

Passed by both Houses



New South Wales

# Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2015*



New South Wales

## **Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015**

Act No     , 2015

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An Act to amend the *Mining Act 1992* and *Petroleum (Onshore) Act 1991* to make further provision with respect to prospecting for and mining minerals and petroleum, including by harmonising certain provisions of those Acts.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Repeal of Mining Amendment Act 2008 No 19**

The *Mining Amendment Act 2008* is repealed.

## **Schedule 1      Amendment of Mining Act 1992 No 29**

**[1]      Section 13 Application for exploration licence**

Insert after section 13 (4):

**Note.** Section 129A requires an application for an exploration licence to be accompanied by a proposed work program.

**[2]      Section 13 (5) (c)**

Omit the paragraph.

**[3]      Section 15 Tenders**

Insert at the end of section 15 (1):

**Note.** Section 129A requires a tender for an exploration licence to be accompanied by a proposed work program.

**[4]      Section 15 (2) (b)**

Omit the paragraph.

**[5]      Section 16 Decision-maker may require further information**

Omit the section.

**[6]      Section 21 Colliery holdings**

Omit the section.

**[7]      Section 22 Power of decision-maker in relation to applications**

Insert at the end of section 22 (1):

**Note.** Schedule 1B contains provisions about the grant or refusal of an application for an exploration licence and the conditions to which an exploration licence is subject.

**[8]      Section 22 (2)**

Omit the subsection.

**[9]      Section 23 Power of decision-maker in relation to tenders**

Insert at the end of section 23 (2):

**Note.** Schedule 1B contains provisions about the grant or refusal of an exploration licence to a tenderer.

**[10]     Section 23 (3)**

Omit the subsection.

**[11]     Section 23A**

Insert after section 23:

**23A      Activity approval required for assessable prospecting operations**

- (1) An exploration licence is subject to a statutory condition that the holder of the licence must not carry out an assessable prospecting operation on land over which the licence is granted unless an activity approval has been obtained for the carrying out of the assessable prospecting operation in relation to that land and is in force.
- (2) The holder of an exploration licence may apply in writing to the decision-maker for approval to carry out an assessable prospecting operation

- in relation to any part of the land over which the licence is granted (an *activity approval*).
- (3) The decision-maker may require the holder to provide such information as is required by the decision-maker, within the time specified by the decision-maker, before considering the application or at any time during consideration of the application.
  - (4) After considering the application for the activity approval, the decision-maker:
    - (a) may grant the activity approval, or
    - (b) may refuse the application.
  - (5) Without limiting the grounds for refusal, the application may be refused if the applicant fails to provide the information required by the decision-maker within the time required.
  - (6) An activity approval may be granted subject to terms.
  - (7) For the purposes of this Act, it is a statutory condition of an exploration licence that the holder must comply with any activity approval granted to the holder and in force.
  - (8) Clauses 7 (2)–(4), 10 (2), 12 and 14 of Schedule 1B apply to and in respect of the imposition of terms on, and variation of the terms of, an activity approval in the same way as they apply to and in respect of the imposition of conditions on, and the variation of the conditions of, an authorisation.
  - (9) The decision-maker may cancel an activity approval:
    - (a) if the holder of the activity approval lodges with the Secretary a request that the decision-maker cancel the activity approval, or
    - (b) if the decision-maker is satisfied that a person has contravened the activity approval (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
  - (10) Before cancelling an activity approval, otherwise than at the request of the holder of the activity approval, the decision-maker is to cause a written notice to be served on the holder of the activity approval that contains the following:
    - (a) notice that the activity approval is proposed to be cancelled,
    - (b) details of the grounds for the proposed cancellation,
    - (c) notice that the holder of the activity approval has a specified period (of at least 28 days) in which to make representations with respect to the proposed cancellation.
  - (11) The decision-maker must not cancel an activity approval, otherwise than at the request of the holder of the activity approval, unless:
    - (a) the decision-maker has taken any such representations received from the holder of the activity approval into consideration, or
    - (b) the period specified in the notice has elapsed and no such representations have been received.
  - (12) The decision-maker is to cause written notice of the cancellation of an activity approval to be given to the holder of the activity approval.
  - (13) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the activity approval, or on a later date specified in the notice.

- (14) Any person who is aggrieved by the decision of the decision-maker to cancel an activity approval held by the person may appeal to the Land and Environment Court against the decision. Section 128 applies to such an appeal as if it were an appeal against a decision to cancel an authority.
- (15) The cancellation of an activity approval does not affect any liability incurred by the holder of the activity approval before the cancellation took effect.
- (16) Action may be taken under subsection (9) (b) whether or not any other action has been taken in respect of the activity approval under this Act.

**[12] Section 26 Conditions of exploration licence**

Omit the section.

**[13] Section 27 Term of exploration licence**

Omit “5 years” from section 27 (b) (ii). Insert instead “6 years”.

**[14] Section 28 Form of exploration licence**

Insert at the end of the section:

**Note.** Schedule 1B provides for an exploration licence to be varied after it is granted.

**[15] Section 30 Exempted areas**

Insert after section 30 (2):

- (3) Clauses 12 and 14 of Schedule 1B apply to the variation or suspension of a condition of consent granted under this section in the same way as they apply to the variation or suspension of a condition of an authorisation.

**[16] Section 33 Application for assessment lease**

Insert after section 33 (4):

**Note.** Section 129A requires an application for an assessment lease to be accompanied by a proposed work program.

**[17] Section 33 (5) (d)**

Omit the paragraph.

**[18] Section 34 Decision-maker may require further information**

Omit the section.

**[19] Section 40 Colliery holdings**

Omit the section.

**[20] Section 41 Power of decision-maker in relation to applications**

Insert at the end of section 41 (1):

**Note.** Schedule 1B contains provisions about the grant or refusal of an application for an assessment lease and the conditions to which an assessment lease is subject.

**[21] Section 41 (2)**

Omit the subsection.

**[22] Section 44 Conditions of assessment lease**

Omit the section.

**[23] Section 44A**

Insert before section 45:

**44A Activity approval required for assessable prospecting operations**

- (1) An assessment lease is subject to a statutory condition that the holder must not carry out an assessable prospecting operation on land over which the lease is granted unless an activity approval has been obtained for the carrying out of the assessable prospecting operation in relation to that land and is in force.
- (2) The holder of an assessment lease may apply in writing to the decision-maker for approval to carry out an assessable prospecting operation in relation to any part of the land over which the lease is granted (an *activity approval*).
- (3) The decision-maker may require the holder to provide such information as is required by the decision-maker, within the time specified by the decision-maker, before considering the application or at any time during consideration of the application.
- (4) After considering the application for the activity approval, the decision-maker:
  - (a) may grant the activity approval, or
  - (b) may refuse the application.
- (5) Without limiting the grounds for refusal, the application may be refused if the applicant fails to provide the information required by the decision-maker within the time required.
- (6) An activity approval may be granted subject to terms.
- (7) For the purposes of this Act, it is a statutory condition of an assessment lease that the holder must comply with any activity approval granted to the holder and in force.
- (8) Clauses 7 (2)–(4), 10 (2), 12 and 14 of Schedule 1B apply to and in respect of the imposition of terms on, and variation of the terms of, an activity approval in the same way as they apply to and in respect of the imposition of conditions on, and the variation of the conditions of, an authorisation.
- (9) The decision-maker may cancel an activity approval:
  - (a) if the holder of the activity approval lodges with the Secretary a request that the decision-maker cancel the activity approval, or
  - (b) if the decision-maker is satisfied that a person has contravened the activity approval (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
- (10) Before cancelling an activity approval, otherwise than at the request of the holder of the activity approval, the decision-maker is to cause a written notice to be served on the holder of the activity approval that contains the following:
  - (a) notice that the activity approval is proposed to be cancelled,
  - (b) details of the grounds for the proposed cancellation,
  - (c) notice that the holder of the activity approval has a specified period (of at least 28 days) in which to make representations with respect to the proposed cancellation.
- (11) The decision-maker must not cancel an activity approval, otherwise than at the request of the holder of the activity approval, unless:
  - (a) the decision-maker has taken any such representations received from the holder of the activity approval into consideration, or

(b) the period specified in the notice has elapsed and no such representations have been received.

- (12) The decision-maker is to cause written notice of the cancellation of an activity approval to be given to the holder of the activity approval.
- (13) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the activity approval, or on a later date specified in the notice.
- (14) Any person who is aggrieved by the decision of the decision-maker to cancel an activity approval held by the person may appeal to the Land and Environment Court against the decision. Section 128 applies to such an appeal as if it were an appeal against a decision to cancel an authority.
- (15) The cancellation of an activity approval does not affect any liability incurred by the holder of the activity approval before the cancellation took effect.
- (16) Action may be taken under subsection (9) (b) whether or not any other action has been taken in respect of the activity approval under this Act.

**[24] Section 45 Term of assessment lease**

Omit “5 years” from section 45 (b) (ii). Insert instead “6 years”.

**[25] Section 46 Form of assessment lease**

Insert at the end of the section:

**Note.** Schedule 1B provides that an assessment lease may be varied after it is granted.

**[26] Section 48 Exempted areas**

Insert after section 48 (2):

- (3) Clauses 12 and 14 of Schedule 1B apply to the variation or suspension of a condition of consent granted under this section in the same way as they apply to the variation or suspension of a condition of an authorisation.

**[27] Section 51 Application for mining lease**

Insert at the end of section 51 (4):

**Note.** Section 129A requires an application for a mining lease to be accompanied by a proposed work program.

**[28] Section 51 (5) (d)**

Omit the paragraph.

**[29] Section 53 Tenders**

Insert at the end of section 53 (1):

**Note.** Section 129A requires a tender for a mining lease to be accompanied by a proposed work program.

**[30] Section 53 (2) (b)**

Omit the paragraph.

**[31] Section 54 Decision-maker may require further information**

Omit the section.

**[32] Section 61 Colliery holdings**

Omit the section.

**[33] Section 63 Power of decision-maker in relation to applications**

Insert at the end of section 63 (1):

**Note.** Schedule 1B contains provisions about the grant or refusal of an application for a mining lease.

**[34] Section 63 (2)**

Omit the subsection.

**[35] Section 64 Power of decision-maker in relation to tenders**

Insert at the end of section 64 (1):

**Note.** Schedule 1B contains provisions about the grant or refusal of a mining lease to a tenderer.

**[36] Section 64 (3)**

Omit the subsection.

**[37] Section 70 Conditions of mining lease**

Omit the section.

**[38] Section 79 Amendment of mining lease in respect of expenditure and labour conditions**

Omit the section.

**[39] Section 93 Granting of proposed lease if objection or proposal made**

Omit section 93 (4). Insert instead:

- (4) Despite clause 12 of Schedule 1B, a condition included in a proposed lease in accordance with a direction of the Premier may only be varied with the concurrence of the Premier.

**[40] Section 113 Applications for renewal**

Insert after section 113 (5):

- (5A) An application for renewal of an exploration licence may include a description of any special circumstances that the applicant claims (for the purposes of section 114A) exist that justify the area of land over which the exploration licence is renewed exceeding half of the area over which the licence is in force when the application for renewal is made.

