



INFORMATION PAPER

State's Offshore Minerals Act 2003

Commencement 1 January 2011

Introduction

By agreement between the Commonwealth and States under the Offshore Constitutional Settlement Agreement of 1979, a legislative regime was to be established for Australia's sea and seabed areas. Mineral exploration and recovery is governed by state legislation for the first three nautical miles and this legislation is to mirror (as much as possible) Commonwealth legislative for Australia's territorial sea beyond the 3 nautical miles.

The 3 nautical miles of the State's *Offshore Minerals Act 2003* is known as "coastal waters" The Commonwealth territorial sea is known as the "adjacent area". The 3 nautical mile strip commences from the baseline to the adjacent area as defined in Section 16(1) of the *Offshore Minerals Act 2003*. The inner waters from land to the baseline remains under the jurisdiction of the *Mining Act 1978*." A plan of the three legislative jurisdictions is attached. The *Offshore Minerals Act 2003* and consequential amendments to the *Mining Act 1978* will commence on 1 January 2011.

Generally, the baseline is the lowest astronomical tide along the coast of islands and the mainland. It also includes lines connecting islands, lines connecting islands and the mainland, lines enclosing bays and coastal indentations that are not bays but depart from the coast.

There are similar title regimes to the State's *Mining Act 1978* such as exploration, retention, mining and ancillary purpose titles and a summary of these is set out below.

Blocks

Both coastal waters and the adjacent area are divided into blocks bounded by one minute of latitude and one minute of longitude. Blocks will fall into one of the following categories:

- Reserved Block - not available for application as it is set aside for a national purpose, conservation, environmental or other reason;
- Standard Block - a block that is not reserved and is available for application; and
- Tender Block - a reserved block that has been made available for application by way of a public invitation.

All title applications can only be applied for in blocks – see below. Note: The adjacent area under jurisdiction of the Commonwealth *Offshore Minerals Act 1994* utilises the AGD 84 graticular system whereas the Western Australian *Offshore Minerals Act 2003* utilises the GDA 94 graticular system.

Titles

The *Offshore Minerals Act 2003* provides for the following 4 types of titles including a consent authority to undertake minor low impact investigations:

Exploration Licence
Retention Licence
Mining Licence
Works Licence
Special Purpose Consent

An application for a licence must be made in the approved form and be lodged with the Minister for Mines and Petroleum at the Department's Perth address with the prescribed application fee and other required information.

The information required will vary for each licence type but generally, the applicant for each licence type will be expected to provide the technical and financial resources available to the applicant and a costed work proposal, albeit that this may be an office reassessment of the commercial viability of a mineral deposit for a retention licence application. If there is more than one applicant, the share for each applicant must be stated.

All licence applications must be advertised in a newspaper circulating throughout the State within 14 days from the date of the application inviting comments from the public. It is considered that the "mining notices" of *The West Australian* newspaper is appropriate for this purpose. Comments are to be lodged with the Minister for Mines and Petroleum at the Department's Perth address within 30 days.

Additional information may also be requested upon lodgement or at a later date when the application is being assessed.

Before the term of a licence commences, the following must occur:

- (a) the applicant is offered the grant of the licence, or "provisional grant";
- (b) the applicant must give the Minister a written acceptance of the grant;
- (c) the applicant must lodge any security if it has been requested and pay the annual fee; and
- (d) the grant must be registered.

A successful applicant may request an amendment to the conditions and the security amount before accepting a provisional grant of a licence. An extension of the period for accepting the provisional grant is also to be requested.

Exploration Licence

This title allows the holder to explore for all minerals. Any person may apply for an exploration licence over a group of standard blocks that are vacant provided the group forms a discrete single area and there are no more than 500 blocks in a group.

The initial term of an exploration licence is 4 years and may be renewed a maximum of three times for two year periods on each occasion. An application for renewal is to be lodged at least 30 days before expiry of the current term and it is mandatory for the licence area to be reduced by 50% at the end of the initial term and at the end of each renewed term.

If an exploration licence is surrendered or cancelled, no application for an exploration licence over the same area will be accepted until at least 30 days after the surrender or cancellation. A 6 months period applies before a former holder can reapply for an exploration licence over the same area / blocks.

Retention Licence

A holder of an exploration licence may apply for a retention licence over blocks within his exploration licence. A maximum 20 blocks may be included in a retention licence and be granted for a maximum period of 5 years. Each renewal cannot exceed 5 years and must be lodged at least 6 months before expiry of the current term.

