

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

- 1. Name of Working Group:** President's Text

- 2. Name(s) of Delegation(s) making the proposal:** Australia

- 3. Please indicate the relevant provision to which the textual proposal refers.**

Annex X, Section 7 – proposed amendments in green; black text and tracked changes text is from the President's draft circulated prior to the November 2023 Council meeting.

- 4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**

7.1 ~~[In accordance with the 'polluter pays' principle.]~~ ~~¶~~The Contractor shall be liable to the Authority for the actual amount of ~~any~~ all environmental damage caused by Contractor activities that were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, including arising out of activities of the Contractor's ~~damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its~~ employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, ~~[including the costs of reasonable measures to prevent and limit damage to the Marine Environment,] [arising out of its wrongful acts [or omissions]],~~ account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage ~~[arising out of the Contractor's wrongful acts [or omissions]]~~ regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term. ~~[For the purpose of clauses 7.1 and 7.2, 'wrongful acts or omissions', means any unlawful act or omission attributable to the Contractor that results in damage not anticipated and approved in the Plan of Work, irrespective of bad intention or negligence].~~ [Recoverable damages under this clause include: costs of reasonable measures to prevent and limit damage to the Marine Environment, lost revenue, reinstatement, pay-out in lieu of actual reinstatement, and/or measures to compensate for third-party economic loss, as well as pure ecological loss and harm to the living resources of the Area.]

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any environmental damage caused by Contractor activities that were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, including arising from activities of the Contractor's ~~wrongful acts or omissions of the Contractor and its~~ employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.

2 Please indicate the rationale for the proposal. [150-word limit]

Australia has proposed this language to align with our textual suggestion in DR55alt. This language has been proposed to more clearly articulate the situations in which a Contractor will be liable for environmental damage. In accordance with the polluter pays principle, the Contractor shall be liable for all the costs associated with environmental damage resulting from their exploitation activities, except in very exceptional circumstances.

We have instead proposed the language of damage 'not foreseen in the plan of work or that arise from a breach of any conditions of approval' to make clear that any damage (including unforeseen damage arising from approved activities) will result in Contractor liability, unless that damage was approved in the Plan of Work.

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Section 13

Obligations on ~~Suspension or following Expiration, Surrender or Termination of a Contract~~

13.1 In the event of termination, ~~expiration or surrender~~ of this Contract, the Contractor shall:

- (a) Comply with the final Closure Plan, [and the Environmental Management and Monitoring Plan] and continue to perform the required environmental management of the Contract Area as set forth in the final Closure Plan and for the period established in the final Closure Plan;
- (b) Continue to comply with relevant provisions of the regulations, including:
 - (i) Maintaining and keeping in place all insurance required under the regulations;
 - (ii) Paying any fee, royalty, penalty or other money on any other account owing to the Authority on or before the date of ~~suspension or~~ termination; and
 - (iii) Complying with any obligation to meet any liability under Section 8;
- (c) Remove all Installations, plant, equipment and materials in the Contract Area; and
- (d) Make the area safe so as not to constitute a danger to persons, shipping or [to result in adverse impacts, or a reasonable likelihood of such impacts, to] the Marine Environment.

13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 within a reasonable period, the Authority may take necessary steps to effect such removal and make safe the area at the expense of the Contractor. Such expense, if any, shall be deducted from the Environmental Performance Guarantee held by the Authority.

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

2 Please indicate the rationale for the proposal. [150-word limit]

DR18ter provides that 'termination' of a contract includes the expiration of the contract, or the contractor surrendering it. Accordingly, the term 'termination' covers both 'expiration' and 'surrender'.

Further, this section currently refers to 'suspension' inconsistently. Australia notes that suspension may only be for a very short period, and therefore a number of these obligations would not be necessary in that instance (eg. complying with the final closure plan).

Australia therefore suggests applying this section only to termination, and (if deemed necessary) establish separate requirements for suspension, which are appropriately adapted to the nature of suspension.