

Package 1 - Explanatory Document – Exploration Licences

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1. Application and grant of an exploration licence

Application and grant of an exploration licence as amended by the Statutes Amendment (Mineral Resources) Act 2019

Exploration licences are applied for under section 29A and are granted under section 29B of the Act under the Exploration Release Area (**ERA**) competitive process or the first-come, first-served standard.

Land subject to the ERA competitive process is defined as 'relinquished ground' and the land that can be applied for on a first-come, first-serve basis is defined as 'open ground'.

The Minister may, at any time, determine any land to be relinquished ground or open ground, and may allow any particular person to apply for that ground. Where no declaration is made, the land will be categorised as either relinquished ground or open ground based on the definitions in section 29.

Relinquished ground that is released under the ERA competitive process is land:

- where an exploration licence has expired;
- where an exploration licence has been cancelled or fully surrendered;
- where an application to renew an exploration licence has been withdrawn;
- subject to a revoked section 8 reservation;
- subject to an expired section 15 notice;
- subject to an expired retention status without the land becoming the subject of a mining lease or retention lease unless the land has returned to its original status under the relevant exploration licence; or
- where another section or regulation requires that land to be relinquished ground.

Open ground that can be applied for on a first-come, first-serve basis is land:

- that is not subject to an existing mineral tenement;
- that is not relinquished ground;
- that becomes available due to partial surrender of a mineral tenement; or
- that becomes available due to the reduction in the size of an exploration licence resulting from an Amalgamated Expenditure Arrangement (AEAs) and compulsory relinquishment requirements associated with renewal.

While the land will either be relinquished ground or open ground by operation of section 29 in the absence of a declaration of the Minister to the contrary, the Ministerial discretion to control the status of land prior to its release provides flexibility. This flexibility was included for a few discrete purposes but also provides general flexibility for reasons unforeseen. Some of these discrete purposes included:

- to release high prospective areas of the State that may ordinarily be open ground;
- to bundle or combine land for release (combine contiguous open ground with relinquished ground); and
- to allow a specific person to apply for particular land.

Ministerial discretion to allow a specific person to apply for a mineral tenement (not just an exploration licence but all mineral tenements) was in response to learnings from the Western Australian Government who were required to address a range of invalid tenements. In August 2017, the High Court found that providing a mineralisation report at the same time as lodging an application for a mining lease was a pre-condition to the warden having jurisdiction to make a recommendation to the Minister and the Minister subsequently granting the mining lease. Consequently, this decision caused a group of mining leases who failed to adhere to this pre-condition in Western Australia to be deemed invalid.

Having regard to the consequences of this case, Ministerial discretion was included in the Act to allow the Minister to bypass the process and allow a specific area to be granted to a specific person, where necessary.

Exploration Release Area (ERA) competitive process

To commence the ERA process, an exploration release area notice is published in a manner the Minister thinks fit. The ERA notice will specify the location of the ERA area and the application period for that ERA area. The manner of publication and content of an ERA notice will be determined as a matter of policy.

There are no statutory timeframes on when an ERA notice must be published. The Minister has the discretion to release relinquished ground as quickly or slowly as the Minister sees fit. Until that notice is published, a person may not make an application for an exploration licence and a mineral claim (for minerals) may not be established in relation to any part of the land. This moratorium period does not prevent the establishment of a mineral claim for extractive minerals. Consequently, where land is relinquished ground, that land will be moratorially until notice is published.

If more than 1 application is received during the ERA application period, the applications will be ranked according to their merits after taking into account such factors the Minister considers appropriate in the particular circumstance. The highest-ranked application will be considered for the grant of the exploration licence, but, if 2 or more applications are assessed as being of equal merit, the applications will be placed in a ballot and the application selected at random will be considered for the grant of the licence. The merits and factors considered by the Minister in ranking competing applications are to be considered as a matter of policy.

First come, first served process

Land that is open ground will be available for application at any time.

Applications that relate to open ground will be assessed in the order on which day they were received. If only one application is received on a particular day, the application will be assessed in accordance with the Act and will take priority ahead of an application for an overlapping area lodged with the Director of Mines a day later. If more than one application is received on a particular day that relates to the same land (wholly or in part), the applications will be ranked according to their merits. The merits may be the same or different from the merits applied to the ERA competitive process. The highest-ranked application will be considered for the grant of the exploration licence, but if 2 or more applications are assessed as being of equal merit, the applications will be placed in a ballot, and the application selected at random will be considered for the grant of the licence. The merits and factors considered by the Minister in ranking competing applications are to be considered as a matter of policy.

The role of the Minister in assessing and ranking applications applicable to relinquished ground or open ground is delegated to the Mineral Exploration Assessment Panel, who ranks the applications according to merit as established in policy.

If an application for an exploration licence relates to an area within the Murray Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2013* and the *Objectives for a Health River Murray* under that Act (s. 56F).

Application

An application for an exploration licence must be in a manner and form determined by the Minister, must identify the boundaries of the land, must include any additional information prescribed by the regulations and must be accompanied by the prescribed fee. The manner and form of an application determined by the Minister is set out in a Ministerial Determination that is published in the Government Gazette and on the Department's website. The Regulations will set out information to

accompany the application and the Ministerial Determination will expand on that information by specifying the minimum level of content.

Subregulation 23(1)(a) of the draft regulations requires that an application be accompanied by a statement outlining the exploration operations that the explorer intends to carry out under the exploration licence during the first 2 years of operations under the licence or a period determined by the Minister. The statement must also declare the amount of expenditure that is estimated to occur in carrying out those operations. The regulation of expenditure requirements is discussed in chapter 3 of this Paper.

Subregulation 23(1)(b) of the draft regulations require that an application be accompanied by a statement of the technical, operational and financial capabilities and resources available to the applicant for the purpose of carrying out operations under the exploration licence. The insertion of 'operational capabilities and resources' expands on the current requirements and is intended to consider the applicant's ability to operate the licence in accordance with the law, including the applicant's social capabilities and the likelihood of compliance.

