

Extractive Industries (Amendment) Bill

EXPLANATORY NOTES

1. INTRODUCTION

In 1957 and 1963 the State Development Committee conducted inquiries into matters associated with extractive industries. During its second inquiry the Committee took sworn evidence from about 100 witnesses, examined legislation in force in other States and overseas countries and inspected many extractive industries sites in metropolitan and country districts. Following the second inquiry, the Committee submitted a Report embodying a number of recommendations for the control of extractive industries. The *Extractive Industries Act* 1966 which came into effect in May 1968 has implemented most of those recommendations.

The principal effects of that Act were to—

Remove extractive industries from the operation of the Mines Act and provide for all aspects of extractive industries to be dealt with under the Extractive Industries Act.

Transfer the ownership of stone from the Crown to the landowner on private land.

Provide for the leasing or licensing of extractive industries throughout Victoria.

Give the widest publicity to applications for extractive industry leases and licences and provide interested parties with adequate opportunity to lodge objections and for these to be heard.

Enable the making of regulations for the control and operation of quarries and the safety and health of persons employed in such quarries and the safety of the public.

Provide, where practicable, for the reclamation of worked out quarries.

Amend the Town and Country Planning Act to co-ordinate the consideration and issue of town planning permits and licences for extractive operations, including Town Planning Appeals.

Amend the Soil Conservation and *Land Utilization Act* 1958 to control extraction from less than 2 metres deep.

Enable the search for extractive substances on Crown and private land.

Establish an Extractive Industries Advisory Committee.

The Need for Amendment

During the eleven years that the Act has been in force a very substantial improvement in the operation of extractive industries throughout the State has been achieved. Accident rates have been reduced substantially and the impact of quarrying operations on the environment has been given much greater consideration. Control over the establishment of new quarries has led to a gradual reduction in the total number of extractive operations despite an increase in the total amount of stone extracted annually.

However, it has also become apparent that certain provisions of the Act require revision to more effectively control extractive operations and to facilitate the issue or amendment of authorizations under which an extractive industry is operated.

In particular, it has been shown that there is a need to—

1. amend the definition of “extractive industry”;
2. allow the consolidation of adjoining leases and licences and the variation of special conditions of leases and licences where variation of proposals is sought;
3. enable the furnishing of more information to substantiate the resources and establish the bona fides of applicants for leases and licences;
4. to introduce a new type of authorization for the operation of small scale or short term extractive industries;
5. extend the capacity to require reclamation to the stage where extraction has fully ceased;
6. provide for wider representation on the Extractive Industries Advisory Committee;
7. update and increase the amounts of penalties provided for under the Act;
8. amend the Town and Country Planning Act to establish a suitable procedure for Responsible Planning Authorities to deal with applications for planning permits where the new form of authorization to extract is involved.

Details of Amendments (see attached Bill)

Clause 2 (a). The new form of authority to extract, termed an “extraction permit” is defined to avoid any confusion with “permits” required under any other Act.

The definition of “extractive industry” is redrafted to exclude the terms “for commercial purposes” and “natural surface” which have been found to have weakened the enforcement of the principal Act.

Exemption clauses are then separately provided for to clearly state those operations to which the Act is not intended to apply (e.g. bona fide farm works) or to which the leasing and extraction permit licensing provisions of the Act do not apply (e.g. operations by municipalities).

The exemption clauses are designed so that no new classes of operations are brought within the definition of “extractive industry” that were not intended in the original definition.

Power is also proposed for the Minister for Minerals and Energy to exempt operations from provisions of the Act in unusual circumstances.

However the definition of “extractive industry” has been broadened to include operations declared by the Minister for Minerals and Energy to be so by notice published in the *Government Gazette*. This would enable operations for all

intents and purposes being extractive industries (i.e. producing stone for profit) but still being exempted by virtue of the exemption clauses of the definition of extractive industry, e.g. depth not exceeding 2 metres but extraction is on a large scale or explosives and/or crushing and screening plant is used or where the primary purpose is claimed to not be the extraction of stone but a large amount of stone is to be sold in competition with other operators holding a lease, licence or extraction permit under the Act.

Clause 2 (b). The definition of "quarry" is extended to allow control by regulation of access ways and private land to the quarry site. This control could cover aspects such as safety of the road (width, grade, maintenance, &c.) or of dust generation and drainage.

Clause 3. The area leased to Alcoa for coal extraction at Anglesea under the *Mines (Aluminium Agreement) Act 1961* also contains large quantities of quartz sands suitable for a variety of uses including the manufacture of abrasives and for fine concrete aggregate. Under the Agreement "stone" is reserved to the Crown.

However, legal opinion has suggested that extraction of "stone" from the Alcoa area cannot be authorized by the grant of an Extractive Industry Lease since this would constitute the issue of a lease on an area already leased under the Mines Act. This clause proposes that the Alcoa area be treated for the purposes of the Extractive Industries Act (except for the payment of royalty) as private land so that a licence and not a lease may be issued.

This would then allow for the maximum utilization of the sand resources which are currently being wasted in the coal overburden removal operation conducted by Alcoa. It is envisaged that full consultation would be maintained with Alcoa to ensure that sand extraction operations did not impair or impede the extraction of coal.

Clause 4. All quarries have some impact on the landscape, public amenity, damage to roads and so on according should not be authorized unless a demand can be demonstrated to exist or likely to exist for the stone produced. If a market area is already well supplied from existing quarries then, in general, applications for leases or licences for an additional quarry should be refused.

