



New South Wales

# Offshore Minerals Regulation 2020

under the

Offshore Minerals Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Offshore Minerals Act 1999*.

JOHN BARILARO, MP

Deputy Premier, Minister for Regional New South Wales, Industry and Trade

## Explanatory note

The object of this Regulation is to repeal and remake, without any significant amendments, the provisions of the *Offshore Minerals Regulation 2013*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation—

- (a) prescribes the requirements for maps to accompany applications for exploration licences, retention licences and mining licences under the *Offshore Minerals Act 1999* (*the Act*), and
- (b) prescribes the procedures to be followed when conducting a ballot to determine the priority of applications for exploration licences and mining licences for the same block that are submitted within less than 30 minutes of each other, and
- (c) enables the Minister to issue directions to the holder or former holder of a licence under the Act to remove unused mining property from coastal waters or to rehabilitate an area in coastal waters affected by the activities of the holder or former holder, and
- (d) enables the Minister, if a direction is not complied with, to take action to rectify the situation and to recover costs incurred in doing so, and
- (e) prescribes the rate at which royalty under the Act is to be paid on minerals recovered under a mining licence, and
- (f) prescribes the records to be kept by the holder of a mining licence under the Act, and
- (g) enables the Minister, with the concurrence of the Treasurer, to determine certain fees for the purposes of the Act, and
- (h) enables the Minister or an inspector to take copies of certain documents or to test or analyse certain samples.

This Regulation is made under the *Offshore Minerals Act 1999*, including sections 54, 58, 138, 199, 203, 332, 338–340, 357–359, 370, 371, 401, 402, 430 and 442 (the general regulation-making power).

This Regulation comprises matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

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## Offshore Minerals Regulation 2020

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Offshore Minerals Regulation 2020*.

#### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note.** This Regulation repeals and replaces the *Offshore Minerals Regulation 2013* which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation—

*royalty period* has the same meaning as in section 428 of the Act.

*the Act* means the *Offshore Minerals Act 1999*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Licences

### 4 Applications for licences

For the purposes of sections 54(1)(e)(ii), 138(1)(e)(ii) and 199(1)(e)(ii) of the Act, each map that accompanies an application for an exploration licence, retention licence and mining licence, respectively—

- (a) must be a 1:1,000,000 series map published by Regional NSW or, if that kind of map is not available, a similar map issued by another Public Service agency (within the meaning of the *Government Sector Employment Act 2013*) or a public authority (whether of New South Wales or the Commonwealth), and
- (b) must show the relevant blocks by distinctive colour tinting or edging.

## Part 3 Ballot procedures—exploration and mining licences

### 5 Meaning of “applicant” and “delegate”

In this Part—

*applicant* includes a person authorised in writing by an applicant to represent the applicant at a drawing of lots under this Part.

*delegate* means a person employed in, or an agent of, Regional NSW who is authorised by the Secretary of Regional NSW to conduct a drawing of lots under this Part.

### 6 Multiple applications—time of lodgment

For the purposes of sections 58(2)(b) and 203(2)(b) of the Act, the prescribed time is 30 minutes.

### 7 Multiple applications—drawing of lots

- (1) For the purposes of sections 58(2) and 203(2) of the Act, the prescribed way of drawing lots is set out in subclauses (2)–(9).
- (2) At least 7 days before the drawing of lots, the delegate is to give notice in writing of the time and place of the draw to each applicant at the principal office of the applicant.
- (3) The draw is to be carried out in the presence of all applicants, other than an applicant who—
  - (a) has been notified of the time and place of the draw in accordance with subclause (2), and
  - (b) does not attend the draw at the notified time and place.
- (4) The delegate is to write the name of each applicant on a separate paper of the same kind as the paper on which the name of each other applicant is written.
- (5) The papers and writing may be examined by each person present at the draw.
- (6) The papers are to be folded in the same manner by the delegate and placed by the delegate in an otherwise empty receptacle the interior surface of which will not snag the papers.
- (7) A person is to draw the papers individually from the receptacle without looking into the receptacle.
- (8) The person referred to in subclause (7)—
  - (a) must not be—
    - (i) an applicant or the delegate, or
    - (ii) an officer, employee or agent of an applicant, and
  - (b) must be a person declared in writing by each applicant present at the draw and the delegate to be acceptable.
- (9) The delegate is to record—
  - (a) on each paper—the place of the paper in the order of drawing papers from the receptacle, and
  - (b) on each application—the number that corresponds to the place in the draw of the paper relating to the application.