Subregulation 23(1)(c) of the draft regulations requires that an application be accompanied by a statement nominating the principal mineral or minerals that the applicant is seeking under the exploration licence and the exploration model that the applicant intends to employ for the purposes of exploring for that mineral or those minerals.

Subregulation 23(1)(d) of the draft regulations requires that an application be accompanied by a statement outlining the applicant's history of non-compliance in relation to authorised operations carried out under an Act of another State or Territory that is equivalent to the SA Mining Act. The Minister will already be aware of the applicant's compliance history in South Australia, therefore this statement provides the Minister with important information pertaining to the applicant's compliance history in other jurisdictions.

Subregulation 23(1)(e) of the draft regulations requires that an application be accompanied by a statement, in the form of a statutory declaration, declaring whether the applicant or a related body corporate has, within the preceding period of 3 months, held an exploration licence (or an interest in an exploration licence) in relation to any area in respect of which the exploration licence is being sought. While there is no prohibition on an applicant reapplying for the same ground, the applicant's previous history in the area will be a relevant factor for the Minister to consider when determining whether to grant an exploration licence.

Refusing an application or cancelling ranking of applicants

The Minister may refuse an application on the grounds that the application is invalid. An application may be invalid for various reasons; however, commonly, this can occur if the application is grossly inadequate in meeting the minimum requirements set out in the Ministerial Determination.

The Minister may, at any time, and without consultation with the applicant or taking any other steps, refuse an application for relinquished ground or open ground at any stage of the assessment or ranking process if:

1. the applicant fails to comply with a requirement under the Act that is relevant to the making or consideration of the application;
2. the Minister considers that the applicant has not proceeded with reasonable diligence to obtain any other permission, authorisation, consent or another form of approval under another Act or law that is relevant in the circumstances; or

3. the Minister considers that there are other sufficient grounds for not assessing the application further after taking into account the public interest and such other matters as the Minister thinks fit.

The refusal grounds listed above are in addition to refusing an application on the grounds that it is invalid. In particular, 1 above allows the Minister to have regard to other non-compliance under the Act and Regulations to the extent that such non-compliance is relevant to the application. An obvious example is the submission of an application that includes false or misleading information in breach of section 79A of the Act. Further, the Minister must not grant an exploration licence unless or until the fee payable under section 31 has been received and, where this stands in arrears to prevent the Minister in granting, the Minister may refuse the application on the grounds that the fees remain unpaid.

An explorer must pay to the Minister, annually and in advance, such fee as may be prescribed (r. 77). The Regulations may fix various methods for the calculation of a fee (including according to the total area of land in respect of which an exploration licence is granted) and fix differential fees on a basis prescribed by the regulations. As part of the 2019/2020 Budget, the Regulations were amended to determine the annual regulation fees for exploration licence holders based on three new spatial zones that applied from 1 January 2020. When a tenement intersects one or more of the three new exploration regulation fee zones, the higher fee will apply to the entire licence.

Refusal ground 2 above allows the Minister to refuse an application where the assessment and ranking process is exhausted by delays associated with other permissions, authorisations, consents or another form of approvals required under other Acts or laws that are relevant. An example is the permissions required under the *Aboriginal Lands Trust Act 2013 (SA)*, *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)* and *Maralinga Tjarutja Land Rights Act 1984 (SA)*. Prior to the grant of an exploration licence under the Mining Act, the applicant must obtain permission under these Acts, and, as a consequence, without this refusal power some applications may be pending for years.

Refusal ground 3 above allows the Minister to have regard to other grounds for refusal as the Minister thinks fit; however, those grounds must be in the public interest and be of sufficient gravity to warrant refusal.

The Minister may cancel the ranking if, during the assessment and ranking process applicable to relinquished ground or open ground, an application is found to be invalid. The Minister may also cancel the ranking if there is some other default, defect or circumstance that the Minister considers sufficiently significant to warrant the cancellation of the ranking. This may occur if, during the assessment and ranking process, new information becomes available to the Minister that undermines or changes the merits of the ranking, such as significant non-compliance.

Grant

There are procedural steps the Minister must undertake prior to granting an exploration licence to the successful applicant.

Firstly, the current Mining Regulations require the Minister to notify the applicant of the proposed terms and conditions and give the applicant at least 7 days, or such longer period as the Minister may allow, to make submissions on those terms and conditions before the Minister finalises them (r. 46).

Secondly, the Minister must collect the exploration licence annual fees in advance prior to granting an exploration licence (s. 29A(7) and 31).

Thirdly, the location of the exploration licence application may require the Minister to undertake further procedural steps prior to grant.

If the application relates to an area within or adjacent to a specially protected area, the Minister must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application (s. 56G). A specially protected area is the Adelaide Dolphin Sanctuary, a marine park or a River Murray Protections Area (s. 6). If the Minister for

Energy and Mining and the Minister for Environment and Water cannot agree on the decision to be made on the application or on any terms of conditions that should be applied if the application is approved, the Ministers must refer the matter to the Governor for decision. In practice, this decision is referred to Cabinet and Cabinet instructs the Governor to make a particular decision.

If the application is within a jointly proclaimed national, conservation or recreation parks (including co-managed parks) the Minister for Energy and Mining must obtain the joint agreement of the Minister for Environment and Water to grant the licence. These parks are defined in the *National Parks and Wildlife Act 1972* and the requirement for joint agreement is set out in the park proclamation.

If the application is within a regional reserve, the Minister for Energy and Mining must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application (s. 43A(1)(3) *National Parks and Wildlife Act 1972*).

If the application is within 'Trust Land' defined in the *Aboriginal Lands Trust Act 2013 (SA)* or 'the lands' defined in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)* or 'the lands' defined in the *Maralinga Tjarutja Land Rights Act 1984 (SA)*, the applicant must obtain permission under these Acts before the Minister can grant an exploration licence over that land.