**[41] Sections 114 and 114A**

Omit section 114. Insert instead:

**114 Power of decision-maker in relation to renewal applications**

- (1) After considering an application for the renewal of an authority, the decision-maker:
- (a) may renew the authority, or
  - (b) may refuse the application.
- Note.** Schedule 1B contains provisions about the grant or refusal of an application to renew an authority and the grounds for refusal of such an application.
- (2) The period for which an authority is renewed may not on any one occasion exceed:
- (a) in the case of an exploration licence or assessment lease—6 years, or

- (b) in the case of a mining lease—21 years (or such longer period as the decision-maker may, with the concurrence of the Premier, determine).
- (3) The decision-maker is not bound to renew an authority over the area nominated by the applicant.
- (4) The area of land over which an authority is renewed may differ from the area of land over which the renewal of the authority is sought, but not so as to include any land that was not subject to the authority immediately before the renewal.
- (5) The decision-maker may defer dealing with an application for the renewal of a mining lease over any land if the mining lease is the subject of action being taken under Part 6 in connection with the granting of a consolidated mining lease over that land.

**114A Power of decision-maker in relation to renewal applications for exploration licences**

- (1) The area of land over which an exploration licence may be renewed is not to exceed half of the area over which the licence was in force when the application for renewal was made.
- (2) However, the decision-maker may grant a renewal over more than half of the area over which the licence was in force if:
  - (a) the applicant for renewal claims that special circumstances exist that justify doing so, and
  - (b) the decision-maker is satisfied that special circumstances exist that justify doing so.
- (3) Without limiting the considerations available to the decision-maker in determining whether special circumstances exist for the purposes of this section, the decision-maker may take into account any partial cancellation of the exploration licence on the request of the holder of the licence under section 126, and reduce the percentage of the area of land over which the renewal may not be granted.
- (4) The decision-maker may direct an applicant for renewal of an exploration licence, within the time specified in the direction, to nominate which part of the area of land is sought to be included in the new exploration licence, where the licence may not be renewed over the whole area of land.
- (5) The decision-maker may refuse to renew an exploration licence if such a direction is not complied with within the time specified in the direction (in addition to the other grounds for refusal in clause 6 of Schedule 1B).
- (6) The decision-maker is not bound to renew an exploration licence over the area nominated by the applicant in compliance with a direction under this section or otherwise.

**[42] Section 117 Authority to have effect until application dealt with**

Omit section 117 (2) and (3).

**[43] Section 118 Date from which renewal of authority has effect**

Omit section 118 (2).

**[44] Section 120 Application for approval of transfer**

Omit “to another person” from section 120 (1).

**[45] Section 120 (3)**

Insert after section 120 (2):

- (3) The holder of an authority must not apply for a transfer of the authority unless the holder has notified any person who has an interest in the authority that is registered under section 161 of the proposed application.

**[46] Section 121 Power of decision-maker in relation to transfer approval applications**

Insert at the end of section 121 (1):

**Note.** Schedule 1B contains provisions about the grant or refusal of an application for approval of the transfer of an authority.

**[47] Section 121 (2) and (6)**

Omit the subsections.

**[48] Section 122 Registration of transfers**

Omit “regulations, and” from section 122 (2) (b). Insert instead “regulations.”.

**[49] Section 122 (2) (c)**

Omit the paragraph.

**[50] Section 122 (3)**

Insert “, unless registration is prohibited by section 124” after “new authority”.

**[51] Sections 125 and 126**

Omit the sections. Insert instead:

**125 Grounds of cancellation of authorities**

- (1) The decision-maker may cancel an authority as to the whole or any part of the land to which it relates:
- (a) if the holder of the authority lodges with the Secretary a request that the decision-maker cancel the authority as to the whole or part of the land, or
  - (b) if the decision-maker is satisfied that the holder of the authority has contravened a provision of this Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
  - (c) if the decision-maker is satisfied that a person has contravened a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention), or
  - (d) if the decision-maker is satisfied that the holder of the authority provided false or misleading information in or in connection with an application for or with respect to the authority or any report provided under this Act, or
  - (e) if the decision-maker is satisfied that the holder of the authority has failed to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation, or
  - (f) if the holder of the authority is convicted of any offence relating to mining or minerals, or
  - (g) if the decision-maker is satisfied that the holder of the authority has failed to use the land the subject of the authority in good faith for the

- purposes for which the authority has been granted, or has used the land for a purpose other than that for which the authority has been granted, or
- (h) if the decision-maker is satisfied that there has been a contravention of a direction under section 240 or 240AA, or
  - (i) if the decision-maker is satisfied that the land is required for a public purpose.
- (2) A request lodged with the Secretary for the cancellation of an authority as to part only of the land to which it relates must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the authority is to be cancelled.
  - (3) Action may be taken under this section whether or not any other action has been taken in respect of the authority under this Act.

#### **126 Cancellations of authorities**

- (1) Before cancelling an authority, otherwise than at the request of the holder of the authority, the decision-maker is to cause a written notice to be served on the holder of the authority that contains the following:
  - (a) notice that the authority is proposed to be cancelled,
  - (b) details of the grounds for the proposed cancellation,
  - (c) notice that the holder of the authority has a specified period (of at least 28 days) in which to make representations with respect to the proposed cancellation.
- (2) The decision-maker must not cancel an authority, otherwise than at the request of the holder of the authority, unless:
  - (a) the decision-maker has taken any such representations received from the holder of the authority into consideration, or
  - (b) the period specified in the notice has elapsed and no such representations have been received.
- (3) The decision-maker is to cause written notice of the cancellation of an authority to be given to the holder of the authority.
- (4) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the authority, or on a later date specified in the notice.
- (5) The cancellation of an authority does not affect any liability incurred by the holder of the authority before the cancellation took effect.

#### **[52] Section 128 Appeals against decisions concerning cancellations**

Insert after section 128 (4):

- (5) This section does not apply to a cancellation that was requested by the holder of the authority.

#### **[53] Section 129A**

Insert after section 129:

##### **129A Applications and tenders to be supported by proposed work program**

- (1) An application for an authority, and any tender, must be accompanied by a proposed work program that:

- (a) indicates the nature and extent of operations to be carried out under the authority conferred by the relevant authority, and
  - (b) sets out commitments relating to the conduct of those operations (such as the timing of the operations), and
  - (c) provides for the carrying out of activities (such as community consultation and environmental management and rehabilitation) in connection with, or ancillary to, those operations, and
  - (d) complies with the regulations.
- (2) In the case of an application for a mining lease, the requirement in subsection (1) can be satisfied by providing a current development consent under the *Environmental Planning and Assessment Act 1979* for the development (within the meaning of that Act) in respect of which the mining lease is being applied for.

**[54] Section 135 Waiver of minor procedural matters**

Omit the section.

**[55] Part 8, Division 3, heading**

Omit the heading. Insert instead:

**Division 3 Registration of interests and other matters**

**[56] Part 8, Division 3A**

Omit section 163C. Insert instead:

**Division 3A Reports and records**

**163C Reports**

- (1) The holder of an authorisation must prepare and lodge reports of all operations carried out under the authorisation.  
**Note.** Clause 7 (2) (g) of Schedule 1B provides that reports may also be required by the conditions of an authorisation.
- (2) The regulations may make provision for or with respect to the following:
- (a) the content, form or lodgment of the reports,
  - (b) the exemption of any person, class of persons, authorisations or class of authorisations from a requirement of this section or the regulations under this section,
  - (c) prohibiting or regulating the disclosure of reports required to be lodged or made under this section or as a condition of an authorisation.
- (3) A person who fails, without reasonable excuse, to prepare or lodge a report in accordance with this section or the regulations is guilty of an offence.  
Maximum penalty:
- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
  - (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

- (4) If there is an inconsistency between a condition of an authorisation and a reporting requirement imposed under this section, the condition prevails to the extent of the inconsistency.

**163D Record-keeping**

Any record required to be created and maintained under this Act, the regulations, a condition of an authorisation or a term of an activity approval must be kept in a legible form, or in a form that can readily be reduced to a legible form for production to any inspector.

**163E Retention of records relating to authorisations**

The holder of an authorisation must retain any records required to be created and maintained under this Act, the regulations, a condition of an authorisation or a term of an activity approval in relation to the authorisation for not less than 4 years after the expiry or cancellation of the authorisation.

**163F Information provided, served or lodged by agents**

Any information received from or served or lodged by an agent duly appointed and notified in accordance with the regulations on behalf of any of the following persons is taken to have been received from or served or lodged by that person:

- (a) the holder of an authorisation,
- (b) an applicant or tenderer for an authorisation or an applicant for the renewal, transfer or cancellation of an authorisation,
- (c) an applicant for an activity approval or for the cancellation of an activity approval,
- (d) any person who owns or occupies land over which an authorisation is in force or to which an application for an authorisation relates.

**163G Samples of strata, minerals and water**

- (1) The holder of an authorisation must collect any samples of strata, minerals, water or any other thing required by the regulations.
- (2) Those samples must be collected, labelled for reference or preserved in the manner required by the regulations.

**[57] Section 168 Suspension of conditions**

Omit the section.

**[58] Section 168A Addition or variation of conditions in certain circumstances**

Omit the section.

**[59] Section 186 Colliery holdings**

Omit the section.

**[60] Section 190 Power of Secretary in relation to applications**

Omit section 190 (2).

**[61] Section 190, note**

Insert at the end of section 190 (6):

**Note.** Schedule 1B makes provision about the grant or refusal of an application for a mineral claim and the conditions to which a mineral claim is subject.

**[62] Section 192 Conditions of mineral claim**

Omit the section.

**[63] Section 198 Determination of application for renewal of mineral claim**

Omit section 198 (2) and (3).

**[64] Section 201 Determination of application for transfer of mineral claim**

Omit section 201 (2) and (3).

**[65] Section 203 Grounds of cancellation or operational suspension**

Insert at the end of section 203 (1) (h):

, or

- (i) if the Secretary reasonably considers that there has been a contravention of a direction under section 240 or 240AA.

**[66] Section 204 Cancellations of mineral claims**

Omit “section 203 (1) (b)–(e) or (h)” from section 204 (1).

Insert instead “section 203 (1) (b)–(f), (h) or (i)”.

**[67] Section 210A Waiver of minor procedural matters**

Omit the section.

**[68] Section 215 Suspension of conditions**

Omit the section.

**[69] Section 218A Records**

Insert “, varied” after “renewed” in section 218A (1) (b).

**[70] Section 223A Special conditions**

Omit “program of work” from section 223A (2) (g). Insert instead “works”.

**[71] Section 228 Power of Secretary in relation to applications**

Omit section 228 (2).

**[72] Section 231 Form of licence**

Insert at the end of the section:

**Note.** Schedule 1B applies to small-scale titles, including opal prospecting licences.

**[73] Section 233 Grounds of cancellation of opal prospecting licence**

Insert at the end of section 233 (1) (e):

, or

- (f) if the Secretary reasonably considers that there has been a contravention of a direction under section 240 or 240AA.

**[74] Section 234 Cancellations**

Omit “section 233 (1) (b)–(d)” from section 234 (1).

Insert instead “section 233 (1) (b)–(d) or (f)”.

**[75] Section 235A Records**

Insert at the end of section 235A (1) (c):

- , and  
(d) the variation of any opal prospecting licence.

**[76] Part 11, Divisions 1 and 2**

Omit the Divisions.

**[77] Section 239E Interpretation**

Omit “240A” from the definition of *authorisation*. Insert instead “240AA”.

**[78] Section 239E (2)**

Insert at the end of section 239E:

- (2) In this Division, a reference to giving a direction or notice to a responsible person includes, where the responsible person is a corporation that is subject to a scheme of arrangement, receivership, winding up or other external administration, a reference to giving a direction or notice to the administrator, receiver or liquidator of the corporation.

**[79] Section 240 Directions**

Insert “or any condition specified in the direction” after “the direction” in section 240 (2).