This title allows the holder to retain rights over an area where a significant mineral deposit has been identified and evaluated but the deposit is not commercially viable and there is a reasonable prospect of developmental mineral recovery in the longer term.

Mining Licence

This title allows the holder to recover minerals over an area where a significant mineral deposit has been identified and evaluated. Further exploration is also permitted.

Any person may apply for a mining licence over a group of standard vacant blocks provided the blocks form a discrete area. The maximum area is 20 blocks.

In addition, the holder of an exploration or retention licence may also apply for a mining licence over all or some of the blocks in the licence up to a maximum of 20 blocks. The term of a mining licence cannot exceed 21 years and may be renewed. The renewal application must be lodged at least 6 months before expiry of the current term.

Before a mining licence may be granted the applicant must lodge a mining development plan and an environmental impact statement for assessment and approval.

Works Licence

This licence allows a licence holder to carry out activities that are directly connected with exploration or operations outside the area of his exploration, retention or mining licence.

Works licences may be granted over areas that are the subject of another existing exploration, retention, mining or works licence for a maximum period of 5 years. Works licences may be renewed, each renewal not exceeding 5 years in term. A renewal application is to be lodged as least 30 days before expiry of the current term.

There is no limit on the number of blocks that may be applied for and the applicant is to also supply a map that shows the footprint of the infrastructure works to be placed inside the blocks that have been applied for. The annual fee will be payable on the hectares identified for infrastructure requirements. Other licences including works licences may be applied for over an existing or application for a works licence.

Special Purpose Consent

This allows the title holder to carry out a geoscientific investigation, a reconnaissance survey or collect small quantities of samples.

Special Purpose consents can be granted over blocks which may be reserved or are the subject of an existing licence.

A special purpose consent does not give the holder any exclusive rights over the area nor any preference for the grant of a licence for the same area.

Licence Conditions

On the grant or renewal of a licence, various conditions may be imposed, including conditions requiring the licence holder to:

- Complete the proposed work program lodged upon application and spend a certain amount of money;
- Seek Ministerial approval to a proposed work program that disturbs the environment;
- Lodge a technical and expenditure report by a certain time;
- Lodge a security;
- Take out insurance;
- Take steps to protect the environment; and
- Repair any damage to the environment caused by activities and remove property.

Under special circumstances, compliance with the conditions may be suspended for specified periods and the holder may apply for the term of his licence to be extended by the period of suspension.

Monitoring of Performance

Inspectors are appointed to monitor operations on the licence and are empowered to audit documents, carry out compliance inspections and give compliance directions.

A direction may be issued to a licence holder that relates to environmental protection, site rehabilitation, health, safety and royalties. A licence holder is required to comply with any direction given and penalties apply for non compliance.

SAVINGS AND TRANSITIONAL PROVISIONS

Existing exploration licences or mining leases granted under the Mining Act 1978 that are totally within coastal waters

Upon commencement, a granted exploration licence or mining lease totally within coastal waters ceases to be governed by the Mining Act and is to be treated as an exploration licence or mining licence as the case may be under the *Offshore Minerals Act 2003*.

The holder of a transitioned exploration licence or mining licence must continue to comply with the provisions of the regulations made under the Mining Act such as the expenditure and reporting requirements. Licence conditions applied under the Mining Act will be treated as the conditions applicable to the licence under the *Offshore Minerals Act 2003*.

The term of a transitioned exploration licence ends 4 years after it was granted and may be renewed in accordance with the *Offshore Minerals Act 2003*. The licence may be renewed 3 times each for a period of two years.

If a transitioned exploration licence is more than 4 years in term, the exploration licence is renewed in accordance with the Savings and Transitional Provisions as follows:

For a term of 1 year after the 5 year term ends.

For a term of 2 years after the 1 year renewed term ends.

For a term of 2 years after the 2 year renewed term ends.

The surrender requirements under section 65 of the Mining Act are replaced with the requirements of section 104 of the *Offshore Minerals Act 2003* and will vary depending on the age of the transitioned exploration licence as follows:

Term of Licence upon commencement	Surrender requirement
More than 4 years old	50% upon 1 st and 3 rd renewal applications / end of term
More than 3 years but less than 4 years old	50% upon each renewal application / end of term
Less than 3 years old	50% upon each renewal application/ end of term

A mining licence will retain the balance of its term granted under the Mining Act. The annual fee provisions under the *Offshore Minerals Act 2003* (which replaces the Mining Act rent) will apply from the next anniversary date.