If the Minister decides to grant an exploration licence, the licence will be taken to be granted when the licence is registered on the mining register (s. 29B). The registration date provides a clearly defined date in which the exploration licence is granted.

The term of the licence will be taken to commence from the date of registration. The Minister must give notice of the granting of an exploration licence in the manner prescribed in regulation 78. **Error! Reference source not found.**

2. Nature of exploration licences

Nature of exploration licences as amended by the Statutes Amendment (Mineral Resources) Act 2019

An exploration licence is an authorisation to undertake exploration operations in accordance with the terms and condition of the licence (s. 29). An exploration licence can only authorise exploration operations in relation to minerals and not extractive minerals. To undertake exploration operations with respect to extractive minerals, the applicant must establish a mineral claim (part 4). While the definition of minerals includes precious stones, an exploration licence will only authorise exploration operations for precious stones within an opal development area or within an exclusion zone as defined under the *Opal Mining Act 1995*. These are areas or zones declared under the Opal Mining Act to facilitate the interaction of the Mining Act and the Opal Mining Act, and, in particular, authorise operations under the Mining Act on a precious stones field, which is otherwise limited to extraction of opals (s. 29(3)).

An exploration licence will describe the land in respect of which it is granted and will be subject to terms or conditions. These terms or conditions can be prescribed in the Regulations and the Minister can specify any additional terms or conditions in the licences as the Minister thinks fit (s. 30(1)). The draft Regulations do not propose to prescribe any standard conditions, rather, the Department will publish online standard conditions as a matter of policy.

Error! Reference source not found. The terms or conditions of an exploration licence will identify specific requirements in relation to the conduct of exploration within the area of the licence and will give consideration to any impacts to the environment, other lawful activities that may be affected by the exploration operations and any impacts to Aboriginal Heritage (s. 30(2)). The exploration licence

terms or conditions are formulated during the assessment stage and after referral to other government agencies for consultation or approval (see Chapter 1 above). Instructions received from all agencies are forwarded to the applicant at the time of licence offer (r. 46 stage) and it is expected that the explorer acknowledges this feedback when planning their exploration operations so that any significant sites or environmentally sensitive issues are identified early in the process.

The Minister may, at any time, add, vary or revoke a term or condition of an exploration licence as the Minister thinks appropriate (s. 30(5)). The Minister's decision to add, vary or revoke a term or condition may be challenged by the explorer in the Environment, Resources and Development Court. The explorer can challenge the Minister's decision on its merits and the Court may order that the decision be replaced or substituted.

Prior to conducting exploration operations on an exploration licence, the explorer must have an approved program under Part 10A of the Mining Act. These programs are known as Programs for Environment Protection and Rehabilitation (PEPRs). While PEPRs are submitted and approved by the Minister, the Minister may adopt a program that applies to operations of a prescribed class. For this purpose, the Minister has adopted a generic PEPR for low impact mineral exploration. This generic PEPR applies automatically following the grant of an exploration licence and authorises the explorer to undertake low impact exploration operations without submitting a PEPR for assessment and approval of the Minister. A generic PEPR for low impact mineral exploration authorises low risk and low impact operations in the nature of regional first-pass operations. Exploration operations not within the scope of the generic PEPR and/or located within certain sensitive environments will require separate approval, and the explorer must submit a PEPR for assessment and approval of the Minister.

3. Expenditure

Expenditure as amended by the Statutes Amendment (Mineral Resources) Act 2019

Exploration expenditure is money expended by an explorer in exploration for, or in connection with, minerals in the exploration licence area. Determining, measuring and monitoring the exploration expenditure are a means of ensuring exploration licences are diligently explored and new discoveries progressed toward development.

It will be a condition of an exploration licence that an explorer will achieve at least a level of expenditure specified in or in relation to the licence of operations in accordance with the requirements of section 30AAA (s. 30AAA(1)). Section 30AAA is a new section of the Mining Act that legislates a regulatory framework for determining, measuring and monitoring expenditure commitments.

While section 30AAA is a new section, current exploration licences have expenditure commitments. Existing expenditure commitments in place before 1 January 2021 (the proposed commencement date of the Act) will be taken to be the level of expenditure that applies in relation to that licence, and from 1 January 2021 section 30AAA will apply.

The initial expenditure commitment following the grant of an exploration licence will be based on information furnished to the Minister as part of the application for the exploration licence; however, the expenditure commitment will be varied throughout the term of the exploration licence (s. 30AAA(2)). Exploration licences are granted for 6-year terms and can be renewed for a maximum of 18 years. The term and renewal process is discussed in further detail below in Chapter 5 (Term and renewal). The expenditure commitment at any point during the term of the exploration licence must

be at a monetary level set by or under policy developed and published by the Minister (s.30AAA(5)). The policy published by the Minister will demonstrate the rate of increase of expenditure over the 18-year life of an exploration licence. The Minister's policy on expenditure will be released in due course and it is expected that the applicable expenditure commitment will increase over the years in accordance with the figures, percentages or other methodology set out in the expenditure policy. This regulatory approach reduces the administrative burden on the Regulator and improves consistency. While increases to expenditure will apply according to the policy, the Minister can still exempt, defer, reduce or vary an expenditure commitment. The Minister may, on application from the explorer, exempt the obligation to meet their expenditure commitment (s. 79), defer an amount of expenditure under an expenditure commitment (s. 30AAA(13)(a)) or vary an amount of expenditure under an expenditure commitment (s. 30AAA(13)(b)). Section 30AAA balances consistent expenditure increases with Ministerial discretion, to ensure the Regulator has adequate control without regulatory burden to ensure exploration licences are diligently explored and developed.

The Minister may also reduce an expenditure commitment in applying retention status to all or part of the exploration licence area (s. 30AAA(14) and 33B). Please see Chapter 7 (Retention Status) for further details.

