believed to be necessary for the proper administration of the legislation. For example the Minister might wish to obtain data to assist in the determination of the quantity and value of minerals extracted for royalty purposes.

Clause 368 - Power to ask person to appear

This provision is similar to the preceding clause. It empowers the Minister to request a person to appear personally to provide information.

Clause 369 - Power to examine on oath or affirmation

This clause gives the Minister or an inspector the power to administer an oath or affirmation, and to examine on oath a person attending before them.

Clause 370 - Minister may ask for documents

This clause enables the Minister to require the production of documents in connection with any activity authorised under this legislation and outlines the procedures to be followed in making such a request.

These provisions would be used to obtain documents which is believed to be necessary for the proper administration of the legislation. For example the Minister might wish to obtain data to assist in the determination of the quantity and value of minerals extracted for royalty purposes.

Clause 371 - Minister may ask for samples

This clause enables the Minister to require the production of samples in connection with any activity authorised under this legislation and outlines the procedures to be followed in making such a request.

Clause 372 - Obligations to comply with request under section 367, 368, 369, 370 or 371

The clause requires a person to provide information or to answer a question, notwithstanding that the information or answer may tend to incriminate him or her.

Clause 373 - Immunity from use of information etc. given in response to request under section 367, 368, 370 or 371

This provides protection to the supplier of information which has been requested and given to the Minister. The information or answer does not become admissible evidence against the person in proceedings other than proceedings concerned with the failure to supply information as requested. The aim of this clause is to use the power for the purposes of the administration of the legislation and not for the purposes of obtaining evidence for prosecution.

Clause 374 - Restrictions on release of confidential material

This clause establishes as a general rule that the Minister, another State Minister or a Commonwealth Minister are not to release or publish confidential information or samples.

Clause 375 - Circumstances in which confidential material may be released

This outlines the circumstances in which confidential information or samples may be released. Generally the Minister may make confidential information or samples available to a Commonwealth Minister or another State Minister. If the licence holder releases or gives consent to the release then the Minister or other State Minister or Commonwealth Minister may do so.

Clause 376 - Certain reports to be made available

Under this provision the Minister must make available reports over areas that are no longer the subject of a licence.

Part 4.2 - Monitoring and Enforcement

Division 1 - Inspections

In order to ensure that licence holders comply with all aspects of the offshore minerals mining code, there is a need for inspectors to monitor the operations of licence holders authorised under this Act. The following clauses outline the powers of inspectors and place an obligation on licence holders to assist the inspectors in the discharge of their respective duties.

Clause 377 - Compliance inspections

This defines what is meant by a compliance inspection.

Clause 378 - Powers exercisable in course of inspection

This outlines what an inspector appointed under this legislation can do when carrying out a compliance inspection.

Clause 379 - Inspection of licence-related premises etc. without warrant

This empowers an inspector to inspect licence-related premises without a warrant provided the inspector is able to produce an identity card on request by the licence holder.

Clause 380 - Inspection of other premises etc. with occupier's consent

This allows an inspector to carry out a compliance inspection of any premises provided the owner has given consent.

Clause 381 - Inspection of other premises etc. with warrant

This empowers an inspector to carry out a compliance inspection with a warrant.

Clause 382 - Procedure for obtaining warrant

This is a procedural provision. It outlines the steps that an inspector must take to obtain a warrant. It also specifies what the warrant must contain.

Clause 383 - Further provisions as to exercise of powers under warrant

This allows the inspector to use such assistance and force as is thought reasonable and necessary to carry out a compliance inspection.

Clause 384 - Occupier to cooperate with inspector

This requires occupiers of premises to provide all reasonable facilities and assistance to enable the inspector to carry out a compliance inspection effectively.

Division 2 - Directions

The clauses in this Division are concerned with directions which may be given by the Minister. As distinct from regulations which have general application covering all licences and special purpose consents, directions are intended to be specific to a particular licence or consent. They are in addition to or can over-ride any matters and requirements covered by regulations or conditions of licences which relate to safety or environmental matters.

Clause 385 - Directions by Minister must be obeyed

This places an obligation on a person given a direction by the Minister to comply with it.

Clause 386 - Scope of directions

This provision empowers the Minister to give a direction on any matters on which regulations may be made. In particular it highlights the fact that they can cover environmental protection, site rehabilitation, health, safety and welfare.

The need for directions to be able to be broad in scope and to be able to over-ride regulations is to allow the Minister to respond quickly to any emergency or unforeseen situation which may be particular to the area covered by a licence or special purpose consent.