Existing exploration licences or mining leases granted under the Mining Act 1978 affecting both coastal waters and areas within the limits of the State

Upon commencement, a licence or lease granted under the Mining Act encroaching on both jurisdictions will be deemed two separate titles - one under the Mining Act and one to be issued under the *Offshore Minerals Act 2003*. Dual rent is not payable in respect to exploration licences (granted in the GDA 94 graticular block format) if the same block is included in the new offshore licence and whilst the holder remains the same.

The register and licence document or lease instrument for the title granted under the Mining Act will be endorsed to reflect the change.

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

original title. Only conditions applicable to coastal waters will be endorsed on the transitioned licence.

The term and renewal provisions etc mentioned in the preceding section also apply to the part transitioned licences.

Pending applications under the Mining Act 1978 affecting both coastal waters and areas within the limits of the State

Any licence or lease application 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, i.e. the portion of an exploration licence application within coastal waters will become an exploration licence under the *Offshore Minerals Act 2003*, and the portion of a mining lease application within coastal waters will become a mining licence under that Act and the provisions of the *Offshore Minerals Act 2003* apply.

Applicants of Mining Act exploration licences that only have a portion of a block or blocks in coastal waters have been advised that the portion of any block in coastal waters will be excised upon grant unless good reason can be provided for the land being retained. Mining Act exploration licence applications with whole blocks in coastal waters will not be treated in this manner.

Pending applications under the Mining Act 1978 totally within coastal waters

Pending applications totally within coastal waters will continue to be processed under the Mining Act 1978, however, when granted, a licence will be issued under the *Offshore Minerals Act 2003*.

CONSEQUENTIAL AMENDMENTS TO THE MINING ACT 1978

Definition of "land"

This definition now includes reference to the jurisdiction of the *Offshore Minerals Act 2003*, i.e. the Mining Act is applicable to the seabed and subsoil up to the baseline, now referred to in the Mining Act as the "offshore area".

Effect of change of baseline

New Section 9A provides that where the baseline moves landward and a title currently within the jurisdiction of the Mining Act then encroaches into coastal waters, the Mining Act continues to apply.

REGISTERS AND TENGRAPH

A summary of a licence's details will be kept in MITIS and the official register will remain a hard copy for the time being. Certified copies and inspections of the registers are available upon payment of the prescribed fees.

State offshore licences will be shown in Tengraph with the following code. The Commonwealth coding has also been included to demonstrate the differences.

Licence Type	State Licence Coding	Commonwealth Licence Coding
Exploration Licence	WA-Lic No-EOS	WA-Lic No-MEL
Retention Licence	WA-Lic No-ROS	WA-Lic No-MRL
Mining Licence	WA-Lic No-MOS	WA-Lic No-MML
Works Licence	WA-Lic No-WOS	WA-Lic No-MWL

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LICENCE APPLICATION AND OBLIGATION SUMMARY

LICENCE TYPE	MAXIMUM No OF BLOCKS	TERM YEARS	FEES			SECURITY	EXPENDITURE COMMITMENT
			APPLICATION FEE	ANNUAL FEES	RENEWAL APPLICATION FEE		
EXPLORATION LICENCE	500 blocks (to be reduced by 50% on each renewal)	4 years. Renewable for 3 periods of 2 years each. Max. 10 years.	\$3000	\$100 per block Min. \$2000	\$600	Type and amount will be specified by condition upon or after grant	Specified by condition upon the grant of the licence
RETENTION LICENCE	20 blocks	Not to exceed 5 years. Renewable for periods up to 5 years.		\$1000 per block.		Type and amount will be specified by condition upon or after grant	Specified by condition upon the grant of the licence
MINING LICENCE	20 blocks	21 years. Renewable for periods up to 21 years.		\$1000 per block.		Type and amount will be specified by condition upon or after grant	Specified by condition upon the grant of the licence
WORKS LICENCE	Blocks limited to area of proposal	Not to exceed 5 years. Renewable for periods up to 5 years.		\$20 per ha based on infrastructure footprint area. Min. \$100.		Type and amount will be specified by condition upon or after grant	
SPECIAL PURPOSE CONSENT	Blocks limited to area of interest	Up to 12 months.	\$300		May be requested)		

Note: All fees including annual fees are GST free.