A key improvement of section 30AAA in the *Statutes Amendment (Mineral Resources) Act 2019* is the decoupling of expenditure commitments and licence terms. Under current practice, the renewal of a licence or the grant of a subsequent licence is used as a compliance tool to determine, measure and monitor expenditure commitments.

Utilising tenure as a means of regulating expenditure can punish compliant explorers with reduced security of tenure and increases the workload of the regulator to process renewals unnecessarily. Section 30AAA, together with section 30A, allows the Minister to appropriately determine, measure and monitor expenditure commitments while granting explorers maximum exploration licence terms.

The Minister measures and monitors expenditure commitment through reporting obligations. The explorer must, at such times as may be prescribed by the regulations, furnish a return to the Minister, in a manner and form determined by the Minister, a statement of intention and a statement of completion. The manner and form of a return is determined by the Minister and set out in a Ministerial Determination that is published in the Government Gazette and on the Department's website.

A 'statement of intention' (colloquial term for a statement submitted under section 30AAA(3)(b)) must outline the exploration operations that the tenement holder intends to carry out under the exploration licence over an ensuing period prescribed by the regulations and must declare the amount of expenditure that is estimated to be incurred in carrying out those operations. The amount declared by the explorer in the statement of intention must meet any monetary limits published by the Minister. A statement of intention is not submitted to the Minister for assessment or approval. The purpose of a statement of intention is to determine the expenditure commitment for the prescribed period and to establish a benchmark for which a statement of completion can be measured against. The expenditure must meet the monetary limit set out in the Minister's expenditure policy.

A 'statement of completion' (colloquial term for a statement submitted under section 30AAA(3)(a)) must outline the exploration operations carried out under the exploration licence within a period prescribed by the regulations and declaring the amount of expenditure incurred in carrying out those operations. To measure and monitor the accuracy of a statement of completion, the Minister can require that the statement be accompanied by information or evidence as needed (s. 30AAA (4)(a)) and the Minister may require the statement, or the accompanying information or evidence, to be verified by an independent person (s. 30AAA(6)). If the Minister requires independent verification, the

Minister can specify the manner in which the statement, information or evidence is verified and the qualification of the independent person (s. 30AAA(6)) and the costs will be borne by the explorer (s. 30AAA (7)). The report prepared by the independent person may be published on the Mining Register at the Minister's discretion.

A statement of intention and a statement of completion must report budgets and programs on 2 year reporting cycles, or an alternate period as determined by the Minister (r. 25(a) and (b)). Each statement must be provided to the Minister by email or other electronic means (eg iApply) within 60 days of the end of the reporting period (r. 25(c)).

A statement of completion will be published on the Mining Register, whereas a statement of intention will not be published. While the Mining Registrar has the discretion to determine the manner and extent to which the statement appears on the Register (in full or in part), the publication of a statement of completion is a transparent means of demonstrating whether an explorer is achieving its minimum expenditure commitments. A statement of intention is not to be published as it is likely to include commercially sensitive information related to proposed exploration operations.

The Minister may amalgamate the expenditure commitments with respect to multiple exploration licences (**amalgamated expenditure arrangement**) (s.30AAA(10)).

If approved, an amalgamated expenditure arrangement amalgamates the expenditure commitments for a group of exploration licences such that the combined total expenditure commitment may be spent anywhere within the tenement group rather than being restricted to specific amounts being spent on individual licences. This flexibility provides benefits to both companies and the State by allowing companies to focus their exploration efforts on targets with the greatest potential for future development while keeping all exploration licences in good standing under the Act. The trade-off for this expenditure flexibility over a large project area is that a mandatory area reduction is required.

An explorer or explorers must submit an application to the Minister to enter into an amalgamated expenditure arrangement and the Minister has broad discretion to determine the manner or the extent of the arrangement. The Minister can take into account such matters as the Minister thinks fit when assessing the application, including the relationship between any tenement holders who are parties to the application and the proximity of the relevant exploration licences to each other.

Under current policy, for a tenement group to be considered for amalgamation of expenditure commitments, certain criteria are considered. This includes but is not limited to:

- 100% ownership or majority shareholding in tenements
- Suitable project-wide exploration program and commodity targets
- Contiguous or nearly contiguous tenements
- Sufficiently sized (3 or more licences covering more than 1500 km²)
- Tenements in good standing regarding all compliance issues

If an amalgamation of expenditure commitments is approved by the Minister, the exploration licences to which the amalgamations relate will be altered by reducing their licence areas by an amount or amounts determined by the Minister after consultation with the tenement holders. Under current policy, the tenement group is generally required to reduce by 10% annually.

An amalgamated expenditure arrangement also has the effect of amalgamating the obligations under section 30AA. For example, the explorer's obligation to submit an expenditure return will apply to the amalgamated group of exploration licences; therefore, one return will be sufficient for the amalgamated area, rather than a return per licence.

Where an explorer fails to meet their expenditure commitments (including amalgamated expenditure), obligations to furnish statements or respond to any requirement for independent verification, the Minister may (without consultation) alter the relevant exploration licence by reducing the licence area by an amount determined by the Minister (s. 30AAA(9)). While the Minister may determine an amount that a licence or licences must be reduced by, the explorer will determine what area of their licence or licences will be relinquished. If the Minister chooses to reduce the area of the licence to punish non-compliance, the licence following the reduction will no longer be in non-compliance and will be in good standing.

As an expenditure commitment is a deemed a condition of an exploration licence, failure to meet an expenditure commitment may attract the maximum penalty for contravening or failing to meet a term or condition of a licence of \$250,000 (s. 56L).

The Minister is unable to penalise a failure to meet expenditure commitment by concurrently reducing an exploration licence area and instituting prosecution for a breach of licence conditions. Therefore, the Minister must determine which measure is the most appropriate where a breach of a provision enlivens the right to either require compulsory relinquishment or commence a prosecution because, once either course is chosen (e.g. by imposing a reduction or commencing proceedings), the alternative course is excluded. Decisions as to which measure to pursue in such circumstances will usually be based on the particular facts in each case, the evidence available, any relevant time constraints, and the weight of the relevant factors.