Clause 387 - Minister may give directions

This provision allows the Minister to issue a direction to the licence holder. It outlines the procedures which must be followed by the Minister in giving directions and provides that a standing direction must be approved by the Minister. The intent is that directions are to be title specific and generally be in response to an emergency or unforeseen event that needs to be implemented quickly.

Clause 388 - Direction may incorporate material in another document

This allows directions to incorporate material in other documents. For example a direction may require a diver to follow the safety rules as set out in a particular manual produced by a recognised professional diving association.

Clause 389 - Direction may impose absolute prohibition

Empowers the Minister to issue a direction which prohibits an action being taken or allows it only with the consent of the person affected.

Clause 390 - Direction may extend to associates

This provides that a direction given to a licence holder may extend to include associates if they are specified.

Clause 391 - Holder to give notice of direction to associates

This clause obliges the licence holder to ensure the direction is brought to the notice of associates if it extends to them.

Clause 392 - Power to give directions after licence etc. ends

Provides that person can be given a direction in respect of an outstanding obligation even if the licence has already terminated. This is to ensure, among other things, that the licence holder can be given a direction in respect of rectification of site damage and environmental rehabilitation after operations have ceased.

Clause 393 - Effect of a direction on other instruments

This clause provides that a direction can over-ride earlier directions, regulations, applied laws or conditions relating to safety or the environment. This is necessary so as to give the Minister the flexibility to respond quickly to any emergency.

Clause 394 - Minister may specify time for compliance

Empowers the Minister to impose a deadline for compliance with a direction.

Clause 395 - Minister may take action if holder fails to comply

This empowers the Minister to do anything required by the direction if the person has not complied with the direction within a specified time.

Clause 396 - Costs incurred by Minister in taking action under section 395.

This allows the Minister to recover any costs associated with the action taken under clause 395 from the title holder or associate.

Clause 397 - Defences to actions to recover debts

This outlines the defence that a title holder or associate can mount if faced with a claim from the Minister for the recovery for debts due to the State.

Division 3 - Securities

This Division is concerned with the lodgement of securities. These securities may be used to pay for the rectification of any damage which may arise from offshore minerals operations, rehabilitation of the licence area's environment and the settlement of any outstanding financial obligations.

Clause 398 - Securities

This clause specifies when a security may be required to be lodged and places restrictions on how it is to be used.

Clause 399 - Determination of requirement to lodge security

This outlines the occasions when the Minister may determine the amount of security as well as the time it is to be lodged.

Clause 400 - Application of security

This outlines how the security may be used by the Minister.

Division 4 - Restoration of environment

Clause 401 - Removal of property from coastal waters

This clause provides that regulations may be made which specify the manner of removal of any property etc. that was brought into the area in connection with offshore minerals activity, but which is no longer used in accordance with the conditions of the licence.

Clause 402 - Rehabilitation of damaged areas

This provides that regulations may specify the manner in which any damage to the environment of the title area may be rehabilitated.

Division 5 - Safety Zones

The clause in this Division conform with Article 5 of the 1958 *Convention of the Continental Shelf*. In accordance with the *Convention on the Continental Shelf* these provisions provide that a safety zone may extend for a distance of up to 500 metres around a structure or equipment.

Clause 403 - Declaration of safety zone around a structure or equipment

Under this provision the Minister is empowered to set up specified areas called "safety zones" for the purpose of protecting a structure or equipment in coastal waters.

Clause 404 - Effect of declaration of safety zone

This provides that once a safety zone has been notified in the Gazette, all shipping not specified by the Minister are prohibited from entering or remaining in the zone without the Minister's consent and then only subject to any conditions attached to such consent.

Clause 405 to 20 - (Numbers not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Part 4.3 - Inspectors

Clause 421 - Appointment of inspectors

This empowers the Minister to appoint inspectors to enforce the provisions of this legislation, regulations, conditions of licences and consents as well as directions.

Clause 422 - Identity cards

This provides that inspectors must be issued with a photographic identity card as proof of his or her authority to inspect any aspect of the operations being carried out under the legislation.

Clause 423 - Return of identity card

This places an obligation on a person to return the identity card to the Minister as soon as possible after the termination of the appointment as an inspector under this Act. The intention is to ensure that the integrity of the identity card system is maintained.

Part 4.4 - Licence fees and royalties

Division 1 - Licence Fees

Clause 424 - Definition

This clause defines “*year*” for the purpose of fee calculation.