**[80] Section 240 (2A)**

Insert after section 240 (2):

- (2A) A direction served on a person under this Division may require the person to prepare, and submit to the Secretary or inspector, reports as to any of the following:
- (a) the measures the person proposes to take for the purpose of complying with the direction,
  - (b) the progress made by the person in implementing any such measures.

**[81] Sections 240A and 240AA**

Omit section 240A. Insert instead:

**240A Prohibition notices**

- (1) If the Secretary or an inspector reasonably suspects that a person who is not the holder of an authorisation is carrying out, or is about to carry out, any activity in contravention of a provision of this Act requiring an authorisation to be held when carrying out the activity, the Secretary or inspector may direct the person to discontinue that activity on the land specified in the notice.
- (2) The direction may be given orally, but must be confirmed by written notice (a *prohibition notice*) issued to the person as soon as practicable.
- (3) A prohibition notice must state:
  - (a) the reasons for the issue of the prohibition notice, and
  - (b) the activity concerned, and
  - (c) the provision of this Act that the Secretary or inspector believes is being, or is likely to be, contravened by that activity.

**240AA Direction to suspend operations**

- (1) The Secretary may, by written notice (a *suspension notice*), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations if the Secretary considers that:
  - (a) circumstances exist that could constitute a ground for cancellation of the authorisation under section 125 (1) (b)–(g), 203 (1) (b)–(e) or (h) or 233 (1) (b)–(d), or
  - (b) circumstances exist that could constitute a ground for cancellation of the authorisation under section 125 (1) (h), 203 (1) (i) or 233 (1) (f), in relation to a breach of a direction under section 240 only, or
  - (c) on any other ground specified in the regulations.
- (2) Before giving a suspension notice, the Secretary is to:
  - (a) cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the authorisation, and
  - (b) give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice, and
  - (c) take any such representations into consideration.
- (3) The suspension notice takes effect on the date on which it is given to the holder of the authorisation or on a later date specified in the notice.
- (4) The suspension of an authorisation does not affect any liability incurred by the holder of the authorisation before the suspension took effect.
- (5) The holder of an authorisation is not entitled to compensation merely because of the suspension of operations under the authorisation in accordance with a suspension notice.
- (6) If a suspension notice under this section is issued to a person who is not the current holder of the authorisation concerned, the Secretary must cause a copy of the notice to be served on any current holder within 5 days after the notice is issued.
- (7) A direction served on a person under this section may require the person to prepare, and submit to the Secretary or inspector, reports as to any of the following:
  - (a) the measures the person proposes to take for the purpose of complying with the direction,
  - (b) the progress made by the person in implementing any such measures.
- (8) Any costs or expenses incurred by the Crown under this section are a debt due to the Crown by the person on whom the direction was served and are recoverable in a court of competent jurisdiction.

**[82] Section 240B Revocation or variation**

Insert “or any condition specified in the direction” after “specifications” in section 240B (2).

**[83] Section 240B (3)**

Insert “or the period of suspension” after “the direction”.

**[84] Section 240C Breach of direction or notice**

Insert “or notice” after “direction” wherever occurring.

**[85] Section 240D Effect of direction**

Omit “section 125” from the note to the section. Insert instead “section 126”.

**[86] Section 240E Fee**

Insert after section 240E (2):

- (3) A fee payable under this section is a debt due by the holder of the authorisation concerned to the Crown and is recoverable in a court of competent jurisdiction.

**[87] Section 242AA**

Insert after section 242:

**242AA Prior notice of direction under section 240 not required**

A person who gives a direction under section 240 is not required to notify any person who may be affected by the direction before giving the direction.

**[88] Section 242C Derelict Mine Sites Fund**

Omit “section 246A” from section 242C (3) (a). Insert instead “section 246”.

**[89] Section 244 Definitions**

Omit the definition of *forfeiture order*.

**[90] Section 246P Conditions for mandatory audits**

Omit section 246P (7). Insert instead:

- (7) This section does not affect the operation of the following provisions of the *Environmental Planning and Assessment Act 1979*:
- (a) section 89K (Approvals etc legislation that must be applied consistently),
  - (b) section 93 (Granting and modification of approval by approval body),
  - (c) section 115ZH (Approvals etc legislation that must be applied consistently).

**[91] Section 246V Protected documents**

Insert “or 240AA” after “section 240” in section 246V (3).

**[92] Part 12, Division 1C, heading**

Omit the heading.

**[93] Section 248L Powers of inspectors to require answers**

Omit “Division” from section 248L (1). Insert instead “Part”.

**[94] Section 248M Recording of evidence**

Omit “Division” from section 248M (1). Insert instead “Part”.

**[95] Section 248N Power of inspectors to demand name and address**

Omit “referred to in section 248K” from section 248N (1).

Insert instead “of this Act or the regulations”.

**[96] Section 248NA**

Insert after section 248N:

**248NA Application of Division**

The powers in sections 248L, 248M and 248N may be exercised whether or not a power of entry under this Division is being or has been exercised.

**[97] Section 248O Additional powers of entry**

Omit the section.

**[98] Section 248T**

Omit the section. Insert instead:

**248T Provisions relating to requirements to furnish records or information or answer questions**

**(1) Warning to be given on each occasion**

A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

**(2) Self-incrimination not an excuse**

A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

**(3) Information or answer not admissible if objection made**

However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

**(4) Records admissible**

Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

**(5) Further information**

Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

(6) **Section extends to requirement to state name and address**

This section extends to a requirement under this Part to state a person's name and address.

**[99] Section 248V Extraterritorial application**

Omit the section.

**[100] Section 261F Claim on and use of security deposit**

Insert after section 261F (3):

- (3A) The Minister may use money obtained under a security deposit for a small-scale title to recover or fund the reasonable costs or expenses that the Crown reasonably incurs rehabilitating land affected by activities undertaken under any small-scale title.

**[101] Section 282 Liability to pay royalty—publicly owned minerals**

Omit “section 70 (4)” from section 282 (2). Insert instead “clause 8 (4) of Schedule 1B”.

**[102] Section 292C Fees payable in respect of authorisation**

Insert after section 292C (2):

- (3) The holder of an authorisation must not fail to pay any annual rental fee or annual administrative levy payable under this Part for the authorisation.  
Maximum penalty:  
(a) in the case of a corporation—100 penalty units, or  
(b) in the case of a natural person—50 penalty units.

**[103] Section 292Q Failure to pay fee**

Omit the section.

**[104] Section 292RA**

Insert after section 292R:

**292RA Waiver or refund of fees**

- (1) The Secretary may refund or waive payment of the whole or any part of a fee that this Act requires to be paid, on his or her own initiative or on the application of the person who is required to pay the fee, if the Secretary is satisfied that there is good cause for doing so.  
(2) The regulations may make further provision for or with respect to the waiver or refund of fees payable under this Act.

**[105] Section 292SD**

Omit the section. Insert instead:

**292SD Use of money raised through levy**

The Secretary may, on the application of a person, allocate any money collected by way of a levy under this Part for any purpose if the Secretary is satisfied that the reasons for which the application was made are consistent with the purposes for which the levy was imposed and the allocation is appropriate and reasonable for achieving those purposes.

**[106] Section 292V Small-Scale Titles Levy Fund**

Omit “awards as grants” from section 292V (4) (a). Insert instead “allocates”.

**[107] Section 361 Appointment of inspectors**

Insert after section 361 (3):

- (4) The Secretary must publish the following matters in the Gazette:
  - (a) the classes of persons appointed as inspectors under subsection (1),
  - (b) any conditions, limitations or restrictions, or limitation on purposes, imposed by the Secretary on the appointment of persons under this section.

**[108] Section 364 Minister or official not to be interested in authority or small-scale title**

Omit section 364 (1). Insert instead:

- (1) A person must not, while holding office in an official capacity for the purposes of this Act and while exercising functions in that capacity, hold either directly or indirectly a beneficial interest in an authority or a small-scale title.
- (1A) The following are persons who hold office in an *official capacity* for the purposes of this Act:
  - (a) the Minister,
  - (b) an inspector,
  - (c) a member of staff of the Department who exercises functions under this Act or the *Petroleum (Onshore) Act 1991*,
  - (d) any other person who exercises any judicial or official functions under this Act or the *Petroleum (Onshore) Act 1991*.

**[109] Section 364A**

Insert after section 364:

**364A Documents or information provided under conditions requiring reporting**

- (1) Any document or information provided under a condition of an authorisation referred to in clause 7 (2) (g) of Schedule 1B may be taken into consideration by the Secretary or the relevant decision-maker and used for the purposes of this Act, including for the purposes of the prosecution of offences under this Act or the regulations.
- (2) The Secretary is authorised, despite any other Act or law, to provide a relevant agency with any such document or information.
- (3) Any such document or information is required to be provided by the holder of an authorisation, whether or not the document or information might incriminate the holder.
- (4) However, information provided by a natural person in compliance with a condition of an authorisation referred to in clause 7 (2) (g) of Schedule 1B is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence for providing false and misleading information) if the person, when providing the information, objected to the provision of the information on the grounds that it might incriminate him or her.

- (5) In this section:  
**relevant agency** means:
- (a) the Department, or
  - (b) a public authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979* or such other legislation, if any, as may be prescribed by the regulations.

**[110] Section 365A**

Insert after section 365:

**365A Exchange of information**

- (1) The regulator may enter into an arrangement (***an information sharing arrangement***) with a relevant agency for the purposes of sharing or exchanging any information that is held by the regulator or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists the regulator or relevant agency:
  - (a) to determine applications made under the resources legislation or legislation made under the corresponding law of another jurisdiction, or
  - (b) to determine whether to cancel, revoke, suspend or vary an authorisation, activity approval or other approval, or an exemption or declaration, that is granted, made or given under that legislation, or
  - (c) to facilitate the carrying out of inspections, probity checks or other enforcement action under that legislation.
- (3) Under an information sharing arrangement, the regulator and the relevant agency are, despite any other Act or law of the State, authorised:
  - (a) to request and receive information that is held by the other party to the arrangement, and
  - (b) to disclose that information to the other party.
- (4) In this section:  
**regulator** means the Minister or the Secretary.  
**relevant agency** means any of the following:
  - (a) a government agency or holder of a statutory office with any functions similar to or related to those imposed on the regulator by or under the resources legislation,
  - (b) any government agency of the Commonwealth or another State or Territory with functions similar to or related to those imposed on the regulator under any of the resources legislation,
  - (c) any other person or body, or person or body of a class, prescribed by the regulations.

**[111] Part 17A, heading**

Omit the heading. Insert instead:

**Part 17A Offences, enforcement and undertakings about contraventions**

**[112] Section 378A**

Omit the section. Insert instead:

**378A Obstruction**

A person must not, without reasonable excuse, obstruct, hinder or resist any of the following persons in the exercise of a function under this Act:

- (a) an inspector,
- (b) an authorised person within the meaning of Division 3 of Part 11,
- (c) a member of staff of the Department who exercises functions under this Act or the *Petroleum (Onshore) Act 1991*,
- (d) any other person who exercises any judicial or official functions under this Act or the *Petroleum (Onshore) Act 1991*.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**[113] Section 378C**

Omit the section. Insert instead:

**378C Providing false or misleading information**

A person must not provide any information, record or return in purported compliance with any requirement by or under this Act:

- (a) knowing that the information, record or return is false or misleading in a material particular, or
- (b) being reckless as to whether the information, record or return is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
- (b) in the case of a natural person—500 penalty units.

**[114] Section 378D Contravention of condition of authorisation—offence by holder**

Omit the penalties to section 378D (1). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[115] Section 378D (2), penalties**

Omit the penalties. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[116] Section 378D (3)**

Omit “of a kind referred to in Part 1 of Schedule 7”.