4. Area and subdivision

Area and subdivision as amended by the Statutes Amendment (Mineral Resources) Act 2019

Section 30AA sets the maximum area of an exploration licence. Unless the Minister approves a larger area, the maximums are:

- a) 1,000 square kilometres for minerals; or
- b) 20 square kilometres for precious stones in an opal development area.

The Minister may describe or delineate the land in respect of which an exploration licence is granted in such a manner as the Minister deems appropriate (s. 33A). The co-ordinates of physical locations in Australia (such as wells, seismic lines, pipelines etc.) are defined using the Geocentric Datum of Australia (GDA).

If the Minister alters the delineation or description of the land and this results in overlapping tenure, section 80 of the Act will not apply (s. 33A(2)). Section 80 prohibits land from being subject to simultaneous tenements unless certain conditions are met. The regulations can prescribe terms and conditions to govern the co-existence of exploration licences that have been granted over the same area as a result of the Minister altering the manner in which the land is described or delineated. There are no regulations prescribed. If part of the licence area of one exploration licence is superimposed over land comprising part of the licence area of another licence, and rights of one of the licensees in respect of the part are suspended in accordance with the regulations, the suspension of the rights will continue until either the part ceases to comprise part of the licence area of the other licence or the other licence expires.

Subsections 30AA(3)-(11) introduce a new process whereby an explorer can sell part of their exploration licence area to a third party and have that area granted to that third party as a separate tenement, similar to the subdivision of land. To achieve the outcome of subdivision, without actual subdivision, subsections 30AA(3)-(11) set out a process whereby an area of the exploration licence is surrendered on the condition that it is granted to a particular third party as if the area was open ground.

An application for conditional surrender and the preferential grant cannot be made if:

- The exploration licence is set to expire within 2 years of making the application; or
- The third party is a related body corporate of the tenement holder.

The above exclusions are to prevent tenement holders from avoiding the compulsory relinquishment requirements under section 30A by surrendering an area of the exploration licence and giving a preferential grant to a subsidiary. Further, the exclusion from applying within 2 years of expiry will also prevent an application being made to allow for an exploration licence term to extend beyond its expiry whilst an application is pending.

An explorer must submit an application to the Minister to subdivide, which in practice will facilitate a surrender of part of an exploration licence area with a new exploration licence over the same area being awarded to a third party as a preferential grant outside of the ordinary application process. This application must be made in a manner and form determined by the Minister, must be accompanied by the information set out in the Regulations, and must be accompanied by the prescribed fee. The manner and form of an application determined by the Minister is set out in a Ministerial Determination that is published in the Government Gazette and on the Department's website.

Regulations 27 of the draft regulations prescribes that an application for subdivision of an exploration licence must be accompanied by:

- (a) a description of the area that is to be surrendered;
- (b) an application for an exploration licence that complies with the requirements of section 29A of the Act as if the third party were applying for a new exploration licence over that area (subject to any necessary modifications);
- (c) a statutory declaration, declaring that—
 - (i) the third party is not, in relation to the tenement holder, a related body corporate; and
 - (ii) the third party or a related body corporate has not, within the preceding period of 2 years, held a mineral tenement in respect of the land to be surrendered;
- (d) a statement that there are no outstanding obligations or liabilities in respect of the land to which the application relates or, if there are any such obligations or liabilities, a commitment from the third party to assume responsibility for those obligations and liabilities;
- (e) a final compliance report as if the land to which the application relates were a tenement that was being surrendered by the tenement holder; and
- (f) a final technical exploration report as if the land to which the application relates were a tenement that was expiring, or being surrendered, cancelled or forfeited by the tenement holder.

In assessing an application for subdivision, the Minister must first determine whether the application is eligible for assessment. As noted above, the exploration licence is not eligible for assessment if it is set to expire within 2 years of making the application or the third party is a related body corporate of the tenement holder. The regulations propose that the application provide a statutory declaration demonstrating the eligibility for the Minister's benefit.

After determining whether the application is eligible, the Minister must assess whether the area subject to the application should, in practice, be surrendered on the condition that it is granted to a specific party. The application for subdivision negates the requirement to submit an application for surrender in accordance with section 56X and an application for an exploration licence in accordance with section 29A; however, the assessment of a subdivision application will encompass the decision-making required for applications under those sections.

To adequately assess a subdivision application, the Minister must identify any outstanding obligations or liabilities, as the nature and scale of the obligations or liabilities may have an impact on the terms and conditions on which the exploration licence is granted to the third party. In assessing whether to

grant an exploration licence to the third party, the Minister will assess the application as if it were a new application for open ground.

If the Minister decides to consider an application under this section, the third party must obtain an exploration licence within 6 months of the Minister notifying the parties, or such longer period as may be allowed by the Minister. If the third party does not apply for the exploration licence, or the Minister does not grant the exploration licence, the surrender application is to be rejected. Where this occurs, the explorer retains the licence. The words 'such longer period as may be allowed by the Minister' were included to accommodate circumstances where the process exceeds 6 months, for example, in circumstances where the exploration licence application needs to be referred to the Minister for Environment and Water for consultation, or where the exploration licence area requires permission under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

The Minister may, at any time, on application by the tenement holder or with the consent of the tenement holder, reduce the area of the licence (s. 30AA (11)). This allows the third party to apply for an area of the exploration licence that may be smaller than the area the tenement holder is seeking to surrender. The third party is, however, unable to apply for an area larger if there is contiguous open ground available. To achieve a larger tenement, the third party could apply for the open ground as part of a separate application and subsequently seek to amalgamate the exploration licences. The subdivision application process did not contemplate applications larger than the subdivided area so as not to undermine the fundamental purpose of the ERA competitive process.

