

Geothermal Energy Resources Act 2005

Act No. 7/2005

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY MATTERS	1
1. Purpose	1
2. Commencement	2
3. Objectives and principles	2
4. Interpretation	4
5. Meaning of geothermal energy exploration	7
6. Meaning of geothermal energy extraction	8
7. Act binds the Crown	8
8. Relationship of this Act to certain other Acts	8
9. Application of this Act to land in Victoria	9
10. Non-application of Act	9
11. Minister may exempt land from application of Act	9
12. Geothermal energy is the property of the Crown	10
13. Crown retains Crown land geothermal energy rights	10
14. Offence to explore for geothermal energy unless authorised	10
15. Offence to extract geothermal energy unless authorised	11
16. Geothermal energy becomes the property of the person extracting it	11
PART 2—EXPLORATION PERMITS	12
Division 1—Rights	12
17. Rights conferred by exploration permit	12
Division 2—Procedure for Obtaining Permits	12
18. Commencement of tender process	12
19. Application for permits	12
20. Chief factors to be considered in deciding competing applications	13
21. Notice to be given to applicants	14
22. Minister may make new grant if former grant refused	14
23. Procedure if tender does not result in the granting of a permit	14
24. Restrictions on permit area	15
25. Term of permit	15

<i>Section</i>	<i>Page</i>
Division 3—Renewals	16
26. Renewal of permit	16
27. Application for renewal	16
28. Other factors to be considered in renewing permits	16
29. Renewed permit area to be reduced	17
30. Variation of work programs for renewed permits	18
Division 4—Ministerial Directions	18
31. Minister may give directions	18
PART 3—RETENTION LEASES	20
32. Purpose of a retention lease	20
33. Rights conferred by lease	20
34. Right to apply for lease	20
35. Details to be supplied with application	21
36. Factors determining grant of application	21
37. Restrictions on area to which lease applies	22
38. Term of lease	22
39. Procedure if lease not to be granted	23
40. Minister may require review of commercial viability	23
41. Minister may give directions if extraction viable	24
PART 4—EXTRACTION LICENCES	25
Division 1—Rights	25
42. Rights conferred by licence	25
Division 2—Procedure for Obtaining Licence	25
43. Application for licence	25
44. Commencement of tender process	25
45. Application for licences	26
46. Chief factors to be considered in deciding applications	27
47. Notice to be given to applicants	28
Division 3—General Provisions	28
48. Minister may make new grant if former grant refused	28
49. Restrictions on area to which licence applies	28
50. Term of licence	29
Division 4—Development Plans	29
51. Geothermal energy extraction development plans	29
52. Development plan to be lodged before extraction can start	29
53. Development plan must be adhered to	29
54. Minister may require variation of development plan	30
55. Minister may permit variation of development plan	30

<i>Section</i>	<i>Page</i>
PART 5—UNIT DEVELOPMENT	31
56. Unit development	31
57. Minister may amend licence for unit development	32
PART 6—PROVISIONS APPLYING TO AUTHORITIES GENERALLY	33
Division 1—Applications	33
58. Applications for authorities	33
59. Applications are not transferable	33
60. Existing permits and leases continue until renewal applications etc. decided	34
Division 2—Requirements	35
61. Work programs	35
62. Planning permits	35
Division 3—Conditions	36
63. Conditions that may apply to authorities	36
64. Minister may vary conditions unilaterally	37
65. Minister may vary conditions by consent	38
66. Variation of conditions on renewal, consolidation or transfer	38
67. Suspension of conditions	39
68. Term of authority may be extended if condition suspended	40
Division 4—Transfers of Authorities	40
69. Transfers	40
70. Matters Minister must consider in assessing transfer application	41
71. Execution of transfer document insufficient to create interest	41
72. Partial transfers of permits and licences	41
Division 5—Surrender or Cancellation of Authorities	42
73. Surrender of authority	42
74. Cancellation of authority	43
75. Additional grounds for the cancellation or partial cancellation of extraction licence	44
76. Procedure to be followed before authority cancelled	45
77. Minister may give directions if an authority is surrendered or cancelled or expires	46
Division 6—Consolidation of Authorities	47
78. Consolidation of adjoining authorities	47

<i>Section</i>	<i>Page</i>
PART 7—REQUIREMENTS BEFORE OPERATIONS ALLOWED ON LAND	49
Division 1—Wilderness Crown Land	49
79. Operations on wilderness land barred	49
Division 2—Operations requiring Prior Consent	49
80. Consent of Minister needed	49
81. Geothermal energy operations on restricted Crown land	50
82. Geothermal energy operations on water authority land	50
83. Provisions applying to consents	51
84. Right to seek review of refusal to give consent	51
Division 3—Operations requiring Notice	52
85. Operations on unrestricted Crown land	52
86. Notice to be given before operation carried out on any land	52
Division 4—Other Matters	53
87. Areas of aboriginal significance	53
PART 8—COMPENSATION	54
88. Requirements before operation starts	54
89. What compensation is payable for—private land and native title interests	54
90. Compensation not payable for geothermal energy	56
91. What compensation is payable for—Crown land	57
92. Limit on total amount of compensation	58
93. Time limit on compensation claims	59
94. Determination of disputes	59
95. Determination of disputes—Crown land	61
PART 9—OTHER OBLIGATIONS ABOUT CONDUCT OF OPERATIONS	62
Division 1—Operation Plans	62
96. Operation plan to be prepared	62
97. Plan must be observed in carrying out operation	63
98. Minister may permit variation of operation plan	63
Division 2—Insurance	63
99. Insurance must be held	63
Division 3—Rehabilitation Bonds	64
100. Requirement to take out rehabilitation bond	64
101. Minister may require increased rehabilitation bond	64
102. Return of bond if rehabilitation satisfactory	65

<i>Section</i>	<i>Page</i>
Division 4—Royalties	65
103. Liability for, and rate of, royalty	65
104. Rate of royalty	65
105. When royalty must be paid	65
106. Minister may vary royalty	66
Division 5—Other Obligations	66
107. Maintenance etc. of property	66
108. Authority holder must not interfere with other rights	67
Division 6—Requirements at End of Authority	67
109. Equipment must be removed once authority ceases	67
110. Minister may remove equipment	67
PART 10—REHABILITATION	69
111. Rehabilitation	69
112. Minister may carry out rehabilitation	69
PART 11—INFORMATION	71
Division 1—Information to be Given to Minister	71
113. Authority holder must provide information to Minister	71
114. Minister may require person to provide information	71
115. False information not to be given	72
Division 2—Release of Information	73
116. Meaning of "release" and "information"	73
117. Meaning of "interpretive information"	73
118. Information that is not to be released	73
119. Information about applications that may be released	74
120. Release of information about area that is no longer an authority area	74
121. Release of factual information	74
122. Minister may give information etc. to other Ministers	75
PART 12—ENFORCEMENT	76
Division 1—Inspections	76
123. Authorisation of inspectors	76
124. Production of identity card	76
125. Monitoring compliance with this Act	76
126. Emergencies	78
127. Offence-related searches and seizures	79
128. Occupier to be given copy of consent	80
129. Disputed property in possession of inspector	80

<i>Section</i>	<i>Page</i>
130. Search warrant	81
131. Announcement before entry	82
132. Copy of warrant to be given to occupier	83
133. Receipt must be given for any thing seized	83
134. Copies of certain seized things to be given	84
135. Use of equipment to examine or process things	84
136. Use or seizure of electronic equipment at premises	85
137. Compensation for damage	86
138. Return of seized things	87
139. Magistrates' Court may extend period	87
140. Power of inspector to require information or documents	88
141. Refusal or failure to comply with requirement	89
142. Protection against self-incrimination	89
143. Offence to obstruct inspector	89
Division 2—Improvement and Prohibition Notices	90
144. Improvement notice	90
145. Prohibition notice	90
146. Right to review	92
147. Defences to charge of failing to comply with a notice	92
Division 3—Offences	93
148. Offences by corporations also offences by officers	93
149. Offences by partners	93
150. Offences by joint venturers	93
151. Offences by employees and agents	94
PART 13—ADMINISTRATION	95
Division 1—Geothermal Energy Register	95
152. Establishment of register	95
153. Effect of registration	95
154. Other documents to be registered	95
155. Entries in register on devolution of title	96
156. Registration	96
157. Effect of registration	97
158. Inspection of register and documents	97
159. Minister's certificates	97
160. Minister may make corrections to register	98
161. Right to review of register entries	98
162. Offences relating to the register	99
163. Officials must not disclose information	99
Division 2—Other Administrative Matters	100
164. Minister may require further information	100
165. Form of documents	100
166. Delegation	100

<i>Section</i>	<i>Page</i>
Division 3—Fees and Penalties	100
167. Applications not to be processed unless fee paid	100
168. Fees and penalties debts due to the State	101
PART 14—REGULATIONS	102
169. Regulations	102
PART 15—AMENDMENTS AND TRANSITIONAL PROVISIONS	105
170. Catchment and Land Protection Act 1994	105
171. National Parks Act 1975	105
172. Nuclear Activities (Prohibitions) Act 1983	105
173. Petroleum (Submerged Lands) Act 1982	106
174. Victorian Plantations Corporation Act 1993	106
175. Effect on existing authorities and activities	106
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	108
INDEX	109



Victoria

No. 7 of 2005

Geothermal Energy Resources Act 2005[†]

[Assented to 27 April 2005]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY MATTERS

1. Purpose

The purpose of this Act is to facilitate and regulate geothermal energy exploration and extraction in Victoria.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 1—Preliminary Matters

s. 2

2. Commencement

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 30 June 2006, it comes into operation on that day.

3. Objectives and principles

- (1) The objectives of this Act are to encourage the exploration for geothermal energy in Victoria and to promote geothermal energy extraction for the benefit of all Victorians by—
 - (a) promoting sustainable, commercial exploration for and extraction of geothermal energy resources and geothermal energy;
 - (b) establishing that the Crown owns and may seek to gain a return for use of geothermal energy resources and geothermal energy;
 - (c) establishing secure title and efficient and effective allocation processes to encourage the exploration for, and extraction of, geothermal energy resources and geothermal energy;
 - (d) establishing transparent, fair and efficient land use and environment planning and land access processes for the exploration for, and extraction of, geothermal energy resources and geothermal energy;
 - (e) ensuring that health, safety and environmental issues are considered in planning for, authorising, operating and decommissioning geothermal energy operations.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 1—Preliminary Matters

s. 3

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- (2) The Minister and all persons employed or engaged in the administration of this Act may have regard to the following in making decisions about the utilization of resources and granting applications under this Act and generally in the administration and enforcement of this Act—
- (a) the enhancement of individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
 - (b) the provision of equity within and between generations;
 - (c) the protection of biological diversity and the maintenance of ecological integrity;
 - (d) recognition of the need to develop a strong, growing, diversified and internationally competitive economy that can enhance the capacity for environment protection;
 - (e) the adoption of cost effective and flexible measures, not disproportionate to the issues being addressed, including improved valuation, pricing and incentive mechanisms;
 - (f) the effective integration of both long and short term economic, environmental, social and equity considerations into decision making;
 - (g) if there are threats of serious or irreversible environmental damage, ensuring that lack of full scientific certainty is not used as a reason for postponing measures to prevent environmental degradation;
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Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 4

Part 1—Preliminary Matters

- (h) decision making should be guided by—
 - (i) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
 - (ii) an assessment of the risk-weighted consequences of various options;
- (i) development should make a positive contribution to social equity, health and safety, regional development and respect the aspirations of the community and indigenous peoples;
- (j) decisions and actions should provide for community involvement in issues which affect members of the community.

4. Interpretation

- (1) In this Act—

"authority" means an exploration permit, a retention lease or an extraction licence;

"Crown land" means land that is, or that is by any Act deemed to be, unalienated land of the Crown, and—

- (a) includes land of the Crown that is—
 - (i) reserved permanently or temporarily by or under any Act; and
 - (ii) occupied by a person under a lease, licence or other right under this or any other Act;
- (b) does not include land that is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993**;

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 1—Preliminary Matters

s. 4

"Department" means the Department of Primary Industries;

"geothermal energy" means the heat energy contained or stored in rock, geothermal water or any other material occurring naturally within the earth;

"geothermal energy exploration" has the meaning set out in section 5;

"geothermal energy extraction" has the meaning set out in section 6;

"geothermal energy operation" means any activity relating to geothermal energy exploration or to geothermal energy extraction;

"geothermal energy register" means the register established under Division 1 of Part 13;

"geothermal energy resources" means geothermal water, rock or any other material occurring naturally within the earth containing heat energy;

"geothermal water" means water, water vapour or steam heated within the earth by natural phenomena to a temperature of 30° Celsius or more or any mixture of such water, water vapour or steam;

"improvement notice" means a notice issued under section 144;

"inspector" means a person authorised by the Minister under section 123 to act as an inspector;

"Native Title Act" means the Native Title Act 1993 of the Commonwealth;

"native title holder" has the same meaning as in the Native Title Act;

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 4

Part 1—Preliminary Matters

"owner" means—

- (a) in relation to land that is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993**, the licensee of that land under that Part;
- (b) in relation to Crown land, includes the native title holder of the land;

"planning scheme" means a planning scheme approved under the **Planning and Environment Act 1987**;

"private land" means land that is not Crown land;

"prohibition notice" means a notice issued under section 145;

"rehabilitation bond" means an instrument acceptable to the Minister under section 100 securing the payment of a specified amount of money for any rehabilitation work, clean-up work or pollution prevention work that may be necessary as a result of a geothermal energy operation;

"retention period" means a period of 60 days after the seizure of a thing under this Act;

"Tribunal" means the Victorian Civil and Administrative Tribunal established under the **Victorian Civil and Administrative Tribunal Act 1998**;

"unit development agreement" means an agreement made under Part 5;

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 1—Preliminary Matters

s. 5

"unrestricted Crown land" means any Crown land other than—

- (a) land referred to in section 79; and
- (b) land that is a national, State or other park under the **National Parks Act 1975**; and
- (c) land specified in Schedule 3 to the **Mineral Resources Development Act 1990**;

"vary", in relation to the conditions of an authority, includes adding conditions to, and removing conditions from, the authority;

"work program" has the meaning set out in section 61.