**[117] Section 378EA**

Insert after section 378E:

**378EA Aiding and abetting commission of offence**

A person who:

- (a) causes or permits the commission of an offence against this Act or the regulations, or
  - (b) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or
  - (c) attempts to commit an offence against this Act or the regulations, or
  - (d) conspires to commit an offence against this Act or the regulations,
- is guilty of that offence and liable to the penalty prescribed by this Act or the regulations in relation to that offence.

**[118] Section 378F Liability of directors etc for offences by corporation—offences attracting executive liability**

Omit section 378F (1). Insert instead:

- (1) For the purposes of this section, an *executive liability offence* is an offence against section 5, 240C or 378D that is committed by a corporation.

**[119] Section 378G**

Omit the section. Insert instead:

**378G Continuing offences**

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission:
  - (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount specified for that offence, and
  - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount specified for that offence.

- (2) An obligation to do something is to be regarded as continuing until the act is done despite the fact that a period within which, or time before which, the act is required to be done has expired or passed.
- (3) An omission is to be regarded as continuing for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.
- (4) However, this section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.

**[120] Section 378H Proceedings for offences**

Omit “239C,” from section 378H (1) (a).

**[121] Section 378H (1) (a)**

Omit “(in the case of a contravention of a condition referred to in Part 1 of Schedule 7 or section 261B)”.

**[122] Section 378H (3)**

Omit “specified in Part 2 of Schedule 7”.

Insert instead “under section 5, 6 (1), 12B, 12C, 12D or 291”.

**[123] Section 378I Time within which summary proceedings may be commenced**

Omit “listed in Part 3 of Schedule 7” wherever occurring in section 378I (1) (a) and (2) (a).

Insert instead “under section 5, 6 (1), 12B, 12C, 12D, 240C, 246R, 248S, 291, 378A or 378D”.

**[124] Part 17A, Divisions 4A and 4B**

Insert after Division 4:

**Division 4A Court orders in connection with suspected contravention**

**378ZFA Order for recovery of costs related to prospecting or mining without authorisation**

- (1) The Land and Environment Court or the Local Court may make an order under this section if the court is satisfied, on the balance of probabilities, that a person has prospected for or mined for a mineral otherwise than in accordance with an authorisation.
- (2) The Land and Environment Court or the Local Court may order a person to pay to a government agency or person costs and expenses incurred, or compensation for loss or damage suffered, as the case may be, in such amount as is fixed by the order, if it appears to the court that:
  - (a) a government agency has incurred costs and expenses in connection with:
    - (i) the prevention, control, mitigation or management of any environmental impact caused by the prospecting or mining, or
    - (ii) rehabilitating land or water damaged or affected by the prospecting or mining, or
  - (b) a person (including a government agency) has, by reason of the prospecting or mining, suffered loss of or damage to property or has

incurred costs and expenses in preventing, controlling, mitigating or managing any such loss or damage, or attempting to do so.

- (3) However, the court is not to make an order for payment to a person under the section to the extent that the payment would represent the value of minerals extracted by that person without title that the person who carried out the suspected unlawful prospecting or mining had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in connection with the suspected contravention.
- (4) An order made by the Local Court under this section is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (5) An order made by the Land and Environment Court under this section is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (6) The Local Court may not make an order under this section for the payment of an amount that exceeds the jurisdictional limit of the Local Court under the *Civil Procedure Act 2005*.
- (7) The court may make an order under this section whether or not the person against whom the order is made:
  - (a) has been convicted of an offence under this Act in relation to the prospecting or mining, or
  - (b) has been issued with a penalty notice under this Act in relation to the prospecting or mining, and whether or not the amount of penalty prescribed for the offence has been paid under any such penalty notice, or
  - (c) has had any other action taken against the person in respect of an offence under this Act in relation to the prospecting or mining.
- (8) This section does not prevent the taking of proceedings for an offence of prospecting or mining for a mineral except in accordance with an authorisation.

## **Division 4B Enforceable undertakings**

### **378ZFB Secretary may accept enforceable undertakings**

- (1) The Secretary may accept a written undertaking (an *enforceable undertaking*) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
- (2) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.
- (3) The Secretary must issue, and make public, general guidelines for or in relation to the acceptance of enforceable undertakings under this Act.

### **378ZFC Notice of decision and reasons for decision**

- (1) The Secretary must give the person seeking to make an enforceable undertaking written notice of the Secretary's decision to accept or reject the enforceable undertaking and of the reasons for the decision.
- (2) The Secretary must publish, and make public, notice of a decision to accept an enforceable undertaking and the reasons for that decision.

**378ZFD When an enforceable undertaking is enforceable**

An enforceable undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the Secretary.

**378ZFE Compliance with enforceable undertaking**

A person must not contravene an enforceable undertaking made by that person that is in effect.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**378ZFF Contravention of enforceable undertaking**

- (1) The Secretary may apply to the District Court for an order if a person contravenes an enforceable undertaking.
- (2) If the Court is satisfied that the person who made the enforceable undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make one or both of the following orders:
  - (a) an order directing the person to comply with the undertaking,
  - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State:
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Secretary in monitoring compliance with the enforceable undertaking in the future.

**Note.** Section 378ZFH specifies circumstances affecting proceedings for a contravention for which an enforceable undertaking has been given.

**378ZFG Withdrawal or variation of enforceable undertaking**

- (1) A person who has made an enforceable undertaking may at any time, with the written agreement of the Secretary:
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The Secretary must publish, and make public, notice of the withdrawal or variation of an enforceable undertaking.

**378ZFH Proceeding for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an enforceable undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an enforceable undertaking in relation to that contravention and has completely discharged the enforceable undertaking.

- (3) The Secretary may accept an enforceable undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (4) If the Secretary accepts an enforceable undertaking before the proceedings are finalised, the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.

**[125] Sections 387B and 387C**

Insert after section 387A:

**387B Extraterritorial application**

A notice may be given under this Act to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter relates to the administration of this Act (including, but not limited to investigation of, or enforcement action relating to, offences against this Act).

**387C Waiver of minor procedural matters**

- (1) The Minister may waive any requirement of this Act or the regulations:
  - (a) as to the time within which anything is required to be done (but not the time for lodging any application for renewal of an authorisation after the date of expiry), or
  - (b) as to the details to be contained in any notice to be served, lodged or caused to be published by the applicant, or
  - (c) as to the documents or particulars to accompany the application, or
  - (d) as to the furnishing of information by the applicant.
- (2) This section does not authorise the Minister to waive a requirement unless the Minister is satisfied that the waiver is unlikely:
  - (a) to adversely affect any person's rights under this Act or the regulations, or
  - (b) to result in any person being deprived of information necessary for the effective exercise of those rights.

**[126] Section 388 Regulations**

Insert after section 388 (1):

- (1A) The regulations may adopt or provide for the adoption of any document (including, for example, a code of practice or set of standards published by any person or body) and for the application of the provisions of that document, as in force for the time being, for any of the purposes of this Act or the regulations.

**[127] Schedule 1B**

Insert in appropriate order before Schedule 1:

**Schedule 1B Further provisions relating to authorisations generally**

**Part 1 Preliminary**

**1 Meaning of “relevant decision-maker”**

In this Schedule:

*relevant decision-maker*, in relation to a decision concerning an authorisation made under a provision of this Act, means the person who makes that decision for the purposes of that provision.

**2 Application of Schedule**

- (1) This Schedule applies to and in respect of applications and tenders for, and decisions made by the relevant decision-maker in relation to, the following:
  - (a) the grant of an authorisation (including the grant of an authorisation to a tenderer),
  - (b) the renewal of an authorisation,
  - (c) the approval of the transfer of an authorisation,
  - (d) the imposition of conditions on, or variation of conditions of, an authorisation,
  - (e) the suspension of an authorisation.
- (2) This Schedule does not apply to environmental assessment permits under section 252.

**Part 2 Considering applications**

**3 Protection of the environment must be taken into account in considering applications**

- (1) The relevant decision-maker must take into account the need to conserve and protect the environment in or on the land over which the authorisation is sought (or, in the case of a variation, to which it applies) in considering an application to which this Schedule applies.
- (2) The relevant decision-maker may cause such studies (including environmental impact studies) to be carried out as the relevant decision-maker considers necessary to assist in making a decision on the application.
- (3) If public money is spent under subclause (2) in having studies carried out or engaging persons to provide advice, the relevant decision-maker may, by written notice, require the applicant concerned to reimburse the Government, within the time specified in the notice, for the money, or any part of the money, reasonably incurred.
- (4) The relevant decision-maker may recover from the applicant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

#### **4 Other matters that may be taken into account in considering applications**

Without limiting the generality of any other provision of this Act, the relevant decision-maker may take into account any one or more of the following when considering an application to which this Schedule applies:

- (a) whether, in the opinion of the relevant decision-maker, the applicant meets the minimum standards, made public by the relevant decision-maker, required to be met with respect to the technical and financial capability to carry out the proposed work program,
- (b) if the application relates to a transfer—whether, in the opinion of the relevant decision-maker, the transferee meets the minimum standards, made public by the relevant decision-maker, required to be met with respect to the technical and financial capability to carry out the proposed work program,
- (c) if the applicant is a natural person—the compliance history of the applicant,
- (d) if the applicant is a body corporate—the compliance history of any director of the body corporate or of any related body corporate,
- (e) if the application relates to a transfer and the proposed transferee is a natural person—the compliance history of the proposed transferee,
- (f) if the application relates to a transfer and the proposed transferee is a body corporate—the compliance history of any director of that body corporate,
- (g) whether, in the opinion of the relevant decision-maker, the work program proposed to be carried out by the applicant meets the minimum standards, made public by the relevant decision-maker, required to be met with respect to work programs for an authorisation of the kind concerned.

#### **5 Relevant decision-maker may require further information**

- (1) The relevant decision-maker may require a person who makes an application to which this Schedule applies to furnish further information in connection with the application, including (if the applicant is a body corporate) information as to the extent to which the controlling power in the body corporate's affairs is held by:
  - (a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or
  - (c) a natural person who is a resident of a foreign country.
- (2) The application may be refused if the applicant does not furnish that further information within the period specified by the relevant decision-maker by written notice when the request for further information is made.

#### **6 Grounds for refusal of applications**

Without limiting the generality of any other provision of this Act, the relevant decision-maker may refuse an application to which this Schedule applies on any one or more of the following grounds:

- (a) the relevant decision-maker considers that the applicant (or if the application relates to a transfer, the transferee) has an unsatisfactory compliance history,
- (b) the relevant decision-maker considers that the applicant (or if the application relates to a transfer, the transferee) does not meet the applicable minimum standards with respect to work programs and the technical and financial capability to carry out the proposed work program,
- (c) the applicant has not paid any fee payable in connection with the application,
- (d) the applicant has failed to lodge any information required to accompany the application within 10 business days after the application is lodged,
- (e) in the case of an application relating to a mineral claim or opal prospecting licence—that the applicant has failed to pay any levy required under section 292SA in relation to the claim or licence.