If the exploration licence area is granted to the third party, then the conditional surrender and the grant of the exploration licences will occur on the same day (s. 30AA(10)).

Despite the ongoing application, the obligations and requirements of the Act will continue to apply to the tenement holder and the exploration licence.

If the application is withdrawn by the tenement holder, an exploration licence will not be granted to the third party.

This regime is intended to provide an alternate means of attracting investment in exploration and is a commercial alternative to farm-in arrangements. This regime also promotes turnover of exploration licence areas through commercial incentives.

The Minister may receive applications from explorers with exploration licences immediately prior to the 10 year anniversary and the 16 year anniversary due to the compulsory relinquishment requirements that requires explorers to relinquish 50% of their area at the 12-year anniversary, and 100% of their area at the 18-year anniversary. There is no prohibition on the tenement holder reapplying for the relinquished ground but they would need to be awarded the area in the competitive bidding process (s. 29). Consequently, if the tenement holder had no intention to reapply for the area, they could attempt to find a prospective purchaser for the area rather than relinquishing the ground. From a policy perspective, this does circumvent the ERA competitive bidding process; however, it does attract further investment to South Australia and provides a means for explorers to obtain further funding to reinvest.

5. Term and renewal

Term and renewal as amended by the Statutes Amendment (Mineral Resources) Act 2019

The *Statutes Amendment (Mineral Resources) Act 2019* introduces a maximum 18-year term for exploration licences. The underlying rationale for a time-limited exploration licence is that exploration should reasonably be able to be undertaken diligently, targets identified, tested and advanced within a period of 18 years. By the conclusion of the period, prospects should either be advanced to a higher form of tenure, namely a retention or mining lease, and, where not advanced, the exploration licence

ceases and the ground becomes available to be applied for by a different explorer. The intent of this reform, coupled with expenditure commitments, subdivision and forfeiture, is to refine the regulatory conditions that lead to maximising exploration across the State at all times, prevent land-banking, and ensure commercial certainty and security of tenure.

Exploration licences can be granted by the Minister for a term of up to 6 years (s. 30A). An exploration licence that is granted for a term of less than 6 years may include a right of renewal (s. 30A(2)). If an exploration licence does not include in its terms a right of renewal, the licence may be renewed at the discretion of the Minister from time to time, but not so the aggregate term of the licence exceeds 6 years (s. 30A(3)).

The *Statutes Amendment (Mineral Resources) Act 2019* changed the term of an exploration licence from 5 years to 6 years. An even term was preferred as exploration budgets and programs are commonly planned 2 yearly. Further, in 2017, the Foreign Investment Review Board clarified that exploration licences are not considered an interest in Australian land under the foreign investment review framework unless the exploration tenement at the time of acquisition exceeds five years *and* confers the holder with a right to occupy the underlying land. While exploration licences in South Australia exceed 5 years, they do not confer a right to occupy land.

While the Minister has the discretion to grant an exploration licence for less than 6 years, grants of less than 6 years should be considered carefully as limited terms restrict an explorer's rights to subdivide their licence (s. 30AA(5)(a)).

An application for renewal must be made prior to the expiry of the licence, must be made in the manner and form determined by the Minister and must be accompanied by any information required by the regulations or requested by the Minister (s. 30A(4) and (4a)). The manner and form of an application determined by the Minister is set out in a Ministerial Determination that is published in the Government Gazette and on the Department's website.

Regulation 28 of the draft Regulations prescribe that an application for a renewal of an exploration licence must be accompanied by:

Subregulation 28(1)(b) of the draft regulations requires that an application be accompanied by a statement of performance for the previous term summarising the explorer last 6 years of operations and expenditure.

Subregulation 28(1)(b) of the draft regulations requires that an application be accompanied by a statement (statement of intention) outlining the exploration operations that the explorer intends to carry out under the exploration licence for the next 2 years of operations under the licence or a period determined by the Minister. The statement must also declare the amount of expenditure that is estimated to occur in carrying out those operations. The regulation of expenditure requirements is discussed in chapter 3 of this Paper.

Subregulation 28(1)(c) of the draft regulations requires that an application be accompanied by a statement nominating the principal mineral or minerals that the applicant is seeking over the next term and the exploration model that the applicant intends to employ for the purposes of exploring for that mineral or those minerals.

Subregulation 28(1)(d) of the draft regulations require that an application be accompanied by a statement of the technical, operational and financial capabilities and resources available to the applicant for the purpose of carrying out operations under the exploration licence. While this was assessed at grant, the Minister will reassess the applicant's capabilities and resources have regard to their previous performance over the previous term.

Subregulation 23(1)(e) of the draft regulations requires that an application be accompanied by a statement outlining the applicant's history of non-compliance in relation to authorised operations carried out under an Act of another State or Territory that is equivalent to the SA Mining Act. The Minister will already be aware of the applicant's compliance history in South Australia, therefore this statement provides the Minister with important information pertaining to the applicant's compliance history in other jurisdictions.

If an application for the renewal of an exploration licence is not decided before the date on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal date is the date on which the licence would have expired.

After 6 years, the Minister may renew the licence for a further 6 years (or an aggregate of 6 years). At the end of the total period of 12 years, the explorer must relinquish 50% of the original exploration licence area. The exploration licence holder will determine the area of their licence that will be relinquished at renewal. The original exploration licence area will be the area as at the date the exploration licence was granted.

During the period of 12 years, the explorer may have reduced their licence area voluntarily (surrender or renewal over a smaller area), as directed by the Minister due to a failure to meet expenditure commitment, or as a condition of an amalgamated expenditure arrangement. The requirement to relinquish 50% of the original licence area will include any other reductions made during that 12-year period; therefore, the total reduction at the 12-year anniversary will not exceed 50% of the original grant area.

If the Minister has granted retention status in relation to the licence, the Minister may provide that a reduction of less than 50% is required at renewal (s. 33B(5b)).

