



# Legislation Offshore.

## 09 EXPLORATION AND MINING LEGISLATION – OFFSHORE A GUIDE FOR INVESTORS

The States and Northern Territory have title and powers over the resources of the seabed adjacent to them, from the low water mark out to the outer limit of the first three nautical miles of the territorial sea. This area is called the Coastal Waters of the State.

The Australian Government Offshore Minerals Act 1994 (the OM Act) provides the statutory framework for the exploration for, and the production of, minerals other than petroleum on Australia's continental shelf that is under Australian Government jurisdiction, the area beyond the coastal waters of the States and the NT.

Six associated Acts provide for the payment of royalties, fees for registration, exploration, retention, mining and works licences. These separate Acts are required for constitutional reasons.

### Australian Government Offshore Minerals Act

The total Australian Government legislative package is set out in the table opposite.

To view these Acts go to [www.comlaw.gov.au](http://www.comlaw.gov.au)

### Administration of the Offshore Minerals Act

The Commonwealth legislation is jointly administered by the Australian Government, States and NT governments. The OM Act operates through two institutions; the Designated Authority and the Joint Authority. There is a separate Designated Authority and Joint Authority for each State and the NT (similar process to that used for offshore petroleum see Leaflet 11).

The Designated Authority (DA) for each jurisdiction is the relevant State/NT Minister responsible for the adjacent offshore

area. All applicants and licence holders deal directly with the relevant State/NT Designated Authority for all matters involving the day to day administration of the Commonwealth legislation.

The Joint Authority (JA) consists of the Commonwealth Minister and the relevant State/NT minister responsible for that States/NT's adjacent offshore area.

Major decisions relating to licences, such as grants and refusals are made by the Joint Authority and decisions are carried out by the Designated Authority. In the event of a disagreement, the views of the Commonwealth minister prevail.

### General Provisions of the Offshore Minerals Act

The OM Act establishes a mining code within which the development of offshore minerals resources (other than petroleum) may be undertaken in the area under Australian Government jurisdiction beyond the outer limit of the States/NT coastal waters.

Under Section 22 of the OM Act, a mineral is defined as a naturally occurring substance or a naturally occurring mixture of substances, which may be in the form of sand, gravel, clay, limestone, rock, evaporites, shale, oil-shale and coal. A mineral for the purposes of the OM Act does not include petroleum.

## 09 Mining Legislation.

The Act establishes five kinds of authorisations. They are:

- › exploration licences;
- › retention licences;
- › mining licences;
- › works licences; and
- › special purpose consents.

### Exploration Licence

An exploration licence is designed to cover the exploration phase of a project and confers exclusive rights to the exploration for and recovery of mineral samples from the licence area.

In general, all offshore areas, not otherwise closed to mineral activity, are open to application for a licence, to a maximum area of 500 blocks. A block is defined as an area bound by adjacent minutes of latitude and longitude (around 3.39 square km at 10 degrees south to 2.64 square km at 40 degrees south). A licence is valid for four years and may be renewed three times for up to 50% of the area in the licence at the time of renewal.

A fee of \$3000 is payable on application and \$600 or \$20 per block (whichever is the greater) is payable for each year of the licence. \$600 is payable on each renewal of the licence.

### Retention Licence

A retention licence is an intermediate form of tenure, between the exploration licence and the mining licence. It is designed to ensure the retention of rights pending the transition of a project from the exploration phase to the commercial mining phase. 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 licence allows the holder to retain the area under strict conditions until market or technological developments make exploitation of the deposit possible. It also authorises the exploration for and the recovery of minerals from the licence area but not as part of a commercial mining operation.

The licence is valid for up to a maximum of five years and may be renewed at the discretion of the Joint Authority.

A fee of \$3000 is payable on application and \$200 per block is payable for each year of the licence. \$600 is payable on each renewal of the licence.

### Mining Licence

A mining licence is designed to cover the commercial mining phase of a project and authorises the exploration for and full recovery of minerals from the licence area. A licence may be applied for at any time for any area either held by the applicant under another title, or currently free of any title. It may be for up to 20 blocks, with the initial term not exceeding 21 years and there being no limit on the number of renewals.

A fee of \$3000 is payable on application and \$200 per block is payable for each year of the licence. \$600 is payable on each renewal of the licence.

### Works Licence

A works licence authorises operations associated with an exploration, a retention or a mining licence to be carried outside the area of the principal licence, such as a jetty. The works licence can be issued for up to a maximum of five years and can be renewed on application.

A fee of \$3000 is payable on application and \$20 per hectare or part of a hectare is payable each year for the area under the licence. \$600 is payable on each renewal of the licence.

### Special Purpose Consent

A special purpose consent authorises the holder to carry out either scientific investigations, a reconnaissance survey or collect a small amount of minerals.

The reconnaissance surveys are intended to cover broad scale short term surveys that companies may undertake to decide whether to apply for an exploration licence. Small scale collection activities might cover the collection of dead coral or a similar limited operation. The consent is different from the other licences in that it does not give the holder any exclusive rights over the area covered, nor does it give any preference when it comes to the grant of other licences for the same area. Because it does not give exclusive proprietary rights, the consent can be granted to cover an area already covered by a licence provided that the applicant for a consent licence has obtained the permission of the affected licence holder.

The consent can be issued for a period of up to a maximum of 12 months and a fee of \$300 is payable on application.

### State/Northern Territory Legislation

The States/NT are in the process of drafting their respective complementary offshore minerals legislation using the Commonwealth Act as a model. This legislation will apply to the mineral resources of the seabed within the first three nautical miles of the territorial sea. The current state of play (as at July 2009) of complementary legislation in the various jurisdictions is shown in the following table.

There is no Australian Government involvement in the administration of offshore minerals activities within the area that is under State/NT jurisdiction.

STATE	ACTS
Queensland	<i>Offshore Minerals Act 1998</i> enacted. <a href="http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/O/OffshoreMinA98.pdf">www.legislation.qld.gov.au/LEGISLTN/CURRENT/O/OffshoreMinA98.pdf</a>
New South Wales	<i>Offshore Minerals Act 1999</i> enacted. <a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>
Victoria	Not yet enacted.
Tasmania	Not yet enacted.
South Australia	<i>Offshore Minerals Act 2000</i> enacted. <a href="http://www.austlii.edu.au/au/legis/sa/consol_act/oma2000188">www.austlii.edu.au/au/legis/sa/consol_act/oma2000188</a>
Northern Territory	Not yet enacted.
Western Australia	<i>Offshore Minerals Act 2003</i> enacted. <a href="http://www.austlii.edu.au/au/legis/wa/consol_act/oma2003188">www.austlii.edu.au/au/legis/wa/consol_act/oma2003188</a>