## **Part 3 Conditions of authorisations**

### **7 Conditions of authorisations**

- (1) An authorisation is subject to:
  - (a) any condition imposed by the relevant decision-maker under this Schedule (including any variation of such a condition), and
  - (b) any condition imposed by or under section 246P or 261B, and
  - (c) in the case of a mineral claim—the conditions referred to in clause 8, and
  - (d) in the case of an opal prospecting licence—the conditions referred to in clause 9, and
  - (e) any condition prescribed by the regulations.
- (2) Without limiting the generality of subclause (1), conditions imposed by the relevant decision-maker or prescribed by the regulations may include conditions relating to the following:
  - (a) the development and conduct of mining operations,
  - (b) environmental management, protection and rehabilitation, including requiring the holder of the authorisation to:
    - (i) carry out activities or not to carry out activities in order to protect, prevent, control or mitigate harm to the environment, and
    - (ii) rehabilitate land or water that is or may be affected by activities under the authorisation,
  - (c) compliance with codes of practice or sets of standards published by any person or body,
  - (d) ensuring the safety of the public in relation to prospecting and mining operations,
  - (e) the administration of authorisations,
  - (f) community relations,
  - (g) requiring the holder to provide the Minister with reports detailing any non-compliance with the conditions of the authorisation, or any requirements of this Act or the regulations relating to activities under

the authorisation, and any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects of that non-compliance.

- (3) Any obligation imposed on the holder of an authorisation in relation to environmental management, protection and rehabilitation:
  - (a) continues to have effect despite the cancellation of the authorisation or it ceasing to have effect, and
  - (b) can be imposed despite anything to the contrary in section 93 of the *Environmental Planning and Assessment Act 1979*.
- (4) Unless an exemption from conditions imposed by regulations applies, in the event of an inconsistency between conditions imposed by the relevant decision-maker and those imposed by regulations, the conditions imposed by the regulations prevail to the extent of any inconsistency.

## **8 Additional conditions of mineral claims**

- (1) In addition to the conditions referred to in clause 7, a mineral claim is subject to:
  - (a) any special conditions that apply to the land, and
  - (b) the conditions imposed on the holder of the claim under section 211 as to his or her exercise of any right of way under that section in respect of the claim area, and
  - (c) the conditions to which the holder of the claim is subject pursuant to any registered access management plan in force in respect of that land, and
  - (d) any other conditions (not inconsistent with any other condition referred to in this subclause) that the Secretary imposes when the claim is granted, or at any other time under a power conferred by this Act.
- (2) Without limiting the generality of subclause (1), a condition may be imposed on a mineral claim requiring the holder of the claim to pay royalty to the Crown on any minerals recovered under the claim.
- (3) In addition to any condition imposed by or under subclause (1), a mining lease that is not granted in relation to a mining purpose or mining purposes only is subject to a condition that the holder of the lease will not suspend mining operations in the mining area otherwise than in accordance with the written consent of the decision-maker.
- (4) A mining lease granted on the basis of a tender lodged under section 53 is taken to include a condition in the terms specified in the tender for the purposes of section 53 (3).

## **9 Additional conditions of opal prospecting licence**

In addition to the conditions referred to in clause 7, an opal prospecting licence is subject to:

- (a) any special conditions that apply, pursuant to section 223A, to the opal prospecting block over which the licence is granted, and
- (b) the conditions imposed on the holder of the licence, pursuant to section 235C, as to his or her exercise of any right of way under that section in respect of the opal prospecting block over which the licence is granted, and
- (c) any other conditions (not inconsistent with any other condition referred to in this section) that the Secretary imposes when the licence is granted, or at any other time under a power conferred by this Act.

#### **10 Conditions imposed on authorisations by relevant decision-maker**

- (1) The relevant decision-maker may impose conditions on an authorisation:
  - (a) at the time of the grant of the authorisation, or
  - (b) at any later time, as permitted by this Schedule.
- (2) A condition imposed by the relevant decision-maker takes effect as follows:
  - (a) if the condition is imposed on the grant of an authorisation—when the grant takes effect,
  - (b) if the condition is imposed on the renewal of an authorisation—when the renewal takes effect,
  - (c) if the condition is imposed when a full or partial transfer of an authorisation is approved under this Act—when the transfer is registered under this Act,
  - (d) if the condition is a variation under clause 12—as provided by clause 12 (7),
  - (e) in any other case—when written notice of the imposition of the condition is served on the holder of the authorisation or at a later time specified in the notice.

#### **11 Exemption from conditions imposed by regulations**

- (1) The relevant decision-maker may, by order published in the Gazette, exempt the holder of an authorisation from compliance with a condition imposed by the regulations.
- (2) An exemption may be granted subject to conditions.
- (3) An exemption may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors, and
  - (b) apply differently according to different factors of a specified kind, and
  - (c) be granted for a specified period or for an indefinite period, and
  - (d) if granted for a specified period—be granted before, during or after that period.
- (4) The relevant decision-maker may vary or revoke an exemption (including by imposing, varying or revoking a condition of the exemption) at any time by notice in writing to the holder of the authorisation.
- (5) The regulations may make provision for or with respect to exemptions.

### **Part 4 Variation of authorisations and variation or suspension of their conditions**

#### **12 Variation of authorisations by relevant decision-maker**

- (1) The relevant decision-maker may vary an authorisation (including the conditions of an authorisation).
- (2) A variation of an authorisation may include:
  - (a) the attaching of a condition to an authorisation (whether or not any conditions have already been attached), or
  - (b) the substitution of a condition, or
  - (c) the omission of a condition, or

- (d) the amendment of a condition, or
  - (e) the variation of the instrument by which an authorisation is granted, including so as to:
    - (i) update the instrument, or
    - (ii) correct a minor error or misdescription, or
    - (iii) consolidate variations made to the authorisation.
- (3) An authorisation may be varied on application by the holder of the authorisation or on the initiative of the relevant decision-maker.
- (4) An authorisation may be varied at any time during its currency, including on its being transferred to another person.
- (5) Except in the case of the renewal or transfer of an authorisation, the decision-maker is not to vary a prescribed condition subsequent to the grant of the authorisation unless the decision-maker:
- (a) has given the holder of the authorisation notice of the draft variation, and
  - (b) has invited the making of submissions to the decision-maker about the proposed variation and specified a deadline for the making of those submissions that is at least 28 days after the publication of the notice, and
  - (c) has either received such submissions and has taken them into consideration or has not received any such submission after the deadline has elapsed.
- (6) An authorisation is varied by notice in writing given to the holder of the authorisation.
- (7) The variation of a condition by the relevant decision-maker takes effect as follows:
- (a) if the condition is varied on the renewal of an authorisation—when the renewal takes effect,
  - (b) if the condition is varied when a full or partial transfer of an authorisation is approved under this Act—when the transfer is registered under this Act,
  - (c) if a prescribed condition is varied other than at the renewal of an authorisation or when a full or partial transfer of an authorisation is approved under this Act—28 days after written notice of the variation of the condition is served on the holder of the authorisation or at a later time specified in the notice,
  - (d) in any other case—when written notice of the variation of the condition is served on the holder of the authorisation or at a later time specified in the notice.
- (8) In this clause:  
**prescribed condition** means a condition that is not:
- (a) imposed on the application of the holder of the authorisation, or
  - (b) imposed under section 246P or 261B.
- (9) This clause does not apply to a condition that is prescribed by the regulations.

### **13 Variation of conditions imposed by the regulations**

- (1) Before a regulation is made that varies any condition of an authorisation imposed by the regulations, the relevant decision-maker is required to ensure that:
  - (a) a notice is published in a daily newspaper circulating throughout New South Wales:
    - (i) stating the objects of the proposed regulation, and
    - (ii) advising where a copy of the regulation may be obtained or inspected, and
    - (iii) inviting comments and submissions within a specified time, but not less than 28 days from publication of the notice, and
  - (b) all the comments and submissions received within the time specified in the notice are considered.
- (2) For the purposes of this clause, a regulation varies a condition of an authorisation if the regulation:
  - (a) imposes a new condition (whether or not any conditions have already been imposed), or
  - (b) substitutes a condition imposed by the regulations, or
  - (c) omits a condition imposed by the regulations, or
  - (d) amends a condition imposed by the regulations.

### **14 Suspension of conditions of authorisations**

- (1) The relevant decision-maker may (whether on the application of the holder of the authorisation or on the initiative of the relevant decision-maker) suspend any of the conditions of an authorisation (other than a mineral claim) for such period, or until the happening of such event, as the relevant decision-maker may determine.
- (2) The Secretary may (whether on the application of the holder of the claim or otherwise) suspend any of the conditions of a mineral claim (other than conditions of the kind referred to in section 175 (4)) for such period, or until the happening of such event, as the Secretary may determine.
- (3) A condition of a mineral claim that is suspended on the application of the holder may not be suspended for more than 3 months at a time.
- (4) The suspension of conditions of an authorisation may be granted unconditionally or subject to such conditions as the relevant decision-maker may consider appropriate.
- (5) The suspension of the conditions of an authorisation takes effect on the date on which written notice of the suspension is served on the holder of the authorisation or on such later date as may be specified in the notice.
- (6) An application for suspension of the conditions of an authorisation may be withdrawn by means of a notice of withdrawal signed by the applicant and lodged with the relevant decision-maker.
- (7) The application ceases to have effect when the notice is lodged.
- (8) The withdrawal of an application under this clause is irrevocable.
- (9) The relevant decision-maker may vary the suspension of the conditions of an authorisation (including the conditions to which the suspension is subject).

- (10) A variation includes the attaching of a condition to the suspension, the substitution of a condition, the omission of a condition or the amendment of a condition.
- (11) A suspension of the conditions of an authorisation is varied by notice in writing given to the holder of the authorisation.
- (12) The suspension of any condition of an authorisation under this clause does not prevent any action being taken under this Act in respect of the authorisation (including variation under clause 12).
- (13) This clause does not apply to a condition that is prescribed by the regulations.

**[128] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases**

Omit clause 21 (4) (b). Insert instead:

- (b) must contain a description, prepared in the approved manner, of the land over which the lease is sought, and

**[129] Schedule 4 Regulation making powers**

Omit “, refund or waiver” from clause 8.

**[130] Schedule 6 Savings, transitional and other provisions**

Insert after clause 118:

**118A Delegations of functions under Environmental Planning and Assessment Act 1979**

- (1) This clause applies to the exercise of a function purported to be delegated by the Minister under section 153A of the *Environmental Planning and Assessment Act 1979* before the substitution of section 363 (1) of this Act by the 2008 Act, whether the delegation was for the purposes associated with functions under this Act or any other Act administered by the Minister.
- (2) The delegation of any such function is taken to have been validly done on and from the date of the delegation if the delegation could have been made had section 363 (1), as so substituted been in force when the delegation was made.

**[131] Schedule 6**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015**

**Definition**

In this Part:

**2015 amending Act** means the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*.

**Pending applications**

An application for an authorisation, or transfer or renewal of an authorisation, made but not decided before the commencement of this clause and that complied with this Act, as in force before the Act's amendment by the 2015 amending Act, is taken to have been duly made under this Act, as amended.

### **Existing conditions**

Subject to this Part, a condition of an authorisation, in force under section 26, 44, 70, 238 or 239 immediately before the repeal of that section by the 2015 amending Act, continues to have effect and is taken to be a condition imposed under Schedule 1B.

### **Existing suspension of condition of authorisation**

A condition of an authorisation that was, immediately before the repeal of section 168 by the 2015 amending Act, suspended, is taken to have been suspended under clause 14 of Schedule 1B, on the date of the original suspension.

### **Existing “activity approval” conditions in exploration licences**

- (1) Any condition to which an exploration licence was subject immediately before the commencement of section 23A, as inserted by the 2015 amending Act, that requires approval to carry out operations and that is identified in the licence using one of the following phrases is void:
  - (a) Category 1 prospecting operations,
  - (b) Category 2 prospecting operations,
  - (c) assessable prospecting operations.
- (2) However, an approval granted pursuant to a condition referred to in subclause (1) that was in force immediately before the commencement of this clause is taken to be an activity approval granted under section 23A and can be varied or voluntarily cancelled accordingly.
- (3) An application for approval to carry out prospecting operations made in compliance with a condition imposed on an assessment lease under section 44, being an application that had not been dealt with before the commencement of section 44A (as inserted by the 2015 amending Act), is to be dealt with in accordance with section 44A, as if it had been made under that section.
- (4) For the avoidance of doubt, compliance with section 23A or 44A is required in respect of any assessable prospecting operation (within the meaning of that section) carried out after the commencement of the section, even if it began before the commencement of the section.

