

Extractive Industries (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 19 April 1989

(Brought in by Mr Trezise and Mr Roper)

A BILL

to amend the *Extractive Industries Act* 1966, to make minor amendments to the *Extractive Industries (Amendment) Act* 1980, the *Extractive Industries (Amendment) Act* 1984 and the *Planning and Environment Act* 1987 and for other purposes.

Extractive Industries (Amendment) Act 1989

The Parliament of Victoria enacts as follows:

Purpose

1. The main purpose of this Act is to amend the *Extractive Industries Act* 1966.

5 Commencement

2. (1) Subject to sub-sections (2), (3) and (4), this Act comes into operation on a day or days to be proclaimed.

(2) Section 13 (3) is deemed to have come into operation on 20 November 1984.

10 (3) Section 13 (1) is deemed to have come into operation on 6 May 1980.

(4) Sections 13 (2) and 13 (4) are deemed to have come into operation immediately before 16 February 1988.

Principal Act

No 7499.
Reprinted to No.
3/1987.
Amended by
Nos. 9/1987,
41/1987 and
45/1987.

3. In this Act, the *Extractive Industries Act* 1966 is called the Principal Act.

New section 2A inserted

4. After section 2 of the Principal Act insert— 5

Objects of this Act

“2A. The objects of this Act are—

- (a) to provide for the development of safe operating standards for extractive industry operations;
- (b) to provide for the issue of leases, licences and permits enabling the carrying on of extractive industry operations; 10
- (c) to ensure that any person carrying on an extractive industry is responsible for its safe operation and for the rehabilitation of land affected by the extractive industry; 15
- (d) to ensure that the development of extractive industries is carried out to make the maximum possible beneficial use of sources of stone and other extractive industry resources which are not renewable and with the minimum possible impact on the environment.” 20

Amendment of section 11

5. After section 11 (2) of the Principal Act insert—

“(3) If, under the regulations, information for the purposes of an application under this section is required to be contained in a statutory declaration, the application must be accompanied by a statutory declaration containing that information.” 25

New section 16B inserted

6. After section 16A of the Principal Act insert—

Variation of leases and licences

‘16B. (1) The Minister may at any time during the currency of a lease or licence, on the recommendation of the Extractive Industries Board, by notice in the *Government Gazette*— 30

- (a) amend or revoke a covenant or condition to which the lease is subject or add a covenant or condition to the lease; 35
- (b) amend or revoke a condition to which the licence is subject or add a condition to the licence.”

(2) In this section “**covenant**” or “**condition**” includes a covenant or condition referred to in section 7B.’.

Amendment of section 19

5 7. (1) In section 19 (2) (*ha*) of the Principal Act, after “apply for” insert “and the information required to be contained in statutory declarations regarding the marking out of that land”.

(2) In section 19 (3) of the Principal Act, after “(3)” insert “Subject to sub-section (4),”.

(3) For section 19 (4) of the Principal Act substitute—

10 “(4) Regulations made under this section—

(a) may apply generally or in a particular case or class of cases; and

(b) may differ according to differences in time, place or circumstances; and

15 (c) may apply, adopt or incorporate (with or without modification) any matter contained in any code, standard, rule or other document formulated or published by any authority or body as in force at the time the regulations are made or at any time before then; and

20 (d) may require a matter or thing affected by the regulations to be approved by or to the satisfaction of the Chief Inspector of Quarries or an inspector; and

25 (e) may leave any matter or thing from time to time to be determined, applied, dispensed with or regulated by the Chief Inspector of Quarries or an inspector; and

(f) may authorise the Chief Inspector of Quarries to impose or vary conditions in relation to any matter affected by the regulations; and

30 (g) may confer power on the Chief Inspector of Quarries to grant exemptions from the regulations, impose conditions subject to which the exemption is granted and revoke or vary the conditions; and

35 (h) may confer a discretion in connection with the regulations on the Chief Inspector of Quarries; and

(i) may confer power or impose duties in connection with the regulations on the Chief Inspector of Quarries or an inspector.