- (2) A reference in this Act to—
 - (a) a permit area, a lease area, a licence area, or an authority area is a reference to the area to which the permit, lease, licence or authority applies at the relevant time;
 - (b) this Act includes a reference to the regulations made under this Act.
- (3) For the purposes of this Act, a person is to be treated as carrying out a geothermal energy operation by starting, or continuing to carry on, the operation.

5. Meaning of geothermal energy exploration

Geothermal energy exploration is the carrying out of one or more of the following activities for the purpose of finding geothermal energy or geothermal energy resources—

- (a) conducting geological, geophysical, hydrogeological and geochemical surveys;
- (b) drilling;

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 6

Part 1—Preliminary Matters

- (c) taking samples for the purposes of chemical, thermal or other analysis;
- (d) extracting geothermal energy or geothermal energy resources for the purpose of determining whether it will be viable to extract the energy or resources commercially.

6. Meaning of geothermal energy extraction

Geothermal energy extraction is—

- (a) the extraction of geothermal energy or geothermal energy resources for the purpose of capturing the heat energy from the resources;
- (b) any activity incidental to extraction referred to in paragraph (a) including the construction and operation of pumps and pipes within the area in which the geothermal energy or geothermal energy resources are being extracted.

7. Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

8. Relationship of this Act to certain other Acts

If this Act makes provision in relation to a matter and provision is also made in relation to that matter by, or under, the **Dangerous Goods Act 1985**, the **Environment Protection Act 1970**, the **Occupational Health and Safety Act 1985** or the **Water Act 1989**, the provision made by this Act—

- (a) if not inconsistent with that other provision, must be observed in addition to that other provision; and

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 1—Preliminary Matters

s. 9

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- (b) if inconsistent with that other provision, is, to the extent of the inconsistency, of no force or effect and that other provision prevails.

9. Application of this Act to land in Victoria

This Act applies to all land in Victoria, other than—

- (a) land that is within the area defined as the adjacent area in the **Petroleum (Submerged Lands) Act 1982**; and
- (b) land to the extent that it is exempted by the Minister under section 11.

10. Non-application of Act

This Act does not apply to—

- (a) small scale ground source heat pumps used at or in the vicinity of the source of the geothermal energy; and
- (b) other small scale extraction operations that are not for commercial purposes; and
- (c) activities and operations or classes of activity or operation that are prescribed by the regulations; and
- (d) land or any class of land that is exempted by the Minister under section 11.

11. Minister may exempt land from application of Act

- (1) The Minister may, by notice published in the Government Gazette and recorded in the geothermal energy register, exempt any land or class of land from the application of some or all of the provisions of this Act.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 1—Preliminary Matters

s. 12

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- (2) The Minister may exempt land—
- (a) to protect the land for significant environmental reasons; or
 - (b) to protect significant commercial or economic operations or activities; or
 - (c) for any other reason the Minister considers to be appropriate.
- (3) The Minister, by notice published in the Government Gazette and recorded in the geothermal energy register, may revoke any exemption granted under this section.

12. Geothermal energy is the property of the Crown

The Crown owns all geothermal energy and geothermal energy resources on or below the surface of any land in Victoria that came to be on or below that surface without human assistance.

13. Crown retains Crown land geothermal energy rights

In conferring any grant, lease, licence or other tenure of any Crown land after the commencement of this section on any person, the Crown retains all rights that it has in relation to any geothermal energy and geothermal energy resource on or below that land.

14. Offence to explore for geothermal energy unless authorised

A person must not carry out any activity relating to geothermal energy exploration in Victoria except—

- (a) under, and in accordance with, an authority; or
- (b) as otherwise permitted by this Act.

Penalty: 240 penalty units.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 1—Preliminary Matters

s. 15

15. Offence to extract geothermal energy unless authorised

A person must not carry out any activity relating to geothermal energy extraction in Victoria except—

- (a) under, and in accordance with, an extraction licence; or
- (b) as otherwise permitted by this Act.

Penalty: 240 penalty units.

16. Geothermal energy becomes the property of the person extracting it

On a person extracting from any land in Victoria in accordance with this Act any geothermal energy or geothermal energy resource that came to be on or below the surface of the land without human assistance, the person becomes the owner of that geothermal energy or geothermal energy resource.

PART 2—EXPLORATION PERMITS

Division 1—Rights

17. Rights conferred by exploration permit

An exploration permit authorises the holder of the permit, subject to and in accordance with the conditions of the permit—

- (a) to carry out geothermal energy exploration in the permit area; and
- (b) to do any thing in that area that is necessary for, or incidental to, that purpose.

Division 2—Procedure for Obtaining Permits

18. Commencement of tender process

- (1) The Minister may invite applications for an exploration permit to explore a specified area.
- (2) The invitation must specify—
 - (a) the chief factors that will be considered by the Minister in assessing applications; and
 - (b) a date by which applications must be made.

19. Application for permits

- (1) In addition to complying with section 58, an applicant for an exploration permit must submit—
 - (a) details of the applicant's relevant technical qualifications and of the relevant technical qualifications of the applicant's employees; and
 - (b) details of the relevant technical advice available to the applicant; and
 - (c) details of the financial resources available to the applicant; and
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 2—Exploration Permits

s. 20

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- (d) the work programs proposed by the applicant; and
 - (e) any other information prescribed by the regulations.
- (2) An applicant must also submit any other information required in the invitation under section 18.

20. Chief factors to be considered in deciding competing applications

- (1) This section applies if more than one application is received in respect of an area and the Minister decides to grant an exploration permit in respect of the area.
- (2) In determining which applicant, if any, is to be granted the permit, the chief factors the Minister must take into account are—
 - (a) the respective merits of the work programs proposed by the applicants;
 - (b) the likelihood that the work programs will be carried out;
 - (c) the effect the proposed exploration will have on public safety;
 - (d) the benefit of the proposed exploration relative to the economic, social and environmental impact of the proposed exploration;
 - (e) the respective technical and financial resources of the applicants;
 - (f) any other chief factors specified in the invitation under section 18.

21. Notice to be given to applicants

- (1) If the Minister decides to grant an exploration permit, he or she must give the person granted the permit and every unsuccessful applicant for the permit written notice of that decision within 14 days after making it.
- (2) If the Minister decides not to grant an exploration permit to any of the applicants for the permit, he or she must notify all applicants in writing of that decision.

22. Minister may make new grant if former grant refused

- (1) This section applies if the Minister had decided to grant an exploration permit to an applicant who responded to an invitation under section 18 but who subsequently states in writing that the applicant is not willing to accept the grant.
- (2) The Minister may grant the permit to any other applicant for the permit.
- (3) This section applies regardless of how many times the Minister has decided to grant the permit.

23. Procedure if tender does not result in the granting of a permit

- (1) This section applies if—
 - (a) no applications are received in response to an invitation made under section 18; or
 - (b) the Minister refuses to grant an exploration permit to any applicant who responded to an invitation made under section 18; or
 - (c) no applicant who responded to the invitation is willing to accept the grant of the exploration permit by the Minister.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 2—Exploration Permits

s. 24

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- (2) The Minister may invite further applications for an exploration permit for the relevant area.
 - (3) Sections 18, 21 and 22 apply to applications made in response to an invitation made under subsection (2).
 - (4) If more than one application is received, the Minister must consider the applications in the order in which they were received by the Minister.

24. Restrictions on permit area

In issuing an exploration permit to an applicant, the Minister must ensure—

- (a) that the area to which the permit applies—
 - (i) is not more than the number of square kilometres prescribed by the regulations; and
 - (ii) forms a continuous parcel of land; and
- (b) that no part of the area to which the permit applies is within an area that is already the subject of an exploration permit.

25. Term of permit

- (1) The Minister may grant a permit for a period not exceeding 15 years.
- (2) An exploration permit expires on the date specified in the permit, unless it is cancelled or surrendered earlier or unless this Act otherwise provides.

Division 3—Renewals

26. Renewal of permit

- (1) The Minister may renew an exploration permit for a further period not exceeding 5 years from the date of its expiry.
- (2) The Minister may renew an exploration permit that has been renewed once under sub-section (1) for a further period not exceeding 10 years from the date it expired before renewal under that sub-section.

27. Application for renewal

- (1) The holder of an exploration permit may apply to the Minister for the renewal of the permit.
- (2) A renewal application must be given to the Minister at least 90 days before the permit is due to expire.
- (3) On the payment of any late fee required by the regulations for the purposes of this section, the Minister may also consider any application for renewal that does not comply with sub-section (2).
- (4) The Minister must not consider any application to renew a permit that is made after the permit has expired.

28. Other factors to be considered in renewing permits

- (1) The Minister must renew an exploration permit if—
 - (a) the holder of the permit applies for the renewal in the form and manner required by the Minister; and
 - (b) the application is accompanied by the renewal fee set out in the regulations for the purposes of this paragraph; and

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 2—Exploration Permits

s. 29

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- (c) the permit holder has complied with the conditions of the permit and all applicable laws; and
 - (d) the application is accompanied by details of the work program the holder of the permit proposes to undertake if the permit is renewed; and
 - (e) the Minister is satisfied that the proposed work program is adequate; and
 - (f) the holder of the permit has nominated in the application the area that the holder wishes to relinquish (unless section 29(4) applies); and
 - (g) the Minister will not breach section 29(1), (2) or (3) by renewing the permit for the remaining area.
- (2) In any other case the Minister may renew a permit if satisfied that there are special circumstances that justify the renewal of the permit.

29. Renewed permit area to be reduced

- (1) In renewing an exploration permit, the Minister must ensure that the permit area is reduced by at least 50%.
- (2) In renewing an exploration permit and reducing the permit area, the Minister must be satisfied that both the area to which the renewed permit will apply and the area to which the permit will no longer apply are of such a nature that it will still be practicable for geothermal energy exploration to be carried out on them.
- (3) In reducing the area to which a renewed exploration permit will apply, the Minister must ensure that the reduced area forms no more than 2 continuous parcels of land.

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 30

Part 2—Exploration Permits

- (4) Despite sub-section (1), the Minister may issue a renewed exploration permit without reducing the permit area, or without reducing the permit area by at least 50%, if—
- (a) the Minister is satisfied, on the written application of the holder of the permit—
 - (i) that the holder was unable to explore a relevant area as a result of one or more events that were beyond the holder's control; or
 - (ii) that there are exceptional circumstances that justify the renewal; or
 - (b) it is necessary to do so to enable the Minister to comply with sub-section (3).

30. Variation of work programs for renewed permits

- (1) If an exploration permit is renewed, the holder of the permit may apply to the Minister for permission to vary the work program.
- (2) The Minister may allow the holder of the permit to vary the work program if the Minister is satisfied that the variation will improve the work program.

Division 4—Ministerial Directions

31. Minister may give directions

- (1) If the holder of an exploration permit discovers any geothermal energy or geothermal energy resources in the permit area, the Minister may require the holder of the permit to apply for a retention lease or an extraction licence in respect of the discovery.
 - (2) The requirement must be made in writing and must allow the holder of the permit at least 90 days within which to make the application.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 2—Exploration Permits

s. 31

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- (3) The Minister may only make a requirement under this section if the holder of the permit has extracted geothermal energy or geothermal energy resources as a result of the discovery.
 - (4) If the holder of the permit fails to comply with a requirement made under this section, the Minister may cancel the permit.
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PART 3—RETENTION LEASES

32. Purpose of a retention lease

A retention lease enables the holder of an exploration permit to retain certain rights to a geothermal energy discovery that it is not commercially viable to develop under an extraction licence at the time the lease is granted, but which might become viable to develop within 15 years.

33. Rights conferred by lease

A retention lease authorises the holder of the lease, subject to and in accordance with the conditions of the lease—

- (a) to carry out geothermal energy exploration in the lease area; and
- (b) to do any thing in the lease area that is necessary for, or incidental to, that purpose; and
- (c) to retain a right to apply for an extraction licence in respect of the lease area under section 43 without complying with any requirement that there might otherwise be under this Act to carry out a work program in respect of the area.

34. Right to apply for lease

The holder of an exploration permit may apply to the Minister for the grant of a retention lease in respect of any part of the permit area on which the holder has discovered geothermal energy or geothermal energy resources.

35. Details to be supplied with application

In addition to complying with section 58, an applicant for a retention lease must submit details of—

- (a) the area in respect of which the lease is sought; and
- (b) the commercial viability of extracting geothermal energy or geothermal energy resources from that area at the time the application is made; and
- (c) the possible future commercial viability of extracting geothermal energy or geothermal energy resources from that area; and
- (d) any other matter prescribed by the regulations.