Clause 425 - Licence fees

This clause provides that a licence holder must pay annual fees , as prescribed.

Clause 426 - Limit on amount of fees

Notwithstanding any prescribed fee, this clause puts a limit on the annual amount payable in respect to each licence.

Clause 427 - Time for payment

This provides that fees are due within one month of each anniversary year.

Division 2 - Royalty

Clause 428 - Definition

This clause defines “*royalty period*” in terms of six month segments.

Clause 429 - Royalty

This clause provides that the holder of a mining lease must pay a royalty for all minerals recovered.

Clause 430 - Rate of royalty

This clause enables the Minister to set royalty rates by an instrument in writing, and the rate set will apply to the mineral or minerals specified in the instrument while the instrument remains effective.

Clause 431 - Reduction of royalty in certain cases

This clause enables the Minister to set a lower rate of royalty for individual mining licences, where it is determined that mineral recovery in specific cases would be uneconomic at the general rate set.

Clause 432 - Fixing of landed value

This clause provides for the value of a mineral extracted to be agreed between the Minister and the holder of a mining lease, or set by the Minister.

Clause 433 - Fixing of quantity

This clause provides that, for the purpose of royalty calculation, mineral quantity can be agreed between the mining licence holder and the Minister or, where there is no agreement, the quantity will be determined by the Minister.

Clause 434 - Time for payment

Provides that royalty is payable within one month of the end of a royalty period.

Clause 435 - State to pay 40% of royalties to Commonwealth

This clause continues the existing arrangement whereby the royalty breakup is the same as under the Commonwealth Offshore Minerals Act 1994. This is the result of agreement reached between the States and the Commonwealth under the Offshore Constitutional Settlement regarding the disbursement of royalties received in respect to offshore areas.

Division 3 - Penalties and Recovery

Clause 436 - Penalty if fee or royalty overdue

This clause provides that the licence holder is liable to pay a penalty if royalty payments or fees are not paid by the due date.

Clause 437 - Fees etc. recoverable as debts

This clause provides that any payment outstanding is a debt to the State which is recoverable through any court of competent jurisdiction.

CHAPTER 5 - MISCELLANEOUS

Clause 438 - State functions under Part 5.1 of the Commonwealth Act

Part 5.1 of the Commonwealth Act provides that State/Territory laws relevant to exploration and mining may be applied in the offshore area, except if a law is inconsistent with a Commonwealth law. This clause enables the State to operate similarly in coastal waters covered by this Bill.

Clause 439 - Delegation by Minister

This clause enables the Minister to delegate any of the Minister's functions by instrument signed under the Minister's hand and gazetted.

Clause 440 - False statements

This clause creates an offence for any person knowingly falsifying any document or making a false statement.

Clause 441 - Service of documents on licence holders etc.

This provides for the method of service of documents on a licence holder.

Clause 442 - Regulations

Provides that the Governor may make regulations from time to time to assist the proper administration of this Bill.

Clause 443 - Savings and transitional provisions

Schedule 2 to this Bill outlines the provisions which will apply to existing mineral titles affected by the operation of this Bill.

SCHEDULE 1

AREA IN WHICH COASTAL WATERS ARE SITUATED

This schedule provides the full description for coastal waters of the State covered by the jurisdiction of this Bill.

SCHEDULE 2

SAVINGS AND TRANSITIONAL PROVISIONS

Currently the provisions of the Mining Act 1978 apply in coastal waters by arrangement with the Commonwealth, however, when enacted, this Bill will be the mineral legislation which applies to coastal waters. This Schedule outlines how titles and applications for titles within or encroaching on coastal waters which were processed under the provisions of the Mining Act will be treated under this Bill.

Clause 1 - Interpretation

This clause sets up the interpretation to be applied to terminology occurring in the clauses to follow.

Clause 2 - Existing exploration licences under Mining Act for coastal waters

This clause provides that an exploration licence totally within coastal waters ceases to be governed by the Mining Act and is to be treated as an exploration licence under this Bill. The conditions applied to the licence under the Mining Act will be treated as the conditions applicable to the licence under this Bill, and the licence holder must continue to expend the amount prescribed under the Mining Act.

Subclause (6) provides that an exploration licence that is in its fourth year of term (granted under the Mining Act) will expire at the end of the fourth year. This provision ensures these licences will be consistent with the four year term for licences issued under this Bill.