### **Existing directions to rehabilitate land**

A direction given under section 240, as in force before its amendment by the 2015 amending Act, and having effect immediately before that amendment, continues in force after that amendment as if section 240 had not been substituted.

### **Environmental information**

Section 365A, as inserted by the 2015 amending Act, does not apply to information about harm caused, or likely to be caused, to the environment obtained by the Secretary before the commencement of the section.

### **Existing notices and conditions**

Section 378C, as inserted by the 2015 amending Act, extends to information given after the commencement of that section in compliance with a notice given or condition imposed under this Act before the commencement of that section if the time by which, or period within which, the notice or condition

must have been complied with had not expired immediately before that commencement.

**Time for commencement of proceedings**

Section 378I, as in force before the amendment of that section by the 2015 amending Act, continues to apply in relation to proceedings for offences alleged to have been committed before the commencement of the amendments.

**[132] Schedule 7 Offences**

Omit the Schedule.

**[133] Dictionary**

Insert in alphabetical order:

*activity approval*—see sections 23A and 44A.

*assessable prospecting operation* means any prospecting operation that is not exempt development within the meaning of the *Environmental Planning and Assessment Act 1979*.

*director* of a body corporate or corporation includes any person involved in the management of the affairs of the body corporate or corporation.

*enforceable undertaking* means an undertaking given under Division 4B of Part 17A.

*related body corporate* has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

*resources legislation* means this Act, the *Petroleum (Onshore) Act 1991* and the regulations and other instruments made under those Acts.

*work program* means a work program referred to in section 129A.

**[134] Dictionary, definition of “Department”**

Omit the definition. Insert instead:

*Department* means the Department of Industry, Skills and Regional Development.

## Schedule 2      **Amendment of Petroleum (Onshore) Act 1991 No 84**

### [1]    **Section 2A**

Insert after section 2:

#### **2A    Objects**

The objects of this Act are to encourage and facilitate the discovery and development of petroleum resources in New South Wales, having regard to the need to encourage ecologically sustainable development, and in particular:

- (a) to recognise and foster the significant social and economic benefits to New South Wales that result from the efficient development of petroleum resources, and
- (b) to provide an integrated framework for the effective regulation of titles for petroleum prospecting and mining, and
- (c) to provide a framework for compensation to landholders for loss or damage resulting from such operations, and
- (d) to ensure an appropriate return to the State from petroleum resources, and
- (e) to require the payment of security to provide for the rehabilitation of sites damaged or affected by such operations, and
- (f) to ensure effective rehabilitation of disturbed land and water, and
- (g) to ensure petroleum resources are identified and developed in ways that minimise impacts on the environment.

### [2]    **Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

**activity approval**—see sections 31A and 36A.

**assessable prospecting operation** means any prospecting operation that is not exempt development within the meaning of the *Environmental Planning and Assessment Act 1979*.

**director** of a body corporate or corporation includes any person involved in the management of the affairs of the body corporate or corporation.

**enforceable undertaking** means an undertaking given under Division 6 of Part 13A.

**environment** includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social grouping.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**inspector** means an inspector within the meaning of the *Mining Act 1992*.

**prospecting operations** means operations carried out in the course of prospecting.

**public authority** means a public authority constituted by or under an Act, and includes:

- (a) a Government Department, and
- (b) a statutory body representing the Crown, a State owned corporation within the meaning of the *State Owned Corporations Act 1989* and a subsidiary (within the meaning of that Act), and

- (c) a council, and
- (d) a member of staff or other person who exercises functions on behalf of a public authority.

**related body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**resources legislation** means this Act, the *Mining Act 1992* and the regulations and other instruments made under those Acts.

**work program** means a work program referred to in section 14.

**[3] Section 3 (1), definition of “Department”**

Omit the definition. Insert instead:

**Department** means the Department of Industry, Skills and Regional Development.

**[4] Part 3 Petroleum titles**

Insert after the heading to the Part:

**Note.** Schedule 1B contains further provisions about the following:

- (a) the consideration of applications for the grant, renewal or transfer of petroleum titles,
- (b) the grounds for refusal of such applications,
- (c) the imposition of conditions on, and the variation of conditions of, petroleum titles,
- (d) the variation and suspension of petroleum titles.

**[5] Section 9 Areas over which petroleum titles may not be granted**

Omit “The Minister may grant a petroleum title over any onshore area within the State, except” from section 9 (1).

Insert instead “The Minister must not grant a petroleum title over any of the following land (the **excluded areas**)”.

**[6] Section 9 (3)–(6)**

Omit the subsections.

**[7] Section 14**

Omit the section. Insert instead:

**14 Applications to be supported by proposed work program**

- (1) An application for a petroleum title must be accompanied by a proposed work program that:
  - (a) indicates the nature and extent of operations to be carried out under the authority conferred by the relevant petroleum title, and
  - (b) sets out commitments relating to the conduct of those operations (such as the timing of the operations), and
  - (c) provides for the carrying out of activities (such as community consultation and environmental management and rehabilitation) in connection with, or ancillary to, those operations, and
  - (d) complies with the regulations.
- (2) In the case of an application for a production lease, the requirement in subsection (1) can be satisfied by providing a current development consent under the *Environmental Planning and Assessment Act 1979* for the conduct

of petroleum mining operations, or the construction and maintenance of works or structures, in respect of which the production lease is being applied for.

**[8] Section 15 Applications to be supported by evidence of financial capability**

Omit “standing” from section 15 (1) (a). Insert instead “capability”.

**[9] Section 15 (2) and (3)**

Omit the subsections.

**[10] Section 16**

Insert after section 15:

**16 Grant or refusal of petroleum titles**

- (1) After considering an application for a petroleum title, the Minister:
  - (a) may grant the petroleum title over land of any title or tenure in any onshore area within the State other than an excluded area within the meaning of section 9, or
  - (b) may refuse the application.
- (2) A petroleum title takes effect on the date on which it is signed by the Minister or on a later date specified in the title.
- (3) Notification of the grant of a petroleum title or of a refusal to grant an application is to be published in the Gazette.
- (4) The Minister is to notify the Minister administering the *Threatened Species Conservation Act 1995* of the grant of any petroleum title in relation to land that is a biobank site (within the meaning of Part 7A of that Act).

**Note.** Schedule 1B contains provisions about the consideration of applications for petroleum titles and the grounds for refusal of such applications.

**[11] Section 17 Form of titles**

Omit the section.

**[12] Section 19 Renewal of title**

Insert at the end of section 19 (1):

**Note.** Schedule 1B contains provisions about the consideration of applications for the renewal of petroleum titles and the grounds for refusal of such applications.

**[13] Section 19 (2AA) and (2AB)**

Insert after section 19 (2A):

- (2AA) An application for renewal of an exploration licence:
  - (a) may be made in respect of one or more parts (but not more than such number of parts as may be prescribed by the regulations) of the land comprised in the exploration licence when the application for renewal is made, and
  - (b) if it relates to renewal in respect of part only of the land comprised in the licence—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land over which renewal of the licence is sought, and
  - (c) may include a description of any special circumstances that the applicant claims (for the purposes of section 19B) exist that justify the

area of land over which the licence is renewed exceeding 75% of the size of:

- (i) the area over which the licence was originally granted (in the case of a first renewal of the licence), or
- (ii) the area over which its last previous renewal was granted (in any other case).

(2AB) An application for renewal must be accompanied by:

- (a) the application fee prescribed by the regulations, and
- (b) any information that is prescribed by the regulations.

**[14] Section 19 (3) and (3A)**

Omit the subsections.

**[15] Section 19 (5)**

Omit “(including requirements with respect to fees)”.

**[16] Section 19B**

Insert after section 19A:

**19B Land over which exploration licences may be renewed**

- (1) The area of land over which an exploration licence may be renewed is not to exceed 75% of the size of:
  - (a) the area over which the licence was originally granted, in the case of a first renewal of the licence, or
  - (b) the area over which its last previous renewal was granted, in any other case.
- (2) However, the Minister may grant a renewal over more than 75% of the size of the area over which the licence was originally or last granted if:
  - (a) the applicant for renewal claims that special circumstances exist that justify doing so, and
  - (b) the Minister is satisfied that special circumstances exist that justify doing so.
- (3) Without limiting the considerations available to the Minister in determining whether special circumstances exist for the purposes of this section, the Minister may take into account any partial cancellation of the exploration licence on the request of the holder of the licence under section 22, and reduce the percentage of the area of land over which the renewal may not be granted.
- (4) The Minister may direct an applicant for renewal of an exploration licence, within the time specified in the direction, to nominate which part of the area of land is sought to be included in the new exploration licence, where the licence may not be renewed over the whole area of land.
- (5) The Minister may refuse to renew an exploration licence if such a direction is not complied with within the time specified in the direction (in addition to the other grounds for refusal in clause 5 of Schedule 1B).
- (6) The Minister is not bound to renew an exploration licence over the area nominated by the applicant in compliance with a direction under this section or otherwise.

**[17] Section 20A Waiver of minor procedural matters**

Omit the section.

**[18] Section 21 Grounds on which application may be refused**

Omit the section.

**[19] Sections 22–22B**

Omit section 22. Insert instead:

**22 Grounds of cancellation of petroleum titles**

- (1) The Minister may cancel a petroleum title as to the whole or any part of the land to which it relates:
  - (a) if the holder of the petroleum title lodges with the Secretary a request that the Minister cancel the petroleum title as to the whole or part of the land, or
  - (b) if the Minister is satisfied that the holder of the petroleum title has contravened a provision of this Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
  - (c) if the Minister is satisfied that a person has contravened a condition of the petroleum title (whether or not the person is prosecuted or convicted of any offence arising from the contravention), or
  - (d) if the Minister is satisfied that the holder of the petroleum title provided false or misleading information in or in connection with an application for or with respect to the petroleum title or any report provided under this Act, or
  - (e) if the Minister is satisfied that the holder of the petroleum title has failed to comply with the requirements of any agreement or assessment under Part 11 in relation to the payment of compensation, or
  - (f) if the holder of the petroleum title is convicted of any offence relating to prospecting, mining or petroleum, or
  - (g) if the Minister is satisfied that the holder of the petroleum title has failed to use the land the subject of the petroleum title in good faith for the purposes for which the petroleum title has been granted, or has used the land for a purpose other than that for which the petroleum title has been granted, or
  - (h) if the Minister is satisfied that there has been a contravention of a direction under section 75 or 77, or
  - (i) if the Minister is satisfied that the land is required for a public purpose.
- (2) A request for the cancellation of the petroleum title as to part only of the land to which it relates must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the petroleum title is to be cancelled.
- (3) Action may be taken under this section whether or not any other action has been taken in respect of the petroleum title under this Act.