36. Factors determining grant of application

- (1) The Minister must grant a retention lease if—
 - (a) the applicant for the lease has provided all the information required by the Minister and has otherwise complied with section 35; and
 - (b) the applicant has complied with the conditions of the exploration permit and all applicable laws in relation to that permit; and
 - (c) the Minister is satisfied that the extraction of geothermal energy or geothermal energy resources from the proposed lease area—
 - (i) was not commercially viable on the day the application for the lease was made; but
 - (ii) might become commercially viable within the next 15 years.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 3—Retention Leases

s. 37

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- (2) The Minister may grant a retention lease if—
 - (a) sub-sections (1)(a) and (1)(c) apply; and
 - (b) satisfied that there are special circumstances concerning the failure to comply with the conditions of the exploration permit, or with an applicable law, that justify the granting of the lease.
 - (3) The Minister must not grant a retention lease in any other circumstances.

37. Restrictions on area to which lease applies

- (1) In granting a retention lease, the Minister must ensure that the lease area is the minimum area necessary—
 - (a) to cover the maximum extent of the geothermal energy resource; and
 - (b) to enable future geothermal energy extraction.
- (2) Nothing in sub-section (1) authorises the Minister to include in the lease area any area that was not within the area to which the lease holder's exploration permit applied.

38. Term of lease

- (1) A retention lease starts on the day it is registered in the geothermal energy register.
- (2) A retention lease expires on the last day of the period specified by the Minister in the lease as the term of the lease, unless it is cancelled or surrendered earlier or unless this Act otherwise provides.
- (3) The Minister must specify the term of a retention lease which must not be more than 15 years.
- (4) A retention lease cannot be renewed.

39. Procedure if lease not to be granted

The Minister must not refuse to grant a retention lease unless the Minister has—

- (a) given the applicant for the lease not less than 30 days' written notice of the Minister's intention to refuse to grant the lease; and
- (b) served a copy of the notice on any other person that the Minister considers may have an interest in the refusal; and
- (c) in the notice—
 - (i) given detailed reasons for the proposed refusal; and
 - (ii) invited the person who is given the notice to make any submissions by a specified date; and
- (d) considered any submissions made on or before the specified date in response to such an invitation.

40. Minister may require review of commercial viability

- (1) The Minister may require the holder of a retention lease to re-evaluate the commercial viability of geothermal energy extraction in the lease area and to report to the Minister in writing the results of the re-evaluation.
- (2) The Minister must—
 - (a) make the requirement by giving the holder of the lease written notice of the requirement; and
 - (b) allow the holder of the lease at least 90 days within which to comply with the requirement.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 3—Retention Leases

s. 41

- (3) The Minister may, on the written application of the holder of a lease, allow the holder of the lease more time within which to comply with a requirement made under this section.
- (4) If the holder of a lease fails to comply with a requirement made under this section, the Minister may cancel the lease.

41. Minister may give directions if extraction viable

- (1) This section applies if, after receiving a report under section 40, the Minister is of the opinion that the extraction of geothermal energy or geothermal energy resources from the lease area is commercially viable.
 - (2) The Minister may require the lease holder to apply for an extraction licence in respect of the lease area.
 - (3) The requirement must be made in writing and must allow the holder of the lease at least 90 days within which to make the application.
 - (4) If the holder of the lease fails to comply with a requirement made under this section, the Minister may cancel the lease.
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PART 4—EXTRACTION LICENCES

Division 1—Rights

42. Rights conferred by licence

An extraction licence authorises the holder of the licence, subject to and in accordance with the conditions of the licence—

- (a) to carry out geothermal energy extraction in the licence area; and
- (b) to carry out geothermal energy exploration in the licence area; and
- (c) to do any thing in the licence area that is necessary for, or incidental to, those purposes.

Division 2—Procedure for Obtaining Licence

43. Application for licence

- (1) The holder of an exploration permit or a retention lease may apply to the Minister for the grant of an extraction licence in respect of any part of the permit or lease area on which the holder has discovered geothermal energy or geothermal energy resources.
- (2) An application must contain or be accompanied by any information prescribed by the regulations.

44. Commencement of tender process

- (1) The Minister may invite applications for the grant of an extraction licence in respect of an area if—
 - (a) in the opinion of the Minister, there is geothermal energy or geothermal energy resources in the area; and

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 45

Part 4—Extraction Licences

- (b) the area—
 - (i) is not the subject of an exploration permit, a retention lease or an extraction licence; or
 - (ii) was the subject of an exploration permit, a retention lease or an extraction licence that has expired or that has been surrendered or cancelled in respect of that area.
- (2) The invitation must specify—
 - (a) the chief factors that will be considered by the Minister in assessing applications; and
 - (b) a date by which applications must be made; and
 - (c) any other matter required by the regulations.
- (3) The invitation may specify—
 - (a) that an applicant must specify the amount that the applicant is willing to pay for the grant of the licence or the royalty regime that the applicant is prepared to accept under the licence; and
 - (b) the basis on which applications will be primarily decided.

45. Application for licences

- (1) In addition to complying with section 58, an applicant for an extraction licence under this Division must submit—
 - (a) details of the applicant's relevant technical qualifications and of the relevant technical qualifications of the applicant's employees; and
 - (b) details of the relevant technical advice available to the applicant; and
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 4—Extraction Licences

s. 46

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- (c) details of the financial resources available to the applicant; and
 - (d) the work programs proposed by the applicant; and
 - (e) the applicant's plans for consulting with parties likely to be affected by the proposed extraction; and
 - (f) an environmental report about the proposed extraction; and
 - (g) a plan to deal with any cultural heritage issue that may be affected by the proposed extraction; and
 - (h) any other information prescribed by the regulations.
- (2) An applicant for an extraction licence responding to an invitation under section 44 must also submit any other information required in the invitation.

46. Chief factors to be considered in deciding applications

- (1) The chief factors the Minister must take into account in determining whether an applicant under this Division is to be granted a licence are—
 - (a) the merits of the work program proposed by an applicant; and
 - (b) the likelihood that the work program will be carried out; and
 - (c) in the case of an application responding to an invitation under section 44, any other factors specified in the invitation.
 - (2) Nothing in this section requires the Minister to grant an application that, in the opinion of the Minister, is deficient or defective or not in the best interests of the people of Victoria.
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47. Notice to be given to applicants

- (1) If the Minister decides to grant an extraction licence, he or she must give the person granted the licence written notice of that decision within 14 days of making it.
- (2) If the Minister decides not to grant an extraction licence, he or she must notify in writing any person who applied for the licence of that decision.

Division 3—General Provisions

48. Minister may make new grant if former grant refused

- (1) This section applies if the Minister decides to grant an extraction licence under this Part to an applicant but the applicant states in writing that the applicant does not intend to accept the grant.
- (2) The Minister may grant the licence to any other applicant for the licence having regard to section 46.
- (3) This section applies regardless of how many times the Minister has decided to grant the licence.

49. Restrictions on area to which licence applies

- (1) In granting an extraction licence, the Minister must ensure that the licence area is the minimum area necessary—
 - (a) to cover the maximum extent of the relevant geothermal energy resource; and
 - (b) to enable future geothermal energy extraction and storage in relation to the resource.

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- (2) In the case of licences granted under Division 2, nothing in sub-section (1) authorises the Minister to include in the licence area any area that was not within the area to which the licence holder's exploration permit or retention lease applied at the time the holder applied for the licence.

50. Term of licence

An extraction licence continues in force until it is surrendered or the Minister cancels it in accordance with this Act.

Division 4—Development Plans

51. Geothermal energy extraction development plans

- (1) A geothermal energy extraction development plan is a plan in relation to an extraction licence that outlines how geothermal energy extraction will be undertaken in the licence area.
- (2) A geothermal energy extraction development plan must contain the details required by the regulations.

52. Development plan to be lodged before extraction can start

The holder of an extraction licence must not carry out geothermal energy extraction in the licence area unless the Minister has approved the geothermal energy extraction development plan for the licence area.

Penalty: 240 penalty units.

53. Development plan must be adhered to

The holder of an extraction licence must ensure that geothermal energy extraction in the licence area is carried out in accordance with the geothermal energy extraction development plan.

Penalty: 240 penalty units.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 4—Extraction Licences

s. 54

54. Minister may require variation of development plan

- (1) The Minister may require the holder of an extraction licence to vary the geothermal energy extraction development plan that applies to the licence.
- (2) The Minister may only do this after consulting with the holder of the licence.

55. Minister may permit variation of development plan

On the written application of the holder of an extraction licence, the Minister may permit the holder of the licence to vary the geothermal energy extraction development plan that applies, or is to apply, to the licence.

PART 5—UNIT DEVELOPMENT

56. Unit development

- (1) This section applies if a geothermal energy resource extends beyond the area of an extraction licence held by a person into adjacent areas that are covered by an authority held by another person.
 - (2) The Minister may require any person who is entitled to extract geothermal energy from the geothermal energy resource to enter into a co-operative arrangement for the extraction of geothermal energy from the geothermal energy resource for one or more of the following purposes—
 - (a) to extract the geothermal energy as effectively as possible;
 - (b) to keep disruptions to the environment to a minimum.
 - (3) In making such a requirement, the Minister must ensure that—
 - (a) written notice of the requirement is given to each person on whom the requirement is made; and
 - (b) the notice specifies by when the requirement must be complied with; and
 - (c) the notice specifies how any dispute concerning the terms of the required co-operative arrangement is to be resolved; and
 - (d) the notice specifies what action the Minister may take if the requirement is not complied with.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 5—Unit Development

s. 57

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- (4) For the purposes of sub-section (3)(b), the Minister must allow a period of at least 90 days from the date the notice is given.

57. Minister may amend licence for unit development

Despite anything to the contrary in this Act, the Minister may amend an extraction licence (including any condition of the licence)—

- (a) for the purpose of giving effect to a co-operative arrangement made under section 56; or
- (b) as a result of a failure of a person to comply with a requirement made under section 56, but only for the purpose of attempting to achieve to the maximum extent that is practicable the object that the requirement sought to achieve.
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**PART 6—PROVISIONS APPLYING TO AUTHORITIES
GENERALLY**

Division 1—Applications

58. Applications for authorities

- (1) An applicant for an authority—
 - (a) must apply for the authority in the manner required by the Minister; and
 - (b) must submit a proposed work program and details of how much the applicant intends to spend on each part of that program; and
 - (c) must submit details of any matter required by the Minister to enable the Minister to assess the application; and
 - (d) must submit evidence of the applicant's ability to comply with this Act; and
 - (e) may set out other matters for the consideration of the Minister.
- (2) In the case of an applicant for a retention lease who does not intend to carry out any geothermal energy operations under the lease, it is sufficient compliance with sub-section (1)(b) if the applicant submits a document declaring that intention.

59. Applications are not transferable

An application for an authority is not transferable.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 60

60. Existing permits and leases continue until renewal applications etc. decided

- (1) This section applies if—
 - (a) an application is made for—
 - (i) the renewal of an exploration permit; or
 - (ii) a retention lease in respect of an area held under an exploration permit; or
 - (iii) an extraction licence in respect of an area held under a retention lease or an exploration permit; and
 - (b) the application has not been determined at the time the original permit or lease is due to expire.
- (2) The original permit or lease continues in force until the first of these events occurs—
 - (a) the Minister gives the applicant a written notice of refusal to grant the application; or
 - (b) if the application is granted, the lease, licence or new permit takes effect; or
 - (c) the application is withdrawn or lapses.
- (3) If the application is not made in respect of exactly the same area to which the original permit or lease applies, sub-section (2) only applies to the area that is common to the original permit or lease and the area in respect of which the application is made.

Division 2—Requirements

61. Work programs

A work program in relation to an authority is a document that—

- (a) outlines the work that it is intended to do under the authority; and
- (b) outlines how the work is to be structured and the intended extent of the work; and
- (c) sets out proposed timelines for the various phases of the work; and
- (d) is in the form required by the regulations; and
- (e) contains any other details required by the regulations.

62. Planning permits

Despite the **Planning and Environment Act 1987** and any planning scheme approved under that Act, the holder of an extraction licence to carry out any geothermal energy extraction operation authorised by the licence is not required to obtain a permit under a planning scheme to carry out the operation if—

- (a) an Environment Effects Statement has been prepared under the **Environment Effects Act 1978** in relation to the carrying out of the operation; and
- (b) an assessment of that Statement by the Minister administering the **Environment Effects Act 1978** has been submitted to the Minister; and
- (c) the Minister has, after consideration of the assessment, authorised the holder of the licence in writing to carry out the operation.

Division 3—Conditions

63. Conditions that may apply to authorities

- (1) The Minister may specify that an authority to be granted is to be subject to any conditions that he or she considers to be appropriate.
- (2) The Minister may also specify that a person must comply with any conditions that the Minister considers to be appropriate before the Minister will issue an authority to the person.
- (3) Without limiting the conditions the Minister may specify under this section, the Minister may specify conditions—
 - (a) relating to the operations that are to be carried out under the authority;
 - (b) requiring the expenditure of a minimum amount of money in relation to operations under the authority;
 - (c) requiring the carrying out of approved work programs during the term of the authority;
 - (d) concerning the protection of the environment;
 - (e) concerning the rehabilitation of any land affected by operations under the authority;
 - (f) requiring compliance with any written directions of the Minister in relation to any matters covered by the authority that are not otherwise the subject of a condition;
 - (g) requiring the holder of the authority to obtain specified approvals or submit specified information to the Minister before beginning a specified operation or using specified equipment;

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 64

- (h) requiring the holder of the authority to provide other specified information to the Minister.