(5) The Chief Inspector of Quarries—

40 (a) must make a record of—

(i) conditions imposed or varied by the Chief Inspector of Quarries under regulations made under sub-section (4) (*f*); and

- (ii) exemptions granted by the Chief Inspector of Quarries under regulations made under sub-section (4) (g); and
- (b) must make a copy of the record available for inspection by the public during ordinary business hours.”. 5

Amalgamation of Quarry Managers Board and Advisory Committee

8. On the commencement of this section:

- (a) Except for the purpose specified in sub-section (2), the Quarry Managers Board established under regulations made under section 19 of the Principal Act and the Extractive Industries Advisory Committee are abolished and their members go out of office; 10
- (b) Subject to this section the powers functions discretions and authorities exercised before that date by the Quarry Managers Board and the Extractive Industries Advisory Committee are transferred to and exercised by the Extractive Industries Board established under section 43 of the Principal Act; 15
- (c) Subject to this section, the duties responsibilities and obligations imposed before that date on the Quarry Managers Board and the Extractive Industries Board are transferred to the Extractive Industries Board and the Extractive Industries Board is subject to all those duties responsibilities and obligations; 20
- (d) any certificate issued or renewed by the Quarry Managers Board and in force immediately before the commencement of this section, unless it is sooner suspended or cancelled, continues in force for the period for which it was issued or renewed and shall be deemed to have been issued or renewed by the Extractive Industries Board; 25 30
- (e) Subject to this section, all other acts matters or things of a continuing nature made done or commenced by or on behalf of or in relation to the Quarry Managers Board or the Extractive Industries Advisory Committee immediately before the commencement of this section shall be deemed to have been made done or commenced by or on behalf of or in relation to the Extractive Industries Board and have effect and may be continued and completed by or on behalf of or in relation to the Extractive Industries Board accordingly. 35 40

(2) Any application to the Quarry Managers Board that was made immediately before the commencement of this section and not determined by the Board before that date may be determined by the Board in all respects as if this section had not come into operation and for that purpose the Quarry Managers Board continues to exist. 45

New section 43 substituted and sections 43A and 43B inserted

9. For section 43 of the Principal Act, substitute—

Extractive Industries Board

“43. (1) There shall be an Extractive Industries Board.

(2) The functions of the Board are—

(a) to conduct any surveys for the purpose of discovering deposits of stone and assessing the quantity of stone in any deposit that it may think fit or the Minister may direct and to report its findings to the Minister;

(b) to carry out other investigations and make any reports with respect to stone deposits or extractive industry in any area that it may think fit or the Minister may direct;

(c) to give advice and report on the suitability for extractive industry of any part of any area in respect of which the preparation of a planning scheme has been commenced to the Minister and to the responsible authority;

(d) to give advice and report on the suitability of any land for extractive industry—

(i) where the land is within the area of a planning scheme, to the Minister and to the responsible authority; and

(ii) where the land is not within the area of a planning scheme, to the Minister and to the council of the municipality in whose district the land is situated;

(e) at the request of the Minister, to advise the Minister about planning for the future utilisation of stone deposits or other extractive industry resources;

(f) to conduct or cause to be conducted examinations of persons desiring to obtain a certificate of competency to manage or supervise and control the operation of quarries;

(g) to issue and renew certificates of competency to persons who are qualified to manage or supervise and control the working of quarries and to impose conditions on those certificates and to cancel or suspend those certificates;

(h) to make recommendations to the Minister about the adoption of codes of work practices in relation to the operation of extractive industries and any alterations to those codes;

(i) at the request of the Minister, to advise the Minister as to any conditions or covenants to which any lease, licence or permit relating to any area or land should be subject;