This clause is intended to clarify the ability of the Minister for Minerals and Energy to refuse an application for a lease or licence where it is considered no need for the additional source of stone exists at that time.

Clause 5. It is quite common for the one extractive operation to be authorized by more than one lease or licence. This may have arisen by one operator purchasing an adjoining operation or by having obtained an additional lease or licence to enable an increase in the working area.

The purpose of this clause is to allow the consolidation of these leases or licences and in so doing to allow the imposition of special conditions more appropriate to the enlarged operation.

Clause 6. The carrying on of an extractive industry is liable to cause problems of one sort or another to the public. Accordingly when leases or licences are issued special conditions requiring the performance of works designed to

protect the public are included. The proper compliance with these conditions (or indeed the proper performance of the total operation) is dependent upon the financial and technical resources of the licensee.

Occasionally applications for leases or licences have been made by persons whose ability to meet likely special conditions has been doubtful. It is considered that the ability of the licensee to satisfactorily carry on the operation and meet special requirements such as safety fencing, road sealing, dust control etc should be determined prior to lease/licence issue.

Clause 7 Practice for some time has been to recommend to the Minister for Minerals and Energy that a lease or licence be transferred to a new holder subject to the transferee agreeing to a variation of the conditions of the lease/licence if this was regarded as desirable. The same has applied where a lessee/licensee has applied to modify the proposals approved prior to lease/licence issue.

This clause is designed to clarify the legal ability to continue this practice.

Clause 8. This clause proposes the introduction of a new form of authorization to enable the carrying-on of an extractive industry.

This new form of authorization, termed an extraction permit would be restricted to short term or small operations where the requirements for the obtaining of an Extractive Industry Lease or Licence would be unnecessarily onerous or lengthy. The latter tenures would remain in their present form for larger operations. The issue of an extractive permit would not remove the need for the obtaining of any necessary town planning permit.

Examples of operations which could be authorized by an extraction permit could include those to meet annual municipal tenders for road making materials such as gravels and small scale slate extraction on Crown land. In the former type the need to carry out advertising, prepare detailed plans and proposals and have the Department refer the application to the Town and Country Planning Board and the Soil Conservation Authority invariably means that a licence cannot be issued in time for an operator to meet a municipal or Country Roads Board tender. In the latter case the costs of advertising, preparation of plans and particularly the need to carry out a location survey by a licensed surveyor are often out of proportion with the scale of extraction.

Under the proposed amendment these types of extraction could be authorized by the issue of an extraction permit. The permit would be for a period of up to one year, would have no automatic rights of renewal, would be issued by the Minister for Minerals and Energy on the advice of the Extractive Industries Advisory Committee and would be subject to the compliance with appropriate conditions including the lodgement of a bond to ensure the performance of reclamation works.

Technical requirements such as working proposals would be kept to a minimum but working methods could be regulated by conditions on the extraction permit. No advertising would be required but it is proposed that the municipality and regional planning authority for the area would be advised of the application and given the ability to comment, and if desired, appoint a representative to the Extractive Industries Advisory Committee. An application for an extraction permit

could be refused on the grounds that the nature of the proposed operation (e.g. scale, duration, location, &c.) was such as to be more appropriately covered by a lease or licence.

In order to expedite the issue of an extraction permit and any necessary town planning permit it is proposed that the planning authority would not first have to receive and take into consideration a report of the Extractive Industries Advisory Committee as is required by section 18A (2) of the Town and Country Planning Act, where application has been made to the Department of Minerals and Energy for a lease or licence. Upon receiving a copy of the application and advice from this Department that an extraction permit is an appropriate form of authorization for the extractive operation proposed the planning authority would be able to proceed to determine any application submitted for a planning permit for the operation. It is proposed that the current procedure for dealing with applications for leases and licences would remain unchanged. Appropriate amendment on section 18A (2) of the Town and Country Planning Act to provide for these procedures is set out in clause 14 (2).

Clause 9. Section 19 (2) (c) of the *Extractive Industries Act* 1966 limits the ability to impose reclamation requirements to the operating life of quarries. Once a quarry has ceased to operate the responsibility for ensuring that appropriate reclamation is carried out rests with the municipality. The procedures set out in sections 20-23 are generally regarded as cumbersome and financially disadvantageous to the municipality involved and have never been tested.

It is considered most desirable that the final reclamation of the quarry site is planned before lease or licence issue and may be ensured as a condition of the lease or licence and, if need be, by a suitable bond.

The term "reclamation" is considered to more accurately portray the intention of the Act to have quarry sites treated so that they are not a permanent blight on the landscape and a useless area of land than the term "restoration".

Clause 10. The current procedure under the *Extractive Industries Act* for the carrying out of reclamation on Crown land financed from the Land Reclamation Fund requires that the municipality must carry out the work and then initiate a request for the necessary funds. This amendment allows the Minister to initiate the carrying out of reclamation without removing the ability of a municipality to do so.

Clause 11. This merely modifies the Act in line with the amendment with respect to an extraction permit.

Clause 12. This clause outlines representation on the Extractive Industries Advisory Committee.

Clause 13. This clause increases the level of penalties for non-compliance.

Clause 14. This clause modifies the Act in terms of extraction permits and also the Town and Country Planning Act to enable the planning authority to determine an application for a planning permit for extractive industry where an extraction permit is an appropriate authorization upon receipt of advice from the Secretary for Minerals and Energy rather than the need to receive a report of the Extractive Industries Advisory Committee.