64. Minister may vary conditions unilaterally

- (1) The Minister may vary any condition imposed on an authority.
- (2) To vary a condition, the Minister must—
 - (a) notify the holder of the authority in writing of the variation the Minister proposes to make and invite the holder to make any submissions in respect of the proposal within the time specified by the Minister; and
 - (b) consider any submissions made by the holder of the authority.
- (3) The Minister must allow a period of at least 28 days for the holder to make submissions.
- (4) If, after complying with sub-section (2), the Minister decides to vary the condition, he or she must give the holder of the authority notice in writing of the decision.
- (5) The Minister may only vary a condition on a retention lease or an extraction licence if at least 5 years have elapsed since the condition was imposed or last varied (whichever is the later event) under this section.
- (6) For the purposes of sub-section (5), a condition is not imposed or varied if the holder of the authority, in response to a notice under sub-section (2)(a), does not object to the imposition or variation of the condition.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 65

65. Minister may vary conditions by consent

- (1) On the application of the holder of an authority, the Minister may vary any condition imposed on the authority.
- (2) In varying a condition under this section, the Minister—
 - (a) may also vary any condition that is associated with the condition that is to be varied; and
 - (b) need not vary the condition in exactly the way sought in the application.
- (3) The holder of the authority may withdraw an application if the Minister indicates that he or she will exercise his or her powers under sub-section (2) in granting the application.
- (4) The Minister may not, under this section, vary a condition imposed on an authority if the holder of the authority has withdrawn their application to vary the condition.

66. Variation of conditions on renewal, consolidation or transfer

- (1) The Minister may vary the conditions that apply to an authority on renewing, wholly transferring or consolidating that authority.
- (2) On transferring part of an authority area to another authority, the Minister may vary the conditions that apply to the area that is being transferred.

67. Suspension of conditions

- (1) On the application of the holder of an authority, the Minister may suspend any condition imposed on an authority for a period of up to 1 year.
 - (2) In suspending a condition under this section, the Minister—
 - (a) may also suspend any associated condition; and
 - (b) need not suspend the condition in exactly the way, or on the terms, sought in the application; and
 - (c) may impose conditions in relation to the suspension.
 - (3) The holder of the authority may withdraw an application if the Minister indicates that he or she will exercise his or her powers under sub-section (2) in granting the application.
 - (4) The Minister may not, under this section, suspend a condition imposed on an authority if the holder of the authority has withdrawn the application to suspend the condition.
 - (5) The holder of an authority that has a condition suspended must comply with any conditions imposed by the Minister under sub-section (2)(c).
Penalty: 240 penalty units.
 - (6) While a condition of an authority is suspended, the holder of the authority need not comply with the condition.
 - (7) Sub-section (6) does not apply during any time that the holder of the authority is not complying with a condition imposed under sub-section (2)(c).
 - (8) The Minister may suspend under this section all of the conditions that apply to an authority.
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68. Term of authority may be extended if condition suspended

If the Minister suspends a condition of an authority, the Minister may also extend the term of the authority by a period not exceeding the period of the suspension.

Division 4—Transfers of Authorities

69. Transfers

- (1) The holder of an authority must not transfer the authority or any legal or equitable interest in the authority to another person, unless the holder or the person to whom the authority is to be transferred has applied and obtained the approval of the Minister to the transfer.
 - (2) A person applying for the approval of a transfer—
 - (a) must apply for the approval in the manner required by the Minister; and
 - (b) must submit the following details concerning the person to whom the authority is to be transferred—
 - (i) the person's relevant technical qualifications and the relevant technical qualifications of the person's employees; and
 - (ii) the relevant technical advice available to the person; and
 - (iii) the financial resources available to the person; and
 - (c) must submit evidence of the ability of the person to whom the authority is to be transferred to comply with this Act; and
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 70

- (d) must submit any other details or matter required by the Minister to enable the Minister to assess the application; and
- (e) may set out other matters that the person wishes the Minister to consider; and
- (f) must submit a transfer document in the form approved by the Minister that has been executed by the parties to the proposed transfer.

70. Matters Minister must consider in assessing transfer application

- (1) The Minister may approve the transfer of an authority if, in the opinion of the Minister, the transfer will maintain or increase geothermal energy operations in the authority area.
- (2) Despite sub-section (1), the Minister may approve the transfer of a retention lease even though the Minister is not of the opinion that the transfer will maintain or increase geothermal energy operations in the authority area.
- (3) The Minister must not approve the transfer of an authority that, in his or her opinion, is not in the best interests of the people of Victoria.

71. Execution of transfer document insufficient to create interest

The mere execution of a document purporting to transfer an authority creates no interest in the authority unless the authority is registered under Part 13.

72. Partial transfers of permits and licences

- (1) The holder of an exploration permit or an extraction licence may apply to the Minister to transfer part of the area specified in the permit or licence to another person.

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 73

Part 6—Provisions Applying to Authorities Generally

- (2) The Minister may transfer the area specified in the permit or licence if, in the opinion of the Minister, the transfer will maintain or increase geothermal energy operations in that area.
- (3) A transfer is to be effected by the issue of a separate permit or licence to the other person.
- (4) The separate permit or licence—
 - (a) expires when the permit or licence from which it was derived expires; and
 - (b) is subject to the same conditions as applied to that permit or licence (unless those conditions are varied by the Minister in accordance with this Act).
- (5) The Minister must not approve a transfer under this section that, in his or her opinion, is not in the best interests of the people of Victoria.

Division 5—Surrender or Cancellation of Authorities

73. Surrender of authority

- (1) The holder of an authority may surrender the authority with the consent of the Minister.
 - (2) The Minister must not give consent to the surrender of an authority unless satisfied that the holder of the authority—
 - (a) has complied with all the relevant requirements of this Act in relation to the authority; and
 - (b) has complied with all of the conditions that apply to the authority.
 - (3) The Minister must not unreasonably refuse to give consent under this section.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 74

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- (4) If the Minister is not satisfied as to any matter referred to in sub-section (2)(a) or (b), he or she may still consent to the surrender of the authority if satisfied that the failure to comply with the relevant requirement was the result of one or more events beyond the control of the holder of the authority.

74. Cancellation of authority

The Minister may cancel an authority if—

- (a) the holder of the authority has not complied with the work program that was to have been carried out under the authority; or
 - (b) the conditions of the authority or any of the provisions of this Act that apply to the authority have not been complied with; or
 - (c) the holder of the authority has failed to maintain any insurance policy it is required to maintain under this Act or has failed to lodge any bond it was required to lodge under this Act; or
 - (d) any geothermal energy operation carried out under the authority has caused an unexpected significant adverse impact on the environment; or
 - (e) the holder of the authority fails to observe good practices in relation to exploration or extraction; or
 - (f) the holder of the authority no longer has the funds to carry out its work program; or
 - (g) the holder of the authority has not paid any amount that is payable under this Act within 90 days after it was due and within 30 days after receiving a written notice from the Minister warning of the Minister's power under this provision; or
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 75

- (h) the holder of the authority becomes an insolvent under administration within the meaning of the Corporations Act; or
- (i) no geothermal energy operations have been carried out over a continuous period of 5 years.

75. Additional grounds for the cancellation or partial cancellation of extraction licence

- (1) The Minister may also cancel an extraction licence if the Minister is satisfied—
 - (a) that it is no longer commercially viable to extract geothermal energy or geothermal energy resources in the licence area; or
 - (b) that no geothermal energy or geothermal energy resources are being extracted in the licence area and the holder of the licence has no present intention to extract geothermal energy or geothermal energy resources in that area in the immediate future; or
 - (c) that no geothermal energy or geothermal energy resources have been extracted in the licence area in the last 2 years.
- (2) The Minister may amend an extraction licence to remove an area specified in the licence from the licence area if—
 - (a) the holder of the licence has failed to comply with a condition of the licence with respect to the area to be removed from the licence area; or
 - (b) the Minister is satisfied that it is no longer commercially viable to extract geothermal energy or geothermal energy resources in the area to be removed from the licence area; or
 - (c) the area to be removed from the licence area is not subject to a work program.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 76

76. Procedure to be followed before authority cancelled

The Minister must not cancel an authority under this Act unless he or she—

- (a) has given the holder of the authority a written notice—
 - (i) stating that the Minister believes that there may be grounds for—
 - (A) cancelling the authority; or
 - (B) in the case of an extraction licence, removing an area specified in the licence from the licence area; and
 - (ii) providing details of those grounds and providing a copy of the information available to the Minister concerning those grounds; and
 - (iii) inviting the holder of the authority to submit to the Minister, within 30 days after the date the holder of the authority is given the notice, any material that the holder wishes to submit; and
- (b) has considered any material submitted by the holder of the authority in response to the notice; and
- (c) is satisfied that one of the grounds set out in section 74 or 75 that is relevant to the authority exists.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 77

77. Minister may give directions if an authority is surrendered or cancelled or expires

- (1) This section applies if—
 - (a) an authority is surrendered or cancelled or expires; or
 - (b) an area is removed from an authority area as the result of action taken by the Minister under section 75(2).
- (2) The Minister may direct the person who held the authority immediately before the surrender, cancellation, expiry or removal to do one or more of the following to the satisfaction of the Minister—
 - (a) to remove, or cause to be removed, from the relevant area all property brought into that area under the authority, or to make other arrangements with respect to that property;
 - (b) to provide for the conservation and protection of the natural resources in the relevant area;
 - (c) to make good any damage to the surface of the land or the subsoil in the relevant area caused by any person engaged or concerned in the operations conducted under the authority;
 - (d) to give to the Minister any information that the person was obliged to give to the Minister.
- (3) A direction must be given in writing and must specify by when it must be complied with.
- (4) A person to whom a direction is given must comply with the direction within the time specified in the direction.

Penalty: 240 penalty units.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 6—Provisions Applying to Authorities Generally

s. 78

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- (5) Nothing in this section requires the Minister to give a direction to any person.
- (6) In this section "**relevant area**" means—
- (a) if an authority expires or is surrendered or cancelled in its entirety, the area to which the authority applied; and
 - (b) in any other case, the area to which the authority no longer applies.

Division 6—Consolidation of Authorities

78. Consolidation of adjoining authorities

- (1) This section applies if the same person holds 2 or more authorities of the same type and each of the authority areas has at least one common boundary with another of those authority areas.
- (2) The person may apply to the Minister to have a single authority of that type issued in respect of all of those authorities.
- (3) The Minister may grant an application if satisfied—
- (a) that the consolidation of the authorities will not affect the work programs being, or to be, conducted under each of the authorities in respect of which the application is made; and
 - (b) that the consolidated authority area will form one continuous parcel of land.
- (4) An authority that is the result of the consolidation of 2 or more authorities expires on the earliest date any of the authorities that have been consolidated would have expired.

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 78

Part 6—Provisions Applying to Authorities Generally

- (5) The Minister must not consolidate 2 or more exploration permits under this section into an exploration permit that has a permit area of more than 12 500 square kilometres.
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**PART 7—REQUIREMENTS BEFORE OPERATIONS
ALLOWED ON LAND**

Division 1—Wilderness Crown Land

79. Operations on wilderness land barred

- (1) A person must not carry out any geothermal energy operation on land that is a marine national park, a marine sanctuary, a reference area under the **Reference Areas Act 1978** or a wilderness zone or wilderness park under the **National Parks Act 1975**.

Penalty: 240 penalty units.

- (2) No authority granted under this Act can authorise any activity prohibited by sub-section (1).

Division 2—Operations requiring Prior Consent

80. Consent of Minister needed

- (1) The holder of an authority must not carry out any geothermal energy operation on any land without the written consent of the Minister.

Penalty: 240 penalty units.

- (2) The giving of consent by the Minister—
- (a) does not relieve the holder of the authority from the requirement to obtain any consents or other authorities required, or comply with any other requirements imposed, by or under this or any other Act; and
- (b) does not relieve the holder of the authority from liability under this or any other Act for a failure to obtain any necessary consent or other authority or to comply with any applicable requirement.
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81. Geothermal energy operations on restricted Crown land

A person must not carry out any geothermal energy operation on any land specified in Schedule 3 to the **Mineral Resources Development Act 1990** without the written consent of the Minister responsible for that land.

Penalty: 240 penalty units.

82. Geothermal energy operations on water authority land

(1) In this section, "**water authority**" means—

(a) a person who holds a water licence or a water and sewerage licence under the **Water Industry Act 1994**; or

(b) an Authority that has a water district or a sewerage district under the **Water Act 1989**.

(2) A person must not carry out any geothermal energy operation on any land that is owned, vested in or managed or controlled by a water authority without the written consent of the water authority.

Penalty: 240 penalty units.

(3) A person must not carry out any geothermal energy operation that involves work at a depth of more than 0.75 metres below any land that is within 100 metres of—

(a) a waterway that is owned by, vested in or managed or controlled by a water authority;
or

(b) any main drains, sewers, aqueducts, channels or pipelines of a water authority—

without the written consent of the water authority.

Penalty: 240 penalty units.

83. Provisions applying to consents

- (1) If the consent of a person or body is sought for the purposes of this Division, the person or body—
 - (a) must not unreasonably withhold that consent; and
 - (b) may impose any conditions the person or body considers to be appropriate in giving that consent; and
 - (c) must give or refuse to give that consent within 28 days (or any longer period allowed by the Minister) after the consent is sought.
- (2) A person or body (other than a native title holder) which does not comply with sub-section (1)(c) in relation to any land is deemed to have given the consent sought.