- (j) at the request of the Minister, to consult with any member of the neighbouring community likely to be affected by any proposed significant variation in any condition or covenant to which a lease or licence should be subject and to advise the Minister about that consultation. 5
- (k) to monitor performance in extractive industries with regard to safety standards and work practices;
- (l) to make recommendations to the Minister about the making of regulations under this Act; 10
- (m) to investigate, report on and make recommendations in relation to any other matter under this Act referred to it by the Minister.
- (3) The Board shall consist of— 15
- (a) three full time members of whom—
- (i) one shall be the General Manager Minerals who shall be President;
- (ii) one shall be the Chief Inspector of Quarries or a person appointed by the Minister on the nomination of the General Manager Minerals; 20
- (iii) one shall be the Director of Geological Survey or a person appointed by the Minister on the nomination of the General Manager Minerals; and
- (b) such part-time members as are appointed under this section. 25
- (4) If the Board is engaged in making any survey or any investigation or report in respect of any area or giving any advice (including advice under sub-section (2) (i) or (j)) or making any reports with respect to any land it shall consist of the three full-time members and a part-time member or members of whom— 30
- (a) one shall be a person nominated by the council of every municipality within whose district any part of the area or land is situated; and
- (b) one shall be a person nominated by any authority established by Act of Parliament (not being a municipality) having planning functions in the area under or in relation to the *Planning and Environment Act 1987*; and 35
- (c) if the area or land or any part thereof is Crown land, a person nominated by the Director-General of Conservation, Forests and Lands. 40
- (5) If the Board is considering any matter other than a matter referred to in sub-section (4) it shall consist of—
- (a) the three full-time members; and
- (b) four part-time members of whom— 45

- (i) three shall be appointed by the Minister from a panel of names submitted by the Extractive Industries Council;
- (ii) one shall be appointed by the Minister from a panel of names of members of the Australian Workers Union who have had experience in the operation of quarries submitted by the Victorian Trades Hall Council.

(6) A responsible authority or the council of any municipality may in writing addressed to the Minister, nominate a person to be the standing part-time member of that authority or municipality on the Board for the purposes of sub-section 4 (a) or (b).

(7) If the Minister directs any survey investigation or report to be made under sub-section (2) (a) or (b) with respect to any area or advice to be given under sub-section (2) (i) or (j) with respect to any land, the Director-General must give notice of the direction to—

- (a) every standing part-time member for the area or land; and
- (b) every responsible authority and the council of a municipality which is entitled under sub-section (4) (a) to nominate a person to be a member of the Board for the purpose of making the survey investigation or report and has not nominated a standing member under sub-section (6).

(8) If any responsible authority or the council of any municipality entitled to do so does not within 30 days after the Minister gives it a direction under sub-section (7) or a copy of an application for a lease or licence in respect of any land is forwarded to it under section 12 (4) (a) or (b) nominate a person to be a member of the Board and notify the Director-General of the nomination, the Board shall be deemed to be properly constituted under sub-section (4) by the three full-time members, any part-time members of whose nomination the Minister has had notice and any standing part-time members nominated by the relevant authorities or councils under sub-section (6).

(9) If any body authorised under sub-section (5) to submit a panel of names fails to submit a sufficient panel of names within 30 days after being so requested by the Minister, the Minister may appoint any suitable person to be a member without that submission.

(10) The Minister may appoint any person that the Minister thinks fit to be advisers to the Board.

(11) An adviser appointed under sub-section (10) is not a member of the Board.

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(12) An adviser may be appointed under sub-section (10) for a specific meeting or meetings or for any period, not exceeding three years, that is specified in the instrument of appointment.

(13) A member of the Board and an adviser appointed under sub-section (10) not being an officer or employee of the Public Service shall be paid such remuneration and allowances as the Minister may from time to time determine. 5

(14) Three members of the Board including at least one full-time member shall be a quorum.