After the compulsory 50% relinquishment, the exploration licence can be renewed for a further 6 years (or an aggregate of 6 years). At the end of the total period of 18 years, the explorer must relinquish 100% of the original exploration licence area. There are no mechanisms available to the Minister to prevent, exempt, or defer compulsory relinquishment of 100% of the licence at the end of 18 years. While an explorer may lose the ground after 18 years, there is no prohibition on the explorer reapplying for the ground. Unless the Minister makes a determination to the contrary, the available ground will be 'relinquished ground' and will be released under the ERA competitive process, whereby the explore could bid for the lost ground.

Transitioning section 30A exploration licences (0-5yrs of exploring)

An exploration licence in existence before the commencement of the *Statutes Amendment (Mineral Resources) Act 2019 (new Act)* granted under section 30A of the existing Mining Act will be subject to the existing Act until that exploration licence expires, after which the explorer must apply for a new exploration licence under section 30A of the new Act.

The explorer will, if or when they apply for a new exploration licence under section 30A of the new Act, commence as if they were at the 6-year anniversary.

For example:

Mr Digger is granted an exploration licence in July 2017 with a term of 2 years under section 30A. Under the new transitional provisions, he could apply for a further renewal of that exploration licence under section 30A of the existing Mining Act of up to 5 years in aggregate. In July 2022, Mr Digger is keen to continue exploring and applies for a new exploration licence under section 30A of the new

Act. The Minister grants Mr Digger a new licence for 6 years. In July 2028, that licence is up for renewal and Mr Digger is keen to continue exploring but must relinquish 50% of the original area at the time of renewal. After which Mr Digger can renew his licence for a further 6 years but must relinquish 100% of the area in July 2034. Mr Digger will have had his exploration licence for 17 years.

Transitioning section 30AB subsequent exploration licences (5yrs-10yrs of exploring)

A subsequent licence in existence before the commencement of the new Act granted under section 30AB of the existing Mining Act will be subject to that section until that exploration licence meets the end of the 5 year terms (or aggregate of 5 years), after which the explorer must apply for a new exploration licence under section 30A of the new Act.

The explorer will, if or when they apply for a new exploration licence under section 30A of the new Act, commence as if they were at the 6-year anniversary.

For example:

Driller Pty Ltd is granted an exploration licence in July 2010 under section 30A. In July 2015, the Minister grants Driller Pty Ltd a subsequent licence. In July 2020, Driller Pty Ltd is keen to continue exploring and applies for a new exploration licence under section 30A of the new Act. The Minister grants Driller Pty Ltd a new licence for 6 years. In July 2026, that licence is up for renewal and Driller Pty Ltd is keen to continue exploring but must relinquish 50% of the original area at the time of renewal. After which Driller Pty Ltd can renew the licence for a further 6 years but must relinquish 100% of the area in July 2032. Driller Pty Ltd will have had its exploration licence for 22 years.

Transitioning section 30AB subsequent exploration licences with age above 10 years (10yrs+ of exploring)

A subsequent licence in existence before the commencement of the new Act granted under section 30AB of the existing Mining Act will be subject to that section until that exploration meets the end of the 5 year terms (or aggregate of 5 years), after which explorer must apply for a new exploration licence under section 30A of the new Act.

If the explorer has held its subsequent licence for at least 10 years at the time in which they must apply for a new exploration licence under section 30A of the new Act, they will commence as if they were at the 12 year anniversary.

For example:

Explore Co was granted an exploration licence under section 30A in July 1981. In July 1986, the Minister granted Explore Co a subsequent licence. Explore Co was granted further subsequent licences in 1991, 1996, 2001, 2006, 2011, and 2016. Under the new transitional provisions, Explore Co could apply for a new exploration licence in July 2021 under section 30A of the new Act. The Minister grants Explore Co a new licence for 6 years but must relinquish 100% of the area in July 2027. Explore Co will have had its exploration licence for 46 years.

Prospective Co was granted an exploration licence under section 30A in July 2007. In July 2012, the Minister granted Prospective Co a subsequent licence. Prospective Co was granted a further subsequent licence in July 2017. Under the new transitional provisions, Prospective Co could apply for a new exploration licence in July 2022 under section 30A of the new Act. The Minister grants

Prospective Co a new licence for 6 years but must relinquish 100% of the area in July 2028. Prospective Co will have had its exploration licence for 21 years.

6. Excise of land and delineation of land

Excise of land and delineation of land as amended by the Statutes Amendment (Mineral Resources) Act 2019

Any land comprised in an exploration licence that is required for a public purpose can be excised by the Minister and that area will cease to apply to the licence (s. 30AB). The land will not be considered to be open ground. Regulation 29 of the draft Regulations prescribes that the Minister may excise land by notice in the Gazette in a form determined by the Minister and by serving a copy of the notice on the tenement holder.

If the Minister excises area from an exploration licence, the explorer may apply to the Court for an order that the Minister pay compensation for the money expended by the explorer in prospecting for minerals in the area excised.

The Minister's power to excise land has been replicated from section 33(4) to 33(6) of the current Act, and it is understood that this power has never been exercised.

7. Retention Status

Retention status as amended by the Statutes Amendment (Mineral Resources) Act 2019

During the review of the Mining Act, it became evident that, on average, the Minister receives 1 or 2 applications for a retention lease each year and when considering the purpose of those leases, it was evident that retention leases are used for 2 purposes:

1. the applicant needs to undertake activities that cannot be undertaken on an exploration licence in order to obtain information for their mining lease application (such as ISL mining); or
2. the resource is currently uneconomical, and the applicant wants to secure the land for future mining.

(1) above makes up the majority of retention leases. It is understood that (2) is less common as explorers currently secure the land through the use of subsequent exploration licences, which have no renewal limit. Feedback also demonstrated that nominal applications are received due to:

- a) The application process is timely and costly
- b) The application process is similar to that of a mining lease; therefore, the applicant is better off applying for a mining lease rather than duplicating the process
- c) The fees and rental are too high compared to the minimum expenditure requirements of an exploration licence
- d) Concessions can be sought by way of amendment to PEPRs if scaling back on operations is required.