84. Right to seek review of refusal to give consent

- (1) A person who sought a consent for the purposes of this Division may apply to the Tribunal for a review of a decision—
 - (a) to refuse to give the consent; or
 - (b) to impose a condition on the consent.
 - (2) An application for a review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.
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Division 3—Operations requiring Notice

85. Operations on unrestricted Crown land

- (1) A person must not carry out any significant operation on any unrestricted Crown land as part of a geothermal energy operation unless the person has consulted the Minister responsible for controlling or managing the land.

Penalty: 240 penalty units.

- (2) If a person has complied with sub-section (1) and the conditions of the relevant authority, the person may carry out the operation without the need to obtain any other consent or authority, despite anything to the contrary in any Act or subordinate instrument other than the **Environment Protection Act 1970**, the **Flora and Fauna Guarantee Act 1988**, the **Water Act 1989** and the Forests (Fire Protection) Regulations 2004.

86. Notice to be given before operation carried out on any land

- (1) A person must not carry out any geothermal energy operation on any land unless the person gives the owner, occupier or person or body responsible for the management of the land a written notice outlining the proposed operation at least 21 days before the activity starts.

Penalty: 120 penalty units.

- (2) The owner, occupier or person or body may waive all or part of the 21 day notice period.
- (3) In the case of unrestricted Crown land, the notice required by this section must be given to the Minister responsible for controlling or managing the land.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 7—Requirements before Operations Allowed on Land

s. 87

Division 4—Other Matters

87. Areas of aboriginal significance

Before carrying out any geothermal energy operation on any land, the holder of the authority under which the operation is to be carried out must take reasonable steps to ensure that the operation will not contravene the **Archaeological and Aboriginal Relics Preservation Act 1972** or the **Aboriginal and Torres Strait Islander Heritage Protection Act 1984** of the Commonwealth.

Penalty: 240 penalty units.

PART 8—COMPENSATION

88. Requirements before operation starts

- (1) A person must not carry out any geothermal energy operation on private land unless—
- (a) the person has obtained the consent of the owners and occupiers of the land to the operation; or
 - (b) the person has entered into a compensation agreement with the owners and occupiers of the land in relation to the operation; or
 - (c) the Tribunal has determined the amount of compensation that is payable to the owners and occupiers of the land under this Act in relation to the operation.

Penalty: 240 penalty units.

- (2) Sub-section (1) does not apply to any land that is owned by the person.

89. What compensation is payable for—private land and native title interests

- (1) Compensation is payable by an authority holder to the owners and occupiers of private land and to native title holders for any loss or damage that has been, or will be, sustained to their interests held in relation to the land as a direct, natural and reasonable consequence of the approval of any geothermal energy operation or the carrying out of any geothermal energy operation under the authority including for—
- (a) deprivation of possession of the whole, or any part, of the surface of the land; and
 - (b) damage to the surface of the land; and

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 8—Compensation

s. 89

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- (c) damage to any improvements on the land;
and
 - (d) severance of the land from other land of the
owner or occupier; and
 - (e) loss of amenity, including recreation and
conservation values; and
 - (f) loss of opportunity to make any planned
improvement on the land; and
 - (g) any decrease in the market value of the
owner or occupier's interest in the land.
- (2) Compensation is not payable in respect of any
land which only became private land after a
geothermal energy operation under the authority
started on that land.
- (3) The amount of compensation payable under sub-
section (1)—
- (a) must, if it is necessary for the owner or
occupier of land to obtain replacement land,
take account of the reasonable incidental
expenses incurred in obtaining and moving
to that land; and
 - (b) may be increased by up to 10% by way of
solatium to compensate the owner or
occupier for intangible and non-pecuniary
disadvantages for which compensation is not
otherwise payable and that result from the
approval or the carrying out of the operation.
- (4) Any amount of compensation paid, agreed to be
paid or determined under this Part is not affected
by any subsequent change in the ownership or
occupancy of the land.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 8—Compensation

s. 90

(5) An authority holder is not liable to pay any greater total amount of compensation because of a change in the ownership or occupancy of the land.

(6) If—

(a) a person is entitled to compensation on just terms (within the meaning of the Native Title Act) in respect of any loss or damage in relation to their interests as a native title holder under sub-sections (1) and (2); and

(b) the compensation the person receives under this section (apart from this sub-section) does not amount to compensation on just terms—

the person is entitled to any additional compensation that is necessary to ensure that compensation is paid on just terms.

(7) In this section, "**planned improvement**", in relation to land, means an improvement on the land in respect of which the owner or occupier had, before an application for an authority covering that land was made—

(a) applied for, or been granted, a building permit or a planning permit; or

(b) otherwise demonstrated a genuine intention to proceed with the improvement.

90. Compensation not payable for geothermal energy

Compensation is not payable for the value of any geothermal energy or any geothermal energy resource in or under the surface of any land.

91. What compensation is payable for—Crown land

- (1) This section applies if the Minister is of the opinion that the approval of a geothermal energy operation, or the carrying out of any geothermal energy operation under an authority, in relation to any Crown land has, or will, result in loss or damage of the following nature being sustained as a direct, natural and reasonable consequence of the approval, or the carrying out of the operation—
- (a) deprivation of possession of the whole, or any part of the surface, of the land; or
 - (b) damage to the surface of the land to such an extent that it cannot be rehabilitated and returned to its former, or a comparable, state; or
 - (c) damage to any improvements on the land; or
 - (d) severance of the land from any other Crown land; or
 - (e) loss of opportunity to make any planned improvement on the land.
- (2) The Minister may require the holder of the authority to pay compensation for the loss or damage—
- (a) to the Crown; or
 - (b) to any person who is authorised to undertake activities on the land under a lease, licence, permit or other authority granted under an Act.
- (3) In determining whether compensation should be paid under sub-section (2)(a), the Minister must take into account any benefits that may accrue to the people of Victoria from the geothermal energy operation.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 8—Compensation

s. 92

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- (4) In determining the amount of compensation to be paid, the Minister may, if it is necessary for the Crown to obtain replacement land, take account of the reasonable incidental expenses incurred in obtaining that land.
 - (5) If the Minister determines that compensation should be paid to a person referred to in sub-section (2)(b), the Minister may increase the amount payable by up to 10% by way of solatium to compensate for intangible and non-pecuniary disadvantages for which compensation is not otherwise payable and that result from the approval or the carrying out of the operation.
 - (6) Compensation is not payable in respect of any land which only became Crown land after a geothermal energy operation under the authority started on that land.
 - (7) Section 89(4), (5) and (6) also apply to this section.

92. Limit on total amount of compensation

- (1) The total amount of compensation payable under section 89 in respect of any land must be no greater if the same person is not the owner and occupier of the land than if the same person was both the owner and occupier of the land.
- (2) Nothing in sub-section (1) limits the amount of solatium payable to the owner or occupier under section 89(3).

93. Time limit on compensation claims

A claim for compensation for any loss or damage under section 89 by the owner or occupier or native title holder of land which is not the subject of an agreement between the relevant parties may be made at any time until the end of the period of 3 years—

- (a) after the loss or damage occurred; or
- (b) after the authority is surrendered or cancelled or expires—

whichever is the earlier.

94. Determination of disputes

- (1) The owner or occupier of land, a native title holder or the holder of an authority may—
 - (a) apply to the Tribunal for the determination of a disputed claim for compensation in relation to private land or their interests as native title holders (other than a claim for just terms compensation under section 53(1) of the Native Title Act); or
 - (b) refer a disputed claim referred to in paragraph (a) to the Supreme Court for determination—

in accordance with Part 10 of the **Land Acquisition and Compensation Act 1986** as if it were a claim for compensation under that Act and as if the authority holder were the Authority referred to in that Part.

- (2) A person may only make an application to the Tribunal in respect of a claim, or refer a claim to the Supreme Court under sub-section (1), after the expiry of any period of time specified for the purposes of this section by the regulations.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 8—Compensation

s. 94

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- (3) A party who makes an application in respect of, or who refers, a claim under sub-section (1) is only entitled to have that claim determined by the Tribunal or the Court (as the case requires) if the Tribunal or the Court is satisfied that the party has attempted to settle the claim by conciliation, but has not been able to do so because the other party has refused to negotiate a settlement or because both parties are unable to agree.
- (4) In its application to a claim that is the subject of an application or reference under sub-section (1), Part 10 of the **Land Acquisition and Compensation Act 1986** has effect as if—
- (a) it required the Tribunal or the Court (as the case requires) in determining the compensation payable to have regard to the provisions of this Part; and
 - (b) section 91(1) provided that the holder of the authority must pay its own costs and the costs of the other party unless—
 - (i) the other party is not the owner, occupier or native title holder of land in the authority area; or
 - (ii) the other party has been frivolous or vexatious or has otherwise acted unreasonably—in which case the Tribunal or the Court (as the case requires) may, subject to that section, award the costs that it thinks are appropriate.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 8—Compensation

s. 95

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- (5) In determining how much compensation is due to a native title holder in any dispute concerning Crown land, the Tribunal or Court must take into account any relevant amount that has been determined or agreed as compensation under the Native Title Act in relation to that land.
 - (6) The holder of the authority must lodge a copy of a determination under this section with the Minister.

95. Determination of disputes—Crown land

- (1) The holder of an authority may apply to the Tribunal for a review of any requirement made by the Minister under section 91.
 - (2) A person who is authorised to undertake activities on Crown land under a lease, licence, permit or other authority granted under an Act may apply to the Tribunal for a review of any decision made by the Minister under section 91 that affects the person.
 - (3) An application for a review under this section must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.
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PART 9—OTHER OBLIGATIONS ABOUT CONDUCT OF OPERATIONS

Division 1—Operation Plans

96. Operation plan to be prepared

- (1) Before carrying out any geothermal energy operation, the holder of the authority under which the operation is to be carried out must give the Minister an operation plan—
 - (a) that identifies the risks of injury or damage that the operation may pose to the environment, to any community, person, land user, land or property in the vicinity of the operation and to any geothermal energy or geothermal energy resource that the operation might affect; and
 - (b) that specifies what the holder of the authority will do to eliminate or minimise those risks; and
 - (c) that specifies what the holder of the authority will do to rehabilitate the land that will be affected by the operation; and
 - (d) that sets out any other matters required by the regulations.
- (2) The holder of the authority must not carry out the geothermal energy operation unless the Minister has given the holder written acceptance of the operation plan for the operation.

Penalty: 240 penalty units.

- (3) The Minister must not accept an operation plan unless satisfied that the holder of the authority has, in preparing the plan, consulted any person who owns, occupies or manages the land on which the operation is to be carried out.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 9—Other Obligations about Conduct of Operations

s. 97

97. Plan must be observed in carrying out operation

In carrying out a geothermal energy operation, the holder of an authority must ensure that the operation is carried out in accordance with the operation plan accepted by the Minister in relation to the operation.

Penalty: 240 penalty units.

98. Minister may permit variation of operation plan

- (1) On the written application of the holder of an authority, the Minister may permit the holder of the authority to vary the operation plan that applies, or is to apply, to the authority.
- (2) The Minister may require the holder of an authority to vary the operation plan that applies to the authority.
- (3) The Minister may only require the holder to vary the operation plan after consulting with the holder of the authority.

Division 2—Insurance

99. Insurance must be held

The holder of an authority must obtain and maintain, as directed by the Minister from time to time, insurance against expenses or liabilities or specified things arising in connection with, or as a result of, the carrying out of operations, or the doing of any other thing, under the authority, including the expenses of complying with directions with respect to the clean-up or other remedying of the effects of the escape of geothermal energy.

Penalty: 240 penalty units.

Division 3—Rehabilitation Bonds

100. Requirement to take out rehabilitation bond

The holder of an authority must not carry out a geothermal energy operation unless the holder has obtained a rehabilitation bond securing the payment of a specified amount of money for any rehabilitation work, clean-up work or pollution prevention work that may be necessary as a result of a geothermal energy operation that is—

- (a) acceptable to the Minister; and
- (b) for an amount specified by the Minister.

Penalty: 240 penalty units.

101. Minister may require increased rehabilitation bond

- (1) This section applies if the Minister believes that the amount secured by a rehabilitation bond in relation to a geothermal energy operation is insufficient.
- (2) The Minister may, by written notice, require the holder of the authority to obtain an extension of, or a further, rehabilitation bond for an amount determined by the Minister.
- (3) Before making a requirement, the Minister must consult the holder of the authority.
- (4) The holder of the authority must comply with a notice imposing such a requirement within 30 days after being given the notice.

Penalty: 120 penalty units.

102. Return of bond if rehabilitation satisfactory

The Minister must discharge a rehabilitation bond, or return a rehabilitation bond to the holder or former holder of the authority, as soon as practicable once the Minister is satisfied—

- (a) that the relevant land has been rehabilitated as required by section 111; and
- (b) that the rehabilitation is likely to be successful; and
- (c) that any other work in respect of which the bond was required has been satisfactorily completed.

Division 4—Royalties

103. Liability for, and rate of, royalty

- (1) The holder of an extraction licence must pay to the Minister a royalty in respect of all geothermal energy extracted from within the licence area.
- (2) A royalty is only payable once under this Act in respect of any geothermal energy.

104. Rate of royalty

Royalty is to be paid at the rate, and in accordance with the conditions, specified in the licence under which the geothermal energy was extracted.

105. When royalty must be paid

- (1) Any royalty required by this Division must be paid in the manner specified in the relevant extraction licence and within the time specified in the licence.