(15) Subject to this Act the Board may regulate its own proceedings.” 10

Certificates may be cancelled or suspended

“43A. (1) If the holder of a certificate issued by the Extractive Industries Board contravenes any provision of this Act or the regulations or any condition of the certificate the Board may by notice in writing cancel the certificate or suspend it for any period. 15

(2) The Board must cause to be served a notice under sub-section (1) on the holder of the certificate and the notice must contain the reasons for the cancellation or suspension.” 20

Appeals to the Minister

“43B. (1) Any person who is aggrieved by any refusal of the Extractive Industries Board to issue or renew a certificate or by any cancellation or suspension of his or her certificate or who is dissatisfied with the conditions subject to which any certificate is issued or renewed may, within 30 days after receipt of notice from the Board of refusal, cancellation or suspension or issue or renewal, appeal to the Minister. 25

(2) The Minister must hear and determine any appeal under this section and the Minister’s decision shall be final and the Board must give effect to the decision. 30

- (3) The Minister may, in writing, designate any person to—
 - (a) hear the whole or any part of an appeal under this section; and
 - (b) report to the Minister on that hearing; and 35
 - (c) make any recommendation thereon.

(4) Any hearing by a person designated by the Minister under sub-section (3) shall for the purposes of this section be deemed a hearing by the Minister but in every case the final determination of the matter shall be made by the Minister.” 40

Consequential amendments

10. The Principal Act is amended as follows:

(a) In section 2 (1) before the definition of “Catchment area” insert—

5 “**Board**” means the Extractive Industries Board established under section 43.”;

(b) In section 2 (1) the definition of “Committee” or “Advisory Committee” is repealed;

10 (c) In sections 8 (3) and (4) and 8A (4) and (5) for “Advisory Committee” substitute “Extractive Industries Board”;

(d) In section 12 (1) (b) for “Extractive Industries Advisory Committee” substitute “Extractive Industries Board”;

(e) In section 12 (4) (d)—

15 (i) for “Advisory Committee” substitute “Extractive Industries Board”;

(ii) for “sub-section (3) of section 43 or by virtue of sub-section (5) of that section” substitute “section 43 (4) or by virtue of section 43 (8)”.

20 (f) In sections 14 (1), 15, 16A (1) and (2), 17 (1A) and (1B), 17A (1) and 44 (2) for “Advisory Committee” substitute “Extractive Industries Board”;

(g) In section 44 (1) for “Advisory Committee” (where three times occurring) substitute “Extractive Industries Board”.

(h) In section 19 (2)—

25 (i) In paragraph (f) omit “and the establishment constitution and powers of a board to conduct examinations”;

(ii) In paragraph (q) omit “certificates”;

(iii) For paragraph (qa) substitute—

30 “(qa) the fees to be paid for or in connection with examinations conducted by the Extractive Industries Board and for the issue and renewal of certificates or duplicate certificates issued by the Board;”

35 **Delegation of certain regulation making powers**

11. In section 45 of the Principal Act—

(a) for “45.” substitute “45. (1)”;

(b) at the end of the section insert—

40 “(2) Regulations made under sub-section (1) (a) for or with respect to forms of application for a certificate to manage or supervise and control the working of a quarry may delegate to the Extractive Industries Board the power

to approve from time to time a form of application for those purposes.”.

Minor amendments to the Principal Act

12. (1) In section 7 (b) (i) of the Principal Act for “has been” substitute “is”. 5

(2) In section 10B of the Principal Act, for “excavation” substitute “extraction”.

(3) In section 12 (1) (a) of the Principal Act, omit “and Environment”.

(4) In section 35 of the Principal Act, omit “(1)”. 10

(5) In section 39 of the Principal Act, for “*and Water Trusts*” substitute “*Trusts and Sunraysia Water Board*”.

Minor amendments to other Acts

13. (1) In section 6 of the *Extractive Industries (Amendment) Act* 1980, for “considers” (where first occurring) substitute “may consider”. 15

(2) In section 14 (1) of the *Extractive Industries (Amendment) Act* 1984, paragraph (b) is repealed.

(3) In section 32 of the *Extractive Industries (Amendment) Act* 1984, for “17A” substitute “17B”.

(4) In item 28 (j) of the Schedule to the *Planning and Environment Act* 1987, for “for sub-section (6) substitute” substitute “after sub-section (5) insert”.. 20