Subclause (7) provides that an exploration licence (granted under the Mining Act) that is in its fifth year of term will expire at the end of the fifth year. The first renewal of 1 year ensures the term aligns with renewal of licences issued under this Bill, ie these licences are for 5 years with a first renewal of 1 year, and licences issued under this Bill are for 4 years with a first renewal of 2 years.

Section 104 provides that the holder of a licence issued under this Bill is required to surrender at least half the licence area at each renewal, however this subclause provides that a compulsory surrender of half the area of a “transitioned” Mining Act exploration licence which is in its fifth year is not required at the end of year 8, as such a licence has already been subject to two compulsory partial surrender requirements under the Mining Act.

Under Section 65(1) of the Mining Act the holder of an exploration licence is required to surrender half of the licence at the expiry of the third and fourth years of the term. **Under subclause (8)** of this Schedule if a licence covered by this clause (ie a licence granted under the Mining Act but “transitioned” to a licence under this Bill) has not reached the end of the third year of term, compulsory surrender of half the licence area at the end of the fourth year is required. This is consistent with a licence issued under this Bill which is required to reduce by half before each renewal (see section 104).

Subclause 9 provides that, if an application for exemption from the requirement to compulsorily surrender half of an exploration licence has not been determined at the commencement of this Bill, that application must be determined under the Mining Act before this Bill applies.

Under **subclause 10** if an application referred to in subclause 9 is refused, the licensee has the 2 months provided under the Mining Act in which to lodge the partial surrender.

Clause 3 - Existing mining leases under Mining Act for coastal waters

This clause provides that a mining lease totally within coastal waters ceases to be governed by the Mining Act and is to be treated as a mining licence under this Bill. The

conditions applied to the lease under the Mining Act will be treated as the conditions applicable to the licence under this Bill.

The term for which a mining lease was granted under the Mining Act remains the same under this Bill, ie. it will retain the balance of its term granted under the Mining Act, and thereafter may be renewed under this Bill.

Clause 4 - Existing exploration licences under Mining Act that relate both to coastal waters and to other areas

This clause provides that an exploration licence granted under the Mining Act encroaching on both jurisdictions will be deemed two separate licences - one under the Mining Act and one to be issued under this Bill. The register and licence document for the title granted under the Mining Act will be endorsed to reflect the change.

Subclause (4) provides that, as both licences will relate to the same graticular block or blocks, the licensee will not be required to pay dual fees or have a dual expenditure commitment in respect to that block or blocks.

Clause 5 - Existing mining leases under Mining Act that relate both to coastal waters and to other areas

This clause provides that a mining lease granted under the Mining Act encroaching on both jurisdictions will be deemed two separate titles - a mining lease under the Mining Act and a mining licence to be issued under this Bill. The register and lease instrument for the title granted under the Mining Act will be endorsed to reflect the change.

Subclause (4) provides that the holder of both titles will not be required to pay dual fees or have a dual expenditure commitment in respect to that area.

Clause 6 - Registration

The register for the new offshore licence will be endorsed with particulars of any instrument or caveat registered under the Mining Act against the original title.

Clause 7 - Document file

This clause provides that a document file must be established for each licence created by virtue of Clause 2 or 3 of this Schedule.

Clause 8 - Securities

For a new licence created by Clause 2 or 3 the Minister may require the licensee to lodge a security.

Clause 9 - Licence fees

Part 4.4 relates to the payment of licence fees and royalty. This clause provides that, when a Mining Act tenement is transitioned to a licence under this Bill, the fees and royalty provisions under this Bill do not commence until the next anniversary of the grant of the tenement under the Mining Act.

Clause 10 - Pending applications under Mining Act that relate only to coastal waters

Pending Mining Act applications totally within coastal waters will continue to be processed under the Mining Act, however when granted a licence will be issued under the Offshore Minerals Act.

Clause 11 - Pending applications under Mining Act that relate both to coastal waters and other areas

An application for an exploration licence or mining lease under the mining Act existing at the time of commencement which partly affects coastal waters and partly affects areas within the limits of the State will continue to be processed under the Mining Act.

If granted, separate titles will be issued, ie. the portion of an exploration licence application within coastal waters will become an exploration licence under this Bill, and the portion of a mining lease application within coastal waters will become a mining licence under the offshore Act.

Clause 12 - Powers in relation to transition provisions

This clause provides that if these transitional provisions prove to be deficient in any way, the Governor has the power to make orders to correct anomalies, to date from the commencement of this Bill.

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