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 106

Part 9—Other Obligations about Conduct of Operations

- (2) If an extraction licence does not specify when or how royalty is to be paid under the licence, the holder of the licence must pay any royalty required by this Division in the manner, and within the time, specified by the regulations.

106. Minister may vary royalty

- (1) On the application of the holder of an extraction licence or a person who has applied for an extraction licence, the Minister may—
- (a) vary the royalty rate specified (or to be specified) in the licence; or
 - (b) provide that a different method of collecting revenue on any geothermal energy extracted under the licence is to apply.
- (2) The Minister must consult the Treasurer before varying the licence, or proposed licence, under sub-section (1)(a) or (b).

Division 5—Other Obligations

107. Maintenance etc. of property

- (1) The holder of an authority must maintain in good condition and repair all structures, equipment and other property in the authority area that is used in connection with the geothermal energy operations being carried out under the authority.

Penalty: 240 penalty units.

- (2) The holder of an authority must remove from the authority area all structures, equipment and other property that are not being used, or that are not to be used, in connection with the geothermal energy operations being conducted under the authority.

Penalty: 240 penalty units.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 9—Other Obligations about Conduct of Operations

s. 108

- (3) Sub-sections (1) and (2) do not apply in relation to any structure, equipment or other property that was not brought into the authority area by, or with the authority of, the holder of the authority.

108. Authority holder must not interfere with other rights

In carrying out geothermal energy operations, the holder of an authority must ensure that the operations are carried out in a way that does not interfere with the activities of any other person who is using the land to a greater extent than is necessary for the reasonable exercise of the holder's rights, and the performance of the holder's duties, under the authority.

Penalty: 120 penalty units.

Division 6—Requirements at End of Authority

109. Equipment must be removed once authority ceases

- (1) This section applies if an authority ceases to apply to any land.
- (2) The person who held the authority at the time it ceased to apply to the land must remove all equipment brought on to the land under the authority within 60 days after the authority ceases to apply.

Penalty: 120 penalty units.

110. Minister may remove equipment

- (1) If a person fails to comply with section 109 with respect to any equipment, the Minister may cause the equipment to be removed and may dispose of the equipment.
- (2) The Minister may recover any cost involved in doing this from any rehabilitation bond that applies in respect of the relevant authority and

Geothermal Energy Resources Act 2005
Act No. 7/2005

s. 110

Part 9—Other Obligations about Conduct of Operations

from any proceeds that result from the disposal of the equipment.

- (3) If the cost of removing or disposing of any equipment is greater than the amount that can be recovered under sub-section (2) in relation to that equipment, the person must pay the difference to the Minister.
 - (4) The Minister may recover as a debt due to the Crown in a court of competent jurisdiction any amount payable under sub-section (3).
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PART 10—REHABILITATION

111. Rehabilitation

- (1) The holder of an authority must rehabilitate any land that is used in carrying out any operation under the authority and must, as far as is practicable, complete the rehabilitation of the land before the authority, or any renewed authority, ceases to apply to the land.
- (2) It is sufficient compliance with this section in respect of an operation if the holder of an authority fully complies with the rehabilitation measures in the operation plan concerning that operation.

112. Minister may carry out rehabilitation

- (1) The Minister may do anything necessary to rehabilitate land that has been used for a geothermal energy operation if he or she—
 - (a) is not satisfied that the land has been rehabilitated as required by section 111; or
 - (b) is satisfied that further rehabilitation of the land is necessary; or
 - (c) is asked to do so by the owner of the land.
 - (2) The Minister may only do this if he or she has asked the holder or former holder of the authority to rehabilitate the land and the holder has failed to do so within a reasonable period after the request.
 - (3) The Minister may recover as a debt due to the Crown in a court of competent jurisdiction any amount incurred under sub-section (1) that cannot be recovered from the rehabilitation bond that applies in respect of the land.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 10—Rehabilitation

s. 112

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- (4) If the Minister refuses to act on a request under sub-section (1)(c), he or she must inform the owner of the land of the reasons for that refusal.
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PART 11—INFORMATION

Division 1—Information to be Given to Minister

113. Authority holder must provide information to Minister

The holder of an authority must—

- (a) collect the information and samples required by the regulations; and
- (b) keep the records required by the regulations in the form required by the regulations; and
- (c) give the Minister any information, samples or records when required to do so by the regulations.

Penalty: 60 penalty units.

114. Minister may require person to provide information

- (1) This section applies if the Minister has reason to believe that a person has information, a document or a thing that relates to a geothermal energy operation.
- (2) The Minister may require the person—
 - (a) to give the information, document or thing to the Minister within a specified time and in a specified form; or
 - (b) to appear before a person specified by the Minister at a time and place specified by the Minister to answer questions relating to the geothermal energy operation or to produce the document or thing.
- (3) A requirement under sub-section (2) must be made in writing.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 11—Information

s. 115

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- (4) A person—
- (a) must comply with any requirement under sub-section (2); and
 - (b) must answer any question asked under sub-section (2)(b); and
 - (c) must produce any document or thing requested for production under sub-section (2)(b).

Penalty: 60 penalty units.

- (5) Any information, answer, document or thing given or produced by a person under this section is not admissible in any proceedings other than proceedings in respect of the falsity of the information, answer, document or thing.

115. False information not to be given

A person must not—

- (a) in purported compliance with this Division, give any information or answer that the person knows is false or misleading in a material detail; or
- (b) produce any document that the person knows is false or misleading in a material detail, without informing the person to whom the document is produced of the defect in the document.

Penalty: 60 penalty units.

Division 2—Release of Information

116. Meaning of "release" and "information"

- (1) In this Division, a reference to the release of information is a reference to making that information publicly known, or available for inspection by a member of the public, regardless of whether a fee is charged in relation to the release.
- (2) In this Division, a reference to information includes a reference to any sample and to a portion of a sample.

117. Meaning of "interpretive information"

- (1) In this Division **"interpretive information"** means any matter contained in a document that is, in the opinion of the Minister, an opinion or conclusion that is at least partly based on information relating to the sub-soil, a geothermal energy resource or the geothermal energy in part of an authority area or proposed authority area.
- (2) The Minister may publish guidelines concerning the identification of interpretive information.

118. Information that is not to be released

The Minister must not release at any time any of the following details provided by an applicant for an authority in applying for the authority—

- (a) the technical qualifications of the applicant or of the employees of the applicant;
- (b) the technical advice available to the applicant;
- (c) the financial resources available to the applicant.

119. Information about applications that may be released

- (1) This section applies to any information contained in, or accompanying, an application for the grant or renewal of an authority, but does not apply to—
 - (a) the information referred to in section 118;
 - (b) interpretive information.
- (2) The Minister may release any information to which this section applies at any time after the grant or renewal of the authority, or the refusal to grant or renew the authority.

120. Release of information about area that is no longer an authority area

- (1) This section applies to any information given to the Minister under this Act by the holder of an authority that relates to an area to which the authority no longer applies.
- (2) The Minister may release information to which this section applies at any time after the expiry of 180 days from the date the authority under which the information was given expires or was surrendered or cancelled in relation to that area.

121. Release of factual information

- (1) This section applies to any information given to the Minister under this Act by the holder of an extraction licence that relates to the licence area, but it does not apply to interpretive information.
- (2) The Minister may release any information to which this section applies at any time after the expiry of 1 year from the information collection date.

122. Minister may give information etc. to other Ministers

- (1) The Minister may give to another Minister or to a Minister of the Commonwealth or of a State or Territory—
- (a) any information contained in a document to which this Division applies that has been given to the Minister; and
 - (b) any cores or cuttings from, or samples of, the subsoil in an area, or samples of geothermal energy resources recovered in an area, that have been given to the Minister.
- (2) The Minister may only give information, cores, cuttings or samples to another Minister or to a Minister of the Commonwealth or of a State or Territory under sub-section (1) in accordance with an arrangement between them that includes a provision restricting the release by that Minister of the information, cores, cuttings or samples to circumstances in which it might be released by the Minister under this Act.
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PART 12—ENFORCEMENT

Division 1—Inspections

123. Authorisation of inspectors

- (1) The Minister may authorise a person who the Minister considers to be suitable to carry out inspections for the purposes of this Act.
- (2) The Minister must give each authorised person an identity card that identifies the person by name as an inspector under this Act and that contains a photograph of the person.
- (3) If a person's authorisation as an inspector is revoked or expires, he or she must immediately return his or her identity card to the Minister.

Penalty: 5 penalty units.

124. Production of identity card

An inspector must produce his or her identity card for inspection—

- (a) before exercising a power under this Part other than a requirement made by post; and
- (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

125. Monitoring compliance with this Act

- (1) An inspector may enter any premises that the inspector believes has been, is being, or is to be, used in connection with a geothermal energy operation at any reasonable hour in the daytime and at any time that the premises are open for business and may—

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 125

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- (a) inspect the premises and any thing on the premises;
 - (b) make copies of, or take extracts from, any document kept on the premises;
 - (c) seize any thing on the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;
 - (d) test any equipment on the premises;
 - (e) take any photographs or make any audio or visual recordings that the inspector considers necessary;
 - (f) use any assistants the inspector considers necessary to exercise the powers conferred by this section.
- (2) An inspector may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purpose of determining compliance with this Act or in connection with the issue of a prohibition notice under section 145.
- (3) An inspector may not continue to exercise any powers under this section if he or she fails to produce, on request, his or her identity card for inspection by the occupier of the land.
- (4) An inspector may not, under this section, enter a residence for the purpose of determining compliance with this Act unless the occupier of the residence has consented in writing to the entry and the carrying out of a search.
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126. Emergencies

- (1) If an inspector reasonably believes that it is necessary to do so because of the existence, on any premises that the inspector believes have been, are being, or are to be, used in connection with a geothermal energy operation, of an immediate risk—
- (a) that one or more people might be injured; or
 - (b) that property may be seriously damaged; or
 - (c) that significant damage may occur to the environment; or
 - (d) that significant damage may occur to any geothermal energy or geothermal energy resource—

the inspector may at any time enter the premises and exercise any power conferred by section 125(1).

- (2) An inspector may not continue to exercise any powers under this section if he or she fails to produce, on request, his or her identity card for inspection by the occupier of the premises.
- (3) If an inspector exercises a power of entry under this section without the owner or occupier being present the inspector must, on leaving the premises, leave a notice setting out—
- (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of all things done while on the premises; and
 - (d) the time of departure; and
 - (e) the procedure for contacting the Department for further details of the entry.

127. Offence-related searches and seizures

- (1) An inspector may only exercise powers under this section if he or she has reasonable grounds for suspecting that there is on any premises a particular thing that may be evidence of the commission of an offence under this Act.
- (2) The inspector, with any assistants he or she considers necessary, may with the consent in writing of the occupier of the premises, enter the premises and search for the thing without applying for a search warrant.
- (3) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
 - (a) produced his or her identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 128

-
- (4) If the thing is found during a search under subsection (2), the inspector may—
- (a) inspect any thing on the premises;
 - (b) inspect, and make copies of, or take extracts from, the thing;
 - (c) seize the thing if the inspector believes on reasonable grounds that it is necessary to seize it in order to prevent its concealment, loss or destruction.

128. Occupier to be given copy of consent

- (1) An occupier who consents in writing to the entry and search of their premises or residence under section 125 or 127 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

129. Disputed property in possession of inspector

- (1) This section applies if an inspector has taken possession of any goods other than goods seized under a warrant under section 130 and there is a dispute as to whether any person claiming the goods or which of any two or more persons claiming the goods is entitled to the possession of goods.
- (2) The Magistrates' Court, upon the application of the inspector, may—
 - (a) hear, receive and examine evidence about the application; and
 - (b) order that the goods should be delivered by the inspector to a specified person.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 130

-
- (3) The Magistrates' Court must consider the application in the presence of all the parties claiming the goods and may consider the application in the absence of a party who does not appear after having had reasonable notice of the hearing of the application.
 - (4) If the Court makes an order for the delivery of goods, the inspector must ensure the goods are delivered in accordance with the order.
 - (5) If, after the making of an order, any action is commenced against the inspector for the recovery of the goods or the value of the goods, the fact of the order and the delivery of the goods under the order may be given and is admissible in evidence in defence to the action.
 - (6) An order or the delivery of goods under this section does not affect the rights or liabilities of the persons claiming the goods or of the persons who have been delivered the goods under an order.

130. Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence under this Act.
- (2) If a magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence under this Act, the magistrate may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary—

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 131

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- (a) to enter the premises, or the part of premises, named or described in the warrant; and
 - (b) to search for and seize any thing named or described in the warrant.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
- (a) the offence suspected; and
 - (b) the premises to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and must be in the form set out in the regulations under that Act.
- (5) Subject to any provision to the contrary in this Act, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

131. Announcement before entry

- (1) Before executing a search warrant, the inspector named in the warrant or a person assisting the inspector must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 132

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- (2) The inspector or a person assisting the inspector need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

132. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at the premises when a search warrant is being executed, the inspector must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

133. Receipt must be given for any thing seized

- (1) An inspector may not seize a thing, apparently in the possession or custody of a person, unless he or she makes out and tenders to the person a receipt for the thing seized that—
 - (a) identifies the thing; and
 - (b) states the name of the inspector and the reason why the thing is being seized.
- (2) If an inspector is unable to discover the identity of the owner or custodian of any thing seized, the inspector must leave the receipt with, or post it to, the owner of the premises from which the thing was seized.