**22A Cancellations of petroleum titles**

- (1) Before cancelling a petroleum title, otherwise than at the request of the holder of the title, the Minister is to cause a written notice to be served on the holder of the title that contains the following:

- (a) notice that the title is proposed to be cancelled,
  - (b) details of the grounds for the proposed cancellation,
  - (c) notice that the holder of the title has a specified period (of at least 28 days) in which to make representations with respect to the proposed cancellation.
- (2) The Minister must not cancel a petroleum title, otherwise than at the request of the holder of the title, unless:
- (a) the Minister has taken any such representations received from the holder of the title into consideration, or
  - (b) the period specified in the notice has elapsed and no such representations have been received.
- (3) The Minister is to cause written notice of the cancellation of a petroleum title to be given to the holder of the petroleum title.
- (4) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the petroleum title, or on a later date specified in the notice.
- (5) The cancellation of a petroleum title does not affect any liability incurred by the holder of the petroleum title before the cancellation took effect.
- (6) No compensation is payable by the Crown for or in respect of the cancellation of a petroleum title.

**22B Appeals against decisions concerning cancellations of petroleum titles**

- (1) Any person who is aggrieved by the decision of the Minister to cancel a petroleum title held by the person may appeal to the Land and Environment Court against the decision.
- (2) Such an appeal is to be made:
- (a) within 14 days after written notice of the cancellation is served on the holder of the petroleum title, or
  - (b) within such further period as the Land and Environment Court may allow.
- (3) In deciding whether or not to allow a further period for appeal, the Land and Environment Court is to have regard to:
- (a) the circumstances that have prevented the appellant from making the appeal within the 14 days referred to in subsection (2) (a), and
  - (b) the consequences to the appellant, and to persons other than the appellant, of a decision allowing a further period for appeal, and
  - (c) the consequences to the appellant, and to persons other than the appellant, of a decision refusing a further period for appeal, and
  - (d) the public interest.
- (4) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the Minister when the decision was made, may be admitted in the hearing.
- (5) Subject to any order made by the Land and Environment Court, the lodging of an appeal does not operate to stay the decision appealed against.
- (6) The decision of the Land and Environment Court on an appeal is final and is to be given effect to as if it were the decision of the Minister.

- (7) This section does not apply to a cancellation that was requested by the holder of the petroleum title.

**[20] Sections 23 and 24**

Omit the sections.

**[21] Section 24A Fit and proper person consideration in making certain decisions about petroleum titles**

Omit “section 22 (5)” from section 24A (5). Insert instead “section 22A (6)”.

**[22] Section 24A (5)**

Omit “or suspension of operations under”.

**[23] Section 28B**

Insert after section 28A:

**28B Right to beneficial use of gas yielded through prospecting**

- (1) In addition to the other rights conferred by the title, an exploration licence or assessment lease confers on its holder:
- (a) the right to carry out such operations as may be described by the regulations to enable the beneficial use of gas recovered from the land comprised in the licence or lease, but only if that gas would otherwise have been flared or released into the atmosphere as part of activities under the licence or lease, and
  - (b) the right to use that gas subject to, and in accordance with, the regulations.
- (2) The regulations may make provision for or with respect to royalty payable under Part 7 in respect of gas used in accordance with this section.

**[24] Section 30 Area of exploration licence**

Omit section 30 (2). Insert at the end of section 30 (1):

**Note.** Section 19B makes provision for the size of the area over which the renewal of an exploration licence may be granted.

**[25] Section 31A**

Insert after section 31:

**31A Activity approval required for assessable prospecting operations**

- (1) An exploration licence is subject to a statutory condition that the holder must not carry out an assessable prospecting operation on land over which the licence is granted unless an activity approval has been obtained for the carrying out of the assessable prospecting operation in relation to that land and is in force.
- (2) The holder of an exploration licence may apply in writing to the Minister for approval to carry out an assessable prospecting operation in relation to any part of the land over which the licence is granted (*an activity approval*).
- (3) The Minister may require the holder of an exploration licence to provide such information as is required by the Minister, within the time specified by the Minister, before considering the application or at any time during consideration of the application.

- (4) After considering the application for the activity approval, the Minister:
  - (a) may grant the activity approval, or
  - (b) may refuse the application.
- (5) Without limiting the grounds for refusal, the application may be refused if the applicant fails to provide the information required by the Minister within the time required.
- (6) An activity approval may be granted subject to terms.
- (7) For the purposes of this Act, it is a statutory condition of an exploration licence that the holder must comply with any activity approval granted to the holder and in force.
- (8) Clauses 6 (2)–(4), 7 (2), 9 and 11 of Schedule 1B apply to and in respect of the imposition of terms on, and variation of terms of, an activity approval in the same way as they apply to and in respect of the imposition of conditions on, and the variation of conditions of, a petroleum title.
- (9) The Minister may cancel an activity approval:
  - (a) if the holder of the activity approval lodges with the Secretary a request that the Minister cancel the activity approval, or
  - (b) if the Minister is satisfied that a person has contravened the activity approval (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
- (10) Before cancelling an activity approval, otherwise than at the request of the holder of the activity approval, the Minister is to cause a written notice to be served on the holder of the activity approval that contains the following:
  - (a) notice that the activity approval is proposed to be cancelled,
  - (b) details of the grounds for the proposed cancellation,
  - (c) notice that the holder of the activity approval has a specified period (of at least 28 days) in which to make representations with respect to the proposed cancellation.
- (11) The Minister must not cancel an activity approval, otherwise than at the request of the holder of the activity approval, unless:
  - (a) the Minister has taken any such representations received from the holder of the activity approval into consideration, or
  - (b) the period specified in the notice has elapsed and no such representations have been received.
- (12) The Minister is to cause written notice of the cancellation of an activity approval to be given to the holder of the activity approval.
- (13) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the activity approval, or on a later date specified in the notice.
- (14) Any person who is aggrieved by the decision of the Minister to cancel an activity approval held by the person may appeal to the Land and Environment Court against the decision. Section 22B applies to such an appeal as if it were an appeal against a decision to cancel a petroleum title.
- (15) The cancellation of an activity approval does not affect any liability incurred by the holder of the activity approval before the cancellation took effect.

- (16) Action may be taken under subsection (9) (b) whether or not any other action has been taken in respect of the activity approval under this Act.

**[26] Section 32 Direction to holder of exploration licence to apply for lease**

Omit “Section 22 (4)” from the note to the section. Insert instead “Section 22A (4)”.

**[27] Section 36A**

Insert after section 36:

**36A Activity approval required for assessable prospecting operations**

- (1) An assessment lease is subject to a statutory condition that the holder must not carry out an assessable prospecting operation on land over which the lease is granted unless an activity approval has been obtained for the carrying out of the assessable prospecting operation in relation to that land and is in force.
- (2) The holder of an assessment lease may apply in writing to the Minister for approval to carry out an assessable prospecting operation in relation to any part of the land over which the lease is granted (an *activity approval*).
- (3) The Minister may require the holder of an assessment lease to provide such information as is required by the Minister, within the time specified by the Minister, before considering the application or at any time during consideration of the application.
- (4) After considering the application for the activity approval, the Minister:
  - (a) may grant the activity approval, or
  - (b) may refuse the application.
- (5) Without limiting the grounds for refusal, the application may be refused if the applicant fails to provide the information required by the Minister within the time required.
- (6) An activity approval may be granted subject to terms.
- (7) For the purposes of this Act, it is a statutory condition of an assessment lease that the holder must comply with any activity approval granted to the holder and in force.
- (8) Clauses 6 (2)–(4), 7 (2), 9 and 11 of Schedule 1B apply to and in respect of the imposition of terms on, and variation of terms of, an activity approval in the same way as they apply to and in respect of the imposition of conditions on, and the variation of conditions of, a petroleum title.
- (9) The Minister may cancel an activity approval:
  - (a) if the holder of the activity approval lodges with the Secretary a request that the Minister cancel the activity approval, or
  - (b) if the Minister is satisfied that a person has contravened the activity approval (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
- (10) Before cancelling an activity approval, otherwise than at the request of the holder of the activity approval, the Minister is to cause a written notice to be served on the holder of the activity approval that contains the following:
  - (a) notice that the activity approval is proposed to be cancelled,
  - (b) details of the grounds for the proposed cancellation,

- (c) notice that the holder of the activity approval has a specified period (of at least 28 days) in which to make representations with respect to the proposed cancellation.
- (11) The Minister must not cancel an activity approval, otherwise than at the request of the holder of the activity approval, unless:
  - (a) the Minister has taken any such representations received from the holder of the activity approval into consideration, or
  - (b) the period specified in the notice has elapsed and no such representations have been received.
- (12) The Minister is to cause written notice of the cancellation of an activity approval to be given to the holder of the activity approval.
- (13) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the activity approval, or on a later date specified in the notice.
- (14) Any person who is aggrieved by the decision of the Minister to cancel an activity approval held by the person may appeal to the Land and Environment Court against the decision. Section 22B applies to such an appeal as if it were an appeal against a decision to cancel a petroleum title.
- (15) The cancellation of an activity approval does not affect any liability incurred by the holder of the activity approval before the cancellation took effect.
- (16) Action may be taken under subsection (9) (b) whether or not any other action has been taken in respect of the activity approval under this Act.

**[28] Section 49 Notice of application for production lease to be sent to Public Service agencies**

Omit “Government Department”. Insert instead “Public Service agency”.

**[29] Section 49**

Omit “that Department”. Insert instead “that agency”.

**[30] Section 50 Notice to be sent to Secretary of Department of Planning and Environment**

Omit “Director of Planning” wherever occurring.

Insert instead “Secretary of the Department of Planning and Environment”.

**[31] Section 51 Objection to grant of production lease**

Omit “Government Department or statutory authority or the Director of Planning”.

Insert instead “Public Service agency or statutory authority or the Secretary of the Department of Planning and Environment”.

**[32] Section 53 Grant of production lease after objection or proposal**

Insert after section 53 (3):

- (4) Despite clauses 9 and 10 of Schedule 1B, a condition included in a production lease in accordance with a direction of the Premier may only be varied with the concurrence of the Premier.

**[33] Part 6 Protection of the environment**

Omit Divisions 1–3. Insert instead:

**Division 1 Environmental, rehabilitation and other directions**

**74 Interpretation**

(1) In this Division:

*responsible person* means:

- (a) in relation to a petroleum title that is in force—the holder of the title, or
- (b) in relation to a petroleum title that has ceased to be in force—the person who was the holder of the title immediately before it ceased to be in force.

(2) In this Division, a reference to giving a direction or notice to a responsible person includes, where the responsible person is a corporation that is subject to a scheme of arrangement, receivership, winding up or other external administration, a reference to giving a direction or notice to the administrator, receiver or liquidator of the corporation.

**75 Directions**

(1) The Secretary or an inspector may, by written notice, direct a responsible person in relation to a petroleum title to do any one or more of the following:

- (a) to give effect to a condition of the petroleum title (except a condition requiring payment of royalty or provision or maintenance of a security deposit),
- (b) to address any adverse impact that activities carried out under, or purportedly carried out under, the petroleum title have had on any aspect of the environment,
- (c) to address a risk of there being such an impact,
- (d) to conserve the environment, protect it from harm as a result of activities under the title or to prevent, control or mitigate any such harm,
- (e) to rehabilitate land or water that is or may be affected by activities under the title.

(2) A direction may require a responsible person to carry out or stop carrying out particular activities, carry out activities in a particular manner or achieve specified outcomes within such period (if any) as is specified in the direction or any condition specified in the direction.

(3) A direction served on a person under this section may require the person to prepare, and submit to the Secretary or inspector, reports as to any of the following:

- (a) the measures the person proposes to take for the purpose of complying with the direction,
- (b) the progress made by the person in implementing any such measures.

**76 Prohibition notices**

(1) If the Secretary or an inspector reasonably suspects that a person who is not the holder of a petroleum title is carrying out, or is about to carry out, any activity in contravention of a provision of this Act requiring a petroleum title to be held when carrying out the activity, the Secretary or inspector may direct the person to discontinue that activity on the land specified in the notice.