While retention leases will be discussed in Topic 12 - Productions Tenements, the *Statutes Amendment (Mineral Resources) Act 2019* introduces retention status for exploration licences.

Retention status is a reprieve granted to an explorer in limited circumstances to reprieve them of obligations under the Act subject to strict conditions.

The purpose of retention status is to provide for a reduction in any expenditure commitment applying under section 30AAA, provide for less reduction in the area of the licence applying in relation to a renewal of the licence under section 30A or provide for a reduction in the fees that would otherwise be payable under section 31 (s. 33B(5)).

An application for retention status must be made in a manner and form determined by the Minister, must identify the boundaries of the land in respect of which retention status is being sought, and must be accompanied by such information as may be prescribed by the regulations (s. 33B(2)). The manner and form of an application determined by the Minister is set out in a Ministerial Determination that is published in the Government Gazette and on the Department's website.

In order to grant retention status over an area of land within an exploration licence, the Minister must consider whether the explorer is eligible, what reprieval of obligations should be granted, what area of the licence the status should apply, the term of the status and whether a work program should be required.

An explorer is only eligible to apply for retention status if the Minister is satisfied that:

- a. the explorer has been unable to obtain 1 or more approvals under another Act or Acts that are required before the tenement holder can commence or continue exploration operations in relation to the land to which the application relates; or
- b. that there is an identified mineral resource, that it is unreasonable to expect an application to be made for a mining lease or a retention lease because it is not commercially viable to spend time and money on developing the resources, and that it is reasonably likely that mining the relevant land will become commercially viable within the next 6 years; or
- c. if satisfied that there are other circumstances (in the Minister's absolute discretion) which justify the granting of retention status under this section.

Where an application is made for retention status on the grounds that the explorer has been unable to obtain 1 or more approvals under another Act or Acts that are required before the tenement holder can commence or continue exploration operations in relation to the land to which the application relates, regulation 26(a) of the draft Regulations prescribe that the following information must accompany the application:

- (a) a statement of the approval or approvals under another Act or Acts that the tenement holder has been unable to obtain, and details of any attempts to obtain such approvals; and
- (b) a statement summarising the exploration operations undertaken under the exploration licence; and
- (c) an estimate of the expenditure that has been incurred in respect of exploration operations undertaken on the area of land to which the application relates; and
- (d) an estimate of the time that the applicant considers will be required to obtain the approvals under another Act or Acts that are required before the tenement holder can commence or continue exploration operations in relation to the land to which the application relates.

Where an application is made for retention status on the grounds that there is an identified mineral resource, that it is unreasonable to expect an application to be made for a mining lease or a retention lease because it is not commercially viable to spend time and money on developing the resources, and that it is reasonably likely that mining the relevant land will become commercially viable within the

next 6 years, regulation 26(b) of the draft Regulations prescribe that the following information must accompany the application:

- (a) details of the mineral resource located in, on or under the land to which the application relates; and
- (b) a statement declaring that the mineral resource has been appropriately identified and estimated; and
- (c) a statement outlining the reasons the applicant considers it unreasonable to expect an application to be made for a mining lease or a retention lease because it is not commercially viable to spend time and money on developing the resource; and
- (d) a statement outlining the reasons the applicant considers that mining the relevant land will become commercially viable within the next 6 years.

Where an application is made for retention status on the grounds that there are other circumstances (in the Minister's absolute discretion) which justify the granting of retention status, regulation 26(c) of the draft Regulations prescribe that the following information must accompany the application:

- (a) a statement summarising the exploration operations undertaken under the exploration licence; and
- (b) an estimate of the expenditure that has been incurred in respect of exploration operations undertaken on the area of land to which the application relates; and
- (c) a statement of the circumstances that the applicant considers justify the application, including details of any steps taken by the applicant to resolve those circumstances by other means.

The area of land in relation to which retention status can be applied will be an area that the Minister considers, after consultation with the explorer, to be reasonable in the circumstances (and may be less than the area delineated in the application).

The Minister can grant retention status for up to 6 years (or an aggregate of 6 years) and may then extend the term of retention status beyond 6 years if satisfied that the eligibility grounds still apply (s. 33B(6)-(8)).

The Minister may, when granting retention status or at a subsequent time, make it a condition of the licence that the explorer carries out work in accordance with a work program approved by the Minister (s. 33B(9)). If required, a work program must be submitted with the application for retention status or from time to time as required under a condition of the licence (s. 33B(10)) and the Minister may approve a proposed work program with or without addition or modification (s. 33B(11)).

As undertaking work in accordance with a work program is a deemed condition of an exploration licence, failure to undertake the work set out in the program may attract the maximum penalty for contravening or failing to meet a term or condition of a licence of \$250,000 (s. 56L).

If a work program is required, the explorer may apply for deferral of any work to be carried out under an approved work program, variation of an approved work program, or cancel an approved work program (s. 33B(12)).

During the term of retention status, the Minister may require the explorer to show cause why 1 or more approvals required under another Act or Acts have not been obtained or why a mining lease or retention lease should not be applied for in relation to the whole or any part of the land comprised in the exploration licence (s. 33B(13)). If the explorer fails to show cause to the satisfaction of the Minister within the period set out in the notice or the Minister considers the explorer failed to show sufficient cause, the Minister may require the explorer to apply for a mining lease or a retention lease.

If the explorer fails to apply for a mining lease or retention lease or that application is unsuccessful, the retention status will expire and the land subject to that status will be excised from the area of the exploration licence and become relinquished ground (s. 33B(15)).

If the term of retention status comes to an end and the Minister has not issued any notices, the land will return to its original status under the exploration licence (s. 33B(16)).