134. Copies of certain seized things to be given

- (1) If an inspector seizes—
- (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device the information in which can be readily copied—

the inspector must give a copy of the thing or information to the owner or custodian of the document, thing or device as soon as practicable after the seizure.

- (2) Sub-section (1) does not apply—
- (a) to any document, thing or device moved under section 135(2); or
 - (b) if the inspector is unable to discover the identity of the owner or custodian of any document, thing or device seized.

135. Use of equipment to examine or process things

- (1) An inspector may bring on to any premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized.

- (2) If—
- (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing—

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.

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- (3) The inspector, or a person assisting the inspector, may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized, if the inspector or person assisting believes on reasonable grounds that—
- (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

136. Use or seizure of electronic equipment at premises

- (1) If—
- (a) a thing found at any premises is, or includes, a disk, tape or other device for the storage of information; and
 - (b) equipment at the premises may be used with the disk, tape or other storage device; and
 - (c) the inspector believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether this Act has been contravened—

the inspector or a person assisting the inspector may operate, or may require the occupier or an employee of the occupier to operate, the equipment to access the information.

- (2) If the inspector or a person assisting the inspector finds that a disk, tape or other storage device at the premises contains information of the kind referred to in sub-section (1)(c), he or she may—
- (a) put the information in documentary form and seize the documents so produced; or

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 137

-
- (b) copy the information to another disk, tape or other storage device and remove that storage device from the premises; or
 - (c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An inspector or a person assisting an inspector must not operate or seize equipment for the purpose mentioned in this section unless the inspector or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

137. Compensation for damage

- (1) The Minister must pay compensation for any damage caused by an inspector, or a person assisting an inspector, in exercising (or purporting to exercise) any power conferred by this Act.
 - (2) Despite sub-section (1), the Minister is not liable to pay compensation for any damage caused during any inspection that reveals that there has been a contravention of this Act.
 - (3) In determining the amount of compensation payable in relation to any damage caused to electronic equipment, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.
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138. Return of seized things

- (1) If an inspector seizes a thing under this Act, the inspector must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the thing has not been returned before the end of the retention period, the inspector must take reasonable steps to return it unless—
 - (a) proceedings have commenced within the retention period and those proceedings (including any appeal) have not been completed; or
 - (b) a court makes an order under section 139 extending the retention period.

139. Magistrates' Court may extend period

- (1) An inspector may apply to the Magistrates' Court within the retention period or within a period extended by the Court under this section for an extension of that period.
- (2) The Magistrates' Court may order such an extension if satisfied that retention of the thing is necessary—
 - (a) for the purposes of an investigation into whether an offence has been committed; or
 - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The Court may adjourn an application to enable notice of the application to be given to any person.

140. Power of inspector to require information or documents

- (1) An inspector who—
- (a) exercises a power of entry under this Act; and
 - (b) produces his or her identity card for inspection by a person—

may, to the extent that is reasonably necessary to determine whether this Act has been contravened or whether there exists a risk of a kind referred to in section 126(1), require the person to give information to the inspector, to produce documents to the inspector and to give reasonable assistance to the inspector.

- (2) An inspector must notify a person of the provisions of section 142 before requiring the person to give information to the inspector or to produce documents to the inspector.
- (3) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under sub-section (1).

Penalty: 60 penalty units.

- (4) A person must not, in response to a request under this Division—
- (a) give information that the person knows to be false or misleading in a material detail; or
 - (b) produce a document that the person knows to be false or misleading in a material detail without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

141. Refusal or failure to comply with requirement

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an inspector under this Part.

Penalty: 60 penalty units.

142. Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Act, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite sub-section (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Act, if the production of the document would tend to incriminate the person.

143. Offence to obstruct inspector

A person must not—

- (a) obstruct or hinder; or
- (b) refuse admission to any premises to—

an inspector, or any person necessarily assisting an inspector, while the inspector is exercising a power given to the inspector by this Act in accordance with this Act.

Penalty: 60 penalty units.

Division 2—Improvement and Prohibition Notices

144. Improvement notice

- (1) This section applies if the Minister is satisfied that the holder of an authority—
 - (a) is contravening this Act; or
 - (b) has contravened this Act in circumstances that make it likely that the contravention will occur again; or
 - (c) is not complying with a condition of the authority; or
 - (d) has failed to comply with a condition of the authority in circumstances that make it likely that the failure will occur again.
- (2) The Minister may issue to the holder of the authority an improvement notice requiring the holder to take specified action within a specified period to stop the contravention, or failure to comply, from continuing or occurring again.
- (3) The holder of the authority must comply with the notice.

Penalty: 240 penalty units.

145. Prohibition notice

- (1) This section applies if an activity or event is occurring, or is likely to occur, in an authority area that, in the opinion of the Minister, creates an immediate risk—
 - (a) that one or more people might be injured; or
 - (b) that property may be seriously damaged; or
 - (c) that significant damage may occur to the environment; or

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 145

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- (d) that significant damage may occur to any geothermal energy or geothermal energy resource.
- (2) The Minister may issue to the holder of the authority a prohibition notice prohibiting the holder—
- (a) from carrying out, or continuing to carry out, any geothermal energy operation, or any activity relating to a geothermal energy operation, in the authority area; or
 - (b) from taking any specified action in the authority area—
- until the Minister certifies in writing that any direction included in the prohibition notice has been complied with, or until the expiry of a specified period.
- (3) The Minister —
- (a) may include in the notice directions as to measures to be taken to remove or reduce the risk to which the notice relates;
 - (b) must specify in the notice from when the prohibition is to take effect.
- (4) The holder of the authority must comply with the notice.
- Penalty: 600 penalty units.
- (5) If the holder of an authority fails to comply with a notice given under this section, the holder is guilty of an offence for each day the failure to comply in respect of which the notice was given continues after the relevant prohibition takes effect.
- Penalty: 20 penalty units for each day the offence continues after the prohibition takes effect.
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146. Right to review

- (1) A person may apply to the Tribunal for a review of a decision by the Minister to issue an improvement or prohibition notice.
- (2) An application for a review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (3) Despite section 144(3), the holder of an authority that applies for a review of the issue of an improvement notice need not comply with the notice until—
 - (a) the Tribunal affirms the notice; or
 - (b) the holder abandons the application for the review or receives written notice that the Tribunal has dismissed the application.

147. Defences to charge of failing to comply with a notice

- (1) In a proceeding for an offence of failing to comply with an improvement notice, it is a defence to the charge for the accused to prove that the accused did not contravene this Act, or fail to comply with a condition of an authority, in the manner set out in the improvement notice.
- (2) In a proceeding for an offence of failing to comply with an improvement or prohibition notice, it is a defence to the charge for the accused to prove that the accused took all reasonable steps to comply with the notice.

Division 3—Offences

148. Offences by corporations also offences by officers

- (1) This section applies if—
 - (a) an offence is committed against this Act by a corporation; and
 - (b) the offence is proved to have been committed at the instigation of, or with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, an officer of the corporation.
- (2) The officer is also guilty of the offence and is liable to the penalty for that offence.

149. Offences by partners

- (1) This section applies if a person holds an authority in partnership with one or more other people.
- (2) The person is also guilty of any offence against this Act that the person's partner or partners are found guilty of in acting, or purporting to act, on behalf of the partnership, and is liable to the penalty for that offence.

150. Offences by joint venturers

- (1) This section applies if a person holds an authority as part of a joint venture with one or more other people.
- (2) The person is also guilty of any offence against this Act that the other person is, or that the other persons are, found guilty of in acting, or purporting to act, on behalf of the joint venture, and is liable to the penalty for that offence.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 12—Enforcement

s. 151

151. Offences by employees and agents

- (1) This section applies if a person who commits an offence under this Act committed the offence while acting—
 - (a) for or on behalf of another person; and
 - (b) within the scope of the actual or apparent authority given to him or her by the other person.
- (2) The other person is also guilty of the offence and is liable to the penalty for that offence.

PART 13—ADMINISTRATION

Division 1—Geothermal Energy Register

152. Establishment of register

The Minister must cause a geothermal energy register to be established and maintained.

153. Effect of registration

The following items have no effect until a document that is in a form specified, or approved, by the Minister and that contains evidence of the item is registered in the geothermal energy register—

- (a) authorities;
- (b) variations, cancellations, suspensions, extensions, or the surrender of all or part of an authority or the conditions of an authority;
- (c) any part of an agreement that purports to create, transfer, assign, devolve or affect any interest in, or conferred by, an authority;
- (d) unit development agreements;
- (e) any other document that is required to be registered under section 154.

154. Other documents to be registered

The Minister, by notice published in the Government Gazette, may require that a document of a specified kind relating to an authority be registered.

155. Entries in register on devolution of title

- (1) The devolution by operation of law of any rights under an authority, or any interest in, or conferred by, an authority, has no effect until a document in a form approved by the Minister that provides evidence of the devolution is registered in the geothermal energy register.
- (2) Sub-section (1) applies despite anything to the contrary in any Act or rule of law.
- (3) Nothing in this section limits any discretion conferred on the Minister by Division 4 of Part 6.

156. Registration

- (1) To register a document, the Minister must—
 - (a) either—
 - (i) enter details of the document in the geothermal energy register; or
 - (ii) lodge a copy of the document in the register; and
 - (b) enter in the register the date the details were entered or the document was lodged; and
 - (c) give the person who sought registration of the document a copy of the document endorsed with a notation that the document has been registered and details of the date and time entered in the register under paragraph (b).
 - (2) The Minister may—
 - (a) determine what details of a document are to be lodged in the register;
 - (b) require that documents of a particular type be in a specified form before accepting them for registration;
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 13—Administration

s. 157

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- (c) require that documents of a particular type contain specified information before accepting them for registration.

157. Effect of registration

The registration of a document does not give any right, interest or dealing that is evidenced by that document any force or effect that the right, interest or dealing would not have had if this Part had not been enacted.

158. Inspection of register and documents

- (1) On the payment of any fee required by the regulations, a person may inspect the geothermal energy register and any documents that form part of the register at any time that the office in which the register is kept is open for business.
- (2) On the payment of any fee required by the regulations, a person may obtain a copy of any entry or document in the geothermal energy register.

159. Minister's certificates

- (1) A certificate certifying as to any matter relating to the contents of the geothermal energy register and purporting to be signed by the Minister is admissible in evidence in any proceeding as evidence of the matter certified.
- (2) The Minister may supply such a certificate to any person who applies for the certificate and pays any fee required by the regulations for the purposes of this section.

160. Minister may make corrections to register

- (1) The Minister may alter the geothermal energy register to correct a clerical error or an obvious defect in the register.
- (2) The Minister may, on application being made in writing to the Minister by a person or on his or her own initiative, make any entries in the register that the Minister considers appropriate for the purposes of ensuring that the register accurately records the interests and rights existing in relation to an authority.
- (3) The Minister must give the holder of the authority to which an alteration relates written details of the alteration.

161. Right to review of register entries

- (1) A person may apply to the Tribunal for a review of the Minister's decision to make or vary an entry in the geothermal energy register under section 160.
- (2) An application for a review must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

162. Offences relating to the register

A person must not wilfully—

- (a) make, cause to be made, or concur in making, a false entry in the geothermal energy register; or
- (b) produce or tender in evidence a document falsely purporting to be a copy of, or extract from, an entry in the register or of or from a document lodged with the Minister under this Part.

Penalty: 120 penalty units.

163. Officials must not disclose information

- (1) A person must not disclose any information that is obtained by him or her while exercising a power conferred by this Act.

Penalty: 240 penalty units.

- (2) A person must not use any such information to obtain directly or indirectly any pecuniary advantage for himself or herself or for any other person.

Penalty: 240 penalty units.

- (3) However, a person may disclose or use such information if—

- (a) the disclosure or use is made in the performance of a duty under, or in connection with, this Act; or
 - (b) the person has the consent of the person to whom the information belongs; or
 - (c) the disclosure or use is made in legal proceedings at the direction of a court; or
 - (d) the information is in the public domain at the time it is disclosed or used.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 13—Administration

s. 164

- (4) Sub-section (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.

Division 2—Other Administrative Matters

164. Minister may require further information

The Minister may require an applicant under this Act to provide the Minister with more information concerning an application and may require the applicant to provide the information within the time specified in the request.

165. Form of documents

- (1) Each document that a person submits to the Minister under this Act must be in the form, if any, required by the Minister.
- (2) Each authority or other document that the Minister issues under this Act is to be in the form determined by the Minister.

166. Delegation

- (1) The Minister may, in writing, delegate to any person employed in the Department any power of the Minister under this Act, other than this power of delegation.
- (2) The Secretary of the Department may, in writing, delegate to any person employed in the Department any power of the Secretary under this Act, other than this power of delegation.

Division 3—Fees and Penalties

167. Applications not to be processed unless fee paid

If the regulations require the payment of a fee for an application under this Act, the application must not be considered until the fee is paid.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 13—Administration

s. 168

168. Fees and penalties debts due to the State

A fee, royalty or other amount payable under this Act is a debt due to the State by the person by whom the amount is payable and is recoverable in any court of competent jurisdiction.