## Part 4 Restoration of environment

### 8 Definition

In this Part—

**unused mining property** means property (including a structure or equipment) that—

- (a) has been brought into coastal waters for use in offshore exploration or mining activities, and
- (b) is not being used and is not intended to be used in exploration or mining activities in accordance with a licence.

### 9 Direction to remove unused mining property

- (1) The Minister may, by written notice given to the holder or former holder of a licence, direct the holder or former holder to remove from coastal waters, within the period specified in the notice, any unused mining property that the holder or former holder has brought into those waters.
- (2) The Minister may, by a further written notice given to the holder or former holder of the licence, extend the period referred to in subclause (1).

### 10 Disposal of unused mining property

- (1) If unused mining property is not removed in accordance with a direction given under clause 9, the Minister may cause the property to be removed and may direct that the property be sold by public auction.
- (2) Any unused mining property unsold after the public auction may be sold by private treaty.
- (3) The costs incurred by the Minister or a person acting under the direction of the Minister in removing or disposing of unused mining property under this clause are to be deducted from the proceeds of any sale under this clause.
- (4) Any balance remaining is to be paid to the holder or former holder of a licence to whom the relevant direction was given under clause 9, unless the Minister determines that it should be paid to some other person who appears to the Minister to be more entitled to the proceeds.
- (5) If the proceeds of sale are less than the amount of costs to be deducted, the proceeds are to be applied in meeting those costs in the manner directed by the Minister.

### 11 Direction to rehabilitate mining area

- (1) The Minister may, by written notice given to the holder or former holder of a licence, direct the holder or former holder to take steps specified in the notice, within the period specified in the notice, to rehabilitate an area in coastal waters that has been damaged or affected by offshore exploration or mining activities of the holder or former holder.
- (2) The Minister may, by a further written notice given to the holder or former holder, extend the period referred to in subclause (1).
- (3) If a person fails to comply with a direction given to the person under this clause, the Minister may cause to be taken any of the steps specified in the notice in which the direction was given.
- (4) Any costs and expenses incurred by the Minister or a person acting under the direction of the Minister under subclause (3) are to be deducted from any amount of security held by the Minister under the Act in relation to the licence or former licence concerned.

## **Part 5 Royalty**

### **12 Rate of royalty**

For the purposes of section 430(1) of the Act, the rate of royalty prescribed in relation to a mineral is 4% of the landed value of the mineral (as referred to in section 432 of the Act).

### **13 Records to be kept**

The holder of a mining licence must keep records of all minerals recovered under the licence, including the following—

- (a) records of the quantity of minerals recovered during each royalty period,
- (b) records of the quantity and value of minerals disposed of, whether by sale or otherwise, during each royalty period,
- (c) records of the quantity and value of minerals held (in the form in which they are disposed of) by the holder of the licence at the beginning and the end of each royalty period,
- (d) records of all royalty that became payable during each royalty period in connection with the disposal of minerals.

## Part 6 Miscellaneous

### 14 Fees

The Minister may determine, with the concurrence of the Treasurer, the prescribed fee payable for the purposes of each of the following provisions of the Act—

- (a) section 332(1)—inspection of the offshore mining register and document file,
- (b) section 338(1)(e)—registration of transfer of a licence or a share in a licence,
- (c) section 339(1)(c)—registration of a document (other than a transfer of a licence or a share in a licence) that creates, transfers, affects or otherwise deals with an interest in a licence,
- (d) section 340(1)(d)—registration of a person as a licence holder after devolution of the rights of a licence holder to the person by operation of law,
- (e) section 357(4)—certified copy of, or extract from, the offshore mining register,
- (f) section 358(1)—certified copy of a document that is kept on the document file,
- (g) section 359(1)—certificate that a thing required or allowed by Part 3.1 (Registration) of the Act has been, or has not been, done.

### 15 Copies of documents

The Minister or an inspector may take a copy of any document produced to the Minister or inspector in accordance with section 370 of the Act.

### 16 Testing and analysis of samples

The Minister or an inspector may test or analyse any sample given to the Minister or the inspector in accordance with section 371 of the Act.

### 17 Repeal and saving

- (1) The *Offshore Minerals Regulation 2013* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Offshore Minerals Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.