PART 14—REGULATIONS

169. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) determining the dimensions, boundaries, form, position and extent of an authority area; and
 - (b) determining the requirements to be complied with by people who wish to acquire authorities; and
 - (c) prescribing conditions that are to apply to a particular type of authority or to authorities generally; and
 - (d) prescribing the fees payable for authorities, and the fees for applications, the processing of applications, renewals, authority variations and extensions, surveys, inspections by inspectors, technical and other assessments undertaken by the Department or its agents, exemptions, registrations in the geothermal energy register, inspection of the geothermal energy register and access to released information; and
 - (e) prescribing annual fees payable by the holders of authorities; and
 - (f) prescribing the rent that is payable by the holders of authorities for occupying Crown land; and
 - (g) requiring the holders of authorities to submit specified information to the Minister and to keep specified information, records and samples; and
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 14—Regulations

s. 169

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- (h) requiring information to be contained in work programs, development plans, unit developments, operation plans, and other plans, manuals and reports required of authority holders; and
 - (i) the geothermal energy register and the documents to be registered; and
 - (j) regulating the extraction and treatment of geothermal energy and geothermal energy resources under an authority; and
 - (k) regulating unit agreements; and
 - (l) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 14—Regulations

s. 169

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- (d) may apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time; and
 - (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (f) may provide in a specified case or class of case for the exemption of activities or operations from all or any of the provisions of this Act, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
 - (g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations; and
 - (h) may be expressed as requiring the achievement of a specified object in relation to any particular subject matter.
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Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 15—Amendments and Transitional Provisions

s. 170

PART 15—AMENDMENTS AND TRANSITIONAL PROVISIONS

170. Catchment and Land Protection Act 1994

In section 33(4) of the **Catchment and Land Protection Act 1994**—

(a) after paragraph (b) **insert**—

"(ba) exploration for or extraction of geothermal energy or geothermal energy resources within the meaning of the **Geothermal Energy Resources Act 2005**; or";

(b) in paragraph (c) after "under the" **insert** "**Geothermal Energy Resources Act 2005**, the".

See:
Act No.
52/1994.
Reprint No. 3
as at
5 August 2004
and
amending
Act No.
81/2004.
LawToday:
www.dms.
dpc.vic.
gov.au

171. National Parks Act 1975

In section 40(2) of the **National Parks Act 1975** for "any authority granted under that Act" **substitute** "the **Geothermal Energy Resources Act 2005** or any authority granted under either of those Acts".

See:
Act No. 8702.
Reprint No. 9
as at
16 November
2002
and
amending
Act Nos
38/1989,
80/2003,
84/2003,
97/2003,
12/2004,
48/2004 and
64/2004.
LawToday:
www.dms.
dpc.vic.
gov.au

172. Nuclear Activities (Prohibitions) Act 1983

In section 2 of the **Nuclear Activities (Prohibitions) Act 1983**, in the definition of "mining title", after "under the" **insert** "**Geothermal Energy Resources Act 2005**, the".

See:
Act No. 9923.
Reprint No. 2
as at
26 April 2001.
LawToday:
www.dms.
dpc.vic.
gov.au

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 15—Amendments and Transitional Provisions

s. 173

See:
Act No. 9772.
Reprint No. 4
as at
1 January
2003
and
amending
Act Nos
10/2004 and
11/2004.
LawToday:
www.dms.
dpc.vic.
gov.au

173. Petroleum (Submerged Lands) Act 1982

In section 15A of the **Petroleum (Submerged Lands) Act 1982**—

- (a) in sub-section (2), after "**1984**" insert "or the co-operative scheme within the meaning of the **Crimes at Sea Act 1999**";
- (b) in sub-section (4), after "**1984**" insert "or the **Crimes at Sea Act 1999**".

See:
Act No.
61/1993.
Reprint No. 3
as at
3 May 2001
and
amending
Act Nos
2/2004 and
48/2004.
LawToday:
www.dms.
dpc.vic.
gov.au

174. Victorian Plantations Corporation Act 1993

In the **Victorian Plantations Corporation Act 1993**—

- (a) in section 9(2)(b), after "of the" insert "**Geothermal Energy Resources Act 2005**, the";
- (b) in section 26(1), after "under the" insert "**Geothermal Energy Resources Act 2005**, the".

175. Effect on existing authorities and activities

- (1) Nothing in this Act affects the operation of a licence, permit or other authority issued under the **Water Act 1989** that was in force immediately before the commencement of section 17.
- (2) Any geothermal energy extraction operation that was being carried out immediately before the commencement of section 42 is deemed to be authorised by an extraction licence issued under and subject to this Act.

Geothermal Energy Resources Act 2005
Act No. 7/2005

Part 15—Amendments and Transitional Provisions

s. 175

-
- (3) The Minister may, within 24 months after the commencement of section 42—
- (a) impose any conditions or limitations on a licence referred to in sub-section (2); and
 - (b) issue an extraction licence under this Act as documentary evidence of a licence referred to in sub-section (2).
- =====

Geothermal Energy Resources Act 2005
Act No. 7/2005

Endnotes

ENDNOTES

- † *Minister's second reading speech—*
Legislative Assembly: 1 December 2004
Legislative Council: 24 March 2005

The long title for the Bill for this Act was "to facilitate and regulate geothermal energy exploration and extraction in Victoria, to amend the **Petroleum (Submerged Lands) Act 1982** and for other purposes."

Geothermal Energy Resources Act 2005
Act No. 7/2005

INDEX

<i>Subject</i>	<i>Section</i>
Aborigines	
<i>See</i> Areas of Aboriginal significance; Native title Act	
amendments to other Acts	170–174
application	9–10
commencement	2
Crown bound by	7
objectives, principles	3
purpose	1
relationship to certain other Acts	8
transitional provisions	175
Areas of Aboriginal significance	87
<i>See also</i> Native title	
Authorities	
applications	58–59, 164
cancellation	74–77
conditions	
general provisions, matters provided for	63
non-compliance with	74, 75, 144
suspension	67–68
variation	4, 64–66
consolidation	66, 78
continuation until renewal applications decided	60
definition	4
expiry	77
extension of term of	68
fees	167–168
form	165
insurance requirements	74, 99
Ministerial directions	77
removal of equipment from areas under	77, 107, 109–110
renewal	66
surrender	73, 77
transfers	66, 69–72
transitional provisions	175
<i>See also</i> Exploration permits, Extraction licences; Geothermal energy operations; Geothermal energy register; Information; Retention leases; Work programs	
Compensation	
for damage caused by inspectors	137
for operations on Crown land	91, 95
for operations on private land, native title land	
disputes	94
limits on total amounts	92
matters payable for, amounts payable	89
requirements before operations start	88
time limits on claims	93
not payable for geothermal energy, resources	90

Geothermal Energy Resources Act 2005
Act No. 7/2005

<i>Subject</i>	<i>Section</i>
Crown	
bound by Act	7
property, rights in geothermal energy, resources	12–13
Crown land	
compensation for operations on	91, 95
definition	4
operations on restricted Crown land	81
operations on unrestricted Crown land	4, 85–86
owners (def.)	4
Definitions	4–6, 77, 82, 89, 116–117
Development plans <i>See</i> Extraction licences	
Entry powers	
for offence-related searches, seizures	127–128
in emergencies	126
to monitor compliance	125, 128
with warrants	130–132
Evidence	129, 159
Exemptions	11
Exploration permits	
applications	18–19, 23
cancellation	31
chief factors considered in determinations	18, 20
duration, expiry	25
grant	21–22
Ministerial directions to holders on discovery of energy, resources	31
more than one application for same area	20, 23
no applications received	23
reduction of renewed permit areas	29
refusal to accept	22–23
refusal to grant	21, 23
renewal	26–30
restrictions on permit areas	24
rights conferred by	17
tenders	18, 23
<i>See also</i> Authorities; Extraction licences;	
Retention leases	
Extraction licences	
amendments	57, 75
applications	31, 33, 41, 43–45
cancellation	74–77
chief factors considered in determinations	44, 46
development plans	51–55
duration	50
environment effects statement for operations under grant	62 46–48
planning permits not required for operations under	62
refusal to accept	48
refusal to grant	47
removal of areas from	75, 77
restrictions on licence areas	49

Geothermal Energy Resources Act 2005
Act No. 7/2005

<i>Subject</i>	<i>Section</i>
rights conferred by	42
royalties payable by holders of	44, 103–106, 168
tenders	44
transitional provisions	175
<i>See also</i> Authorities	
Fees	167–168
Geothermal energy	
compensation not payable for	90
definition	4
property of person extracting	16
property, rights of Crown	12–13
Geothermal energy exploration	4, 5, 14
<i>See also</i> Exploration permits; Extraction licences;	
Retention leases	
Geothermal energy extraction	
definition	4, 6
unauthorised extraction	15
unit development	4, 56–57
<i>See also</i> Extraction licences	
Geothermal energy operations	
consents	80–84, 88
definition	4
in areas of Aboriginal significance	87
interference with other activities	108
notice requirements	86
on private land	88
on restricted Crown land	81
on unrestricted Crown land	85–86
on water authority land	82
operation plans	96–98
prohibited areas, land	79
property, equipment, structures used in	107
<i>See also</i> Compensation; Rehabilitation	
Geothermal energy register	
certificates regarding contents of	159
corrections to	160–161
definition	4
documents which must be registered in	71, 153–154
entries on devolution of title in	155
establishment and maintenance	152
exemptions recorded in	11
inspection of	158
offences	162
registration in	156–157
review of entries in	161
Geothermal energy resources	
compensation not payable for	90
definition	4
property of person extracting	16
property, rights of Crown in	12–13
Geothermal water (def.)	4
Improvement notices	4, 144, 146–147

Geothermal Energy Resources Act 2005
Act No. 7/2005

<i>Subject</i>	<i>Section</i>
Information	
definition, construction of references	116
given to Minister	113–115
given to other Ministers	122
interpretive information	117
not to be released	118
release	116, 119–121
Inspectors	
authorisation	123
compensation for damage caused by	137
definition	4
identification	123–127, 132
non-compliance with requirements of	140, 141
obstruction, hindrance	143
powers, duties regarding	
entry and inspection	125–126, 128
requiring of information, documents	140
search and entry with warrant	130–132
search and entry without warrant	125, 127–128
seizure	125–127, 129, 133–136, 137–139
protection against self-incrimination	142
refusal of admission to	143
Insurance	
Land <i>See</i> Crown land; Private land	
Marine national parks and sanctuaries	79
Minister	
delegation	166
matters to be considered in decisions made by	3
powers, duties regarding	
compensation	91, 95, 137
exemptions	11
form of documents	165
geothermal energy operations	80
geothermal energy register	152, 154–156, 159, 160
improvement notices	144
information	113–122
inspectors	123, 137
insurance	99
operation plans	96–98
prohibition notices	145
rehabilitation	100–102, 112
removal of equipment	110
royalties	103, 106
unit development	56–57
<i>See also</i> Authorities; Exploration permits; Extraction licences; Retention leases	
Native title	
compensation for holders of	89, 92–94
definitions of Native Title Act, holders	4
<i>See also</i> Areas of Aboriginal significance	

Geothermal Energy Resources Act 2005
Act No. 7/2005

<i>Subject</i>	<i>Section</i>
Offences	
by corporations	148
by employees, agents	151
by joint venturers	150
by partners	149
regarding	
authorities	67
development plans	52–53
disclosure of confidential information	163
information	113–115
inspectors	123–124, 140–141, 143
insurance	99
non-compliance with improvement notices	144, 147
non-compliance with Minister's directions	77
non-compliance with prohibition notices	145, 147
operations, operation plans	79–82, 85–88, 96–97, 107–108
property maintenance	107
register	162
rehabilitation bonds	100–101
removal of equipment	107, 109
unauthorised exploration	14
unauthorised extraction	15
Operations <i>See</i> Geothermal energy operations	
Private land	
consent to, compensation for operations on	88–89, 92–94
definition	4
Prohibition notices	4, 145–147
Records <i>See</i> Information	
Reference areas	79
Register and registration	
<i>See</i> Geothermal energy register	
Regulations	169
Rehabilitation	
as condition of authorities	63
authority holders' general duties	111
carried out by Minister	112
rehabilitation bonds	4, 100–102, 110
specified in operation plans	96
Restricted Crown land	81
Retention leases	
applications	31, 34–35, 58
cancellation	40, 41
commencement, duration, expiry	38
grant	36
Ministerial directions if extraction viable	41
purpose	32
refusal to grant	39
restrictions on lease areas	37
review of commercial viability by holders	40
rights conferred by	33
<i>See also</i> Authorities; Extraction licences	

Geothermal Energy Resources Act 2005
Act No. 7/2005

<i>Subject</i>	<i>Section</i>
Review	
<i>See</i> Victorian Civil and Administrative Tribunal	
Royalties	44, 103–106, 168
Samples <i>See</i> Information	
Search powers	
with warrants	130–132
without warrants	125, 127–128
Seizure	
copies of things seized	134
disputed goods	129
electronic equipment	136–137
extension of retention period	139
inspectors' powers	125–127
receipts for things seized	133
return of seized things	138
use of equipment to examine, process things	135–136
Self-incrimination	
protection from	142
Supreme Court	94
Transitional provisions	175
Tribunal	
<i>See</i> Victorian Civil and Administrative Tribunal	
Unit development	4, 56–57
<i>See also</i> Geothermal energy register	
Unrestricted Crown land	85–86
Victorian Civil and Administrative Tribunal	
review, determinations regarding	
compensation disputes	88, 94–95
consent to operations	84
entries in register	161
improvement, prohibition notices	146
Water authorities	82
Wilderness zones and parks	79
Work programs	
definition and contents	4, 61
in authorities in general	58, 61, 63, 74
in exploration permits	19, 20, 28, 30
in extraction licences	33, 45, 46, 75
non-compliance with	74