- (2) The direction may be given orally, but must be confirmed by written notice (a *prohibition notice*) issued to the person as soon as practicable.
- (3) A prohibition notice must state:
  - (a) the reasons for the issue of the prohibition notice, and
  - (b) the activity concerned, and
  - (c) the provision of this Act that the Secretary or inspector believes is being, or is likely to be, contravened by that activity.

#### **77 Direction to suspend operations**

- (1) The Secretary may, by written notice (a *suspension notice*), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified, operations under a petroleum title or an activity approval relating to the operations if the Secretary considers that:
  - (a) circumstances exist that could constitute a ground for cancellation of the petroleum title under section 22 (1) (b)–(g), or
  - (b) circumstances exist that could constitute a ground for cancellation of the petroleum title under section 22 (1) (h), in relation to a contravention of a direction under section 75 only, or
  - (c) on any other ground specified in the regulations.
- (2) Before giving a suspension notice, the Secretary is to:
  - (a) cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the relevant petroleum title, and
  - (b) give the holder of the relevant petroleum title a reasonable opportunity to make representations with respect to the proposed suspension notice, and
  - (c) take any such representations into consideration.
- (3) The suspension notice takes effect on the date on which it is given to the holder of the relevant petroleum title or on a later date specified in the notice.
- (4) The suspension of a petroleum title does not affect any liability incurred by the holder of the relevant petroleum title before the suspension took effect.
- (5) The holder of the relevant petroleum title is not entitled to compensation merely because of the suspension of operations under the petroleum title or an activity approval in accordance with a suspension notice.
- (6) If a suspension notice under this section is issued to a person who is not the current holder of the relevant petroleum title, the Secretary must cause a copy of the notice to be served on any current holder within 5 days after the notice is issued.
- (7) A direction served on a person under this section may require the person to prepare, and submit to the Secretary or inspector, reports as to any of the following:
  - (a) the measures the person proposes to take for the purpose of complying with the direction,
  - (b) the progress made by the person in implementing any such measures.

#### **78 Revocation or variation**

- (1) A direction under this Division may be revoked or varied by a subsequent direction issued in accordance with this Division.

- (2) A direction may be varied by modification of, or addition to, its terms and specifications or any condition specified in the direction.
- (3) Without limiting the above, a direction or notice may be varied by extending the time for complying with the direction or the period of suspension.

**78A Breach of direction or notice**

A person must comply with a direction or notice issued to the person under this Division, unless the person has a reasonable excuse for not doing so.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**78B Effect of direction**

The issuing of a direction under this Division does not affect:

- (a) the liability of any person to any penalty for an offence in relation to a petroleum title, or
- (b) the amount of security deposit that is or may be required under a petroleum title, or
- (c) the operation of any other provision of this Act or the regulations that requires or enables other action to be taken in relation to any contravention or other circumstances to which the direction relates.

**Note.** For example, the issuing of a direction does not affect the power to cancel a petroleum title under section 22A on a ground specified in section 22.

**78C Fee**

- (1) The purpose of this section is to enable the recovery of the administrative costs of preparing and issuing a direction under this Division (not including a direction that varies an earlier direction under this Division).
- (2) A person to whom a direction is issued must, within 30 days, pay the fee prescribed by the regulations to the Secretary.
- (3) A fee payable under this section is a debt due by the holder of the petroleum title concerned to the Crown and is recoverable in a court of competent jurisdiction.

**78D Rehabilitation by Minister at holder's expense**

- (1) If a person on whom a direction is served under this Division does not comply with the direction, the Minister may take any action necessary to give effect to the direction.
- (2) Any costs or expenses incurred by the Crown under this section are a debt due to the Crown by the person on whom the direction was served and are recoverable in a court of competent jurisdiction.
- (3) An authorised person may enter any land and do anything that in the person's opinion is necessary for or in connection with the taking of that action (including gaining access from that land to other land).

- (4) However, an authorised person must not enter land unless the person:
  - (a) has given the occupier of the land reasonable notice of the person's intention to do so, and
  - (b) enters the land at a reasonable time (except in the case of an emergency), and
  - (c) uses no more force than is reasonably necessary to effect entry, and
  - (d) before entering any premises on the land that are used only for residential purposes—has obtained the permission of the occupier of those premises.
- (5) A person who suffers damage caused by the taking of any action under this section is entitled to be paid reasonable compensation by the person who failed to comply with the direction (as referred to in subsection (1)).
- (6) Parts 11 and 12 apply (with such modifications as may be prescribed by the regulations) to that compensation as if it were compensation payable under Part 11.
- (7) In this section:

**authorised person** means:

  - (a) a person engaged in connection with the taking of steps under subsection (1), or
  - (b) the Secretary, or
  - (c) a person authorised in writing by the Secretary for the purposes of this section, or
  - (d) an inspector.

**78E Recovery of costs of rehabilitation**

- (1) In any proceedings for the recovery of a debt due to the Crown under this Division, a certificate that is signed by the Minister and that states that a specified amount is the amount of the debt so due is admissible in evidence in all courts and is evidence of that fact.
- (2) A debt due to the Crown under this Division is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Division.

**78F Prior notice of direction under section 75 or 76 not required**

A person who gives a direction under section 75 or 76 is not required to notify any person who may be affected by the direction before giving the direction.

**[34] Part 6, Division 5**

Insert after Division 4:

**Division 5 Audits**

**83A Relationship of this Division to other provisions**

This Division does not affect any other provision of this Act that:

- (a) enables a petroleum title to be subject to a condition requiring monitoring or reporting, or

- (b) relates to functions exercisable by persons for the purpose of auditing compliance with this Act, the regulations or conditions of petroleum titles.

**83B Nature of audit**

An audit under this Division is a periodic or particular documented evaluation of prospecting or mining for petroleum (including management practices, systems and plant) for any one or more of the following purposes:

- (a) to provide information on compliance or otherwise with obligations under the petroleum title or other related legal requirements under this or any other law (including in relation to the protection of the environment from the impacts of, or the rehabilitation of land affected by, activities under the title),
- (b) to provide information on compliance or otherwise with codes of practice or policies relevant to the petroleum title,
- (c) to enable a determination of whether the way activities are being carried out under the petroleum title can be improved in order to protect the environment.

**83C Accreditation and regulation of auditors**

The regulations may make provision for or with respect to either or both of the following:

- (a) the accreditation of auditors for the purposes of this Division,
- (b) the carrying out of audits by auditors.

**83D Conditions for mandatory audits**

- (1) A condition that requires one or more mandatory audits to be undertaken, to the satisfaction of the Secretary, for any one or more of the purposes referred to in section 83B (a *mandatory audit condition*) may be imposed on a petroleum title by the regulations or the Minister in accordance with Part 3 of Schedule 1B.
- (2) A mandatory audit condition must specify the purpose or purposes of the audit.
- (3) A mandatory audit condition may require any one or more of the following:
  - (a) appointment of an auditor to undertake the audit,
  - (b) approval by the Secretary of the auditor before being appointed,
  - (c) preparation of particular written documentation during the course of the audit,
  - (d) preparation of an audit report,
  - (e) production to the Secretary of the audit report.
- (4) A mandatory audit condition may also:
  - (a) specify the format and level of detail required for the audit, or
  - (b) require the auditor to submit the proposed format and level of detail to the Secretary for approval.
- (5) A mandatory audit condition may be varied by written notice served on the holder of the petroleum title and otherwise in accordance with Part 4 of Schedule 1B.

- (6) A condition imposed under this section takes effect on the date on which written notice of the condition is served on the holder of the petroleum title or on any later date specified in the notice.
- (7) This section does not affect the operation of the following provisions of the *Environmental Planning and Assessment Act 1979*:
  - (a) section 89K (Approvals etc legislation that must be applied consistently),
  - (b) section 93 (Granting and modification of approval by approval body),
  - (c) section 115ZH (Approvals etc legislation that must be applied consistently).

### **83E Certification of audit report**

The audit report for a mandatory audit is taken not to have been duly produced to the Secretary unless it is accompanied by:

- (a) a declaration signed by the holder of the petroleum title certifying that the holder has not knowingly provided any false or misleading information to the auditor and has provided all relevant information to the auditor, and
- (b) a declaration signed by the auditor:
  - (i) setting out the auditor's qualifications, and
  - (ii) certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

### **83F Offences relating to audit information**

- (1) A person who provides information to an auditor in connection with a mandatory audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (2) The holder of a petroleum title who fails to provide information to an auditor in connection with a mandatory audit being carried out in relation to the petroleum title, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (3) An auditor who includes information in an audit report produced to the Secretary in connection with a mandatory audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (4) An auditor who fails to provide information in an audit report produced to the Secretary in connection with a mandatory audit, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (5) The holder of a petroleum title who:
  - (a) fails to retain any written documentation required to be prepared by the holder in connection with a mandatory audit for a period of at least 5 years after the audit report concerned was produced to the Secretary (or such other period as is prescribed by the regulations), or
  - (b) fails to produce during that period any such documentation to the Secretary on request,is guilty of an offence.  
Maximum penalty:
  - (a) in the case of a corporation—1,000 penalty units, or

- (b) in the case of a natural person—500 penalty units.

**83G Self-incriminatory information not exempt**

Information must be supplied by a person in connection with a mandatory audit, and this Division applies to any such information that is supplied, whether or not the information might incriminate the person.

**83H Use of information**

- (1) Any information in an audit report or other documentation supplied to the Secretary in connection with a mandatory audit may be supplied by the Secretary to, and taken into consideration by, any person who has functions under this Act, the *Environmental Planning and Assessment Act 1979* or the environment protection legislation and may be used by that person for the purposes of those laws.
- (2) Without limiting subsection (1):
  - (a) the Secretary is authorised, despite any other Act or law, to provide a relevant agency with any such information, and
  - (b) any such information is admissible in evidence in any prosecution of the holder of a petroleum title for any offence (whether under this Act or otherwise).
- (3) In this section, *relevant agency* means the Department, or a public authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979* or such other legislation, if any, as may be prescribed by the regulations.

**83I Nature of voluntary audit**

- (1) For the purposes of this Division, a *voluntary audit* is an audit commissioned or carried out voluntarily, whether or not in relation to activities carried out under a petroleum title.
- (2) An audit is not voluntary if there is a contemporaneous requirement for a mandatory audit in relation to the same or substantially the same activity or other matter and the audits are to be carried out by the same person.

**83J Protected documents**

- (1) Documents prepared for the sole purpose of a voluntary audit are *protected documents* for the purposes of this Act.
- (2) The protected documents include the final report of the audit and any documents prepared during the course of the audit for the sole purpose of the audit.
- (3) Without affecting the generality of subsection (1) or (2), documents are not protected if they are prepared wholly or partly in connection with monitoring or reporting that is required by any conditions of a petroleum title or by a direction under section 75 or 77.

**83K Nature of protection**

- (1) A protected document:
  - (a) is not admissible in evidence against any person in any proceedings connected with the administration or enforcement of this Act, the environment protection legislation or such other legislation, if any, as may be prescribed by the regulations, and

- (b) must not be inspected, copied, seized or otherwise obtained by the Department, any authority prescribed by the regulations or any other person for any purpose connected with such administration or enforcement.
- (2) Neither the Department, a prescribed authority nor any other person may, for the purpose referred to in subsection (1) (b), require a person to answer any question or provide any information about the existence of the document or about what it contains.
- (3) The onus of establishing that a document is a protected document lies on the person asserting that it is protected.
- (4) A court may inspect any document that is claimed to be a protected document for the purpose of determining whether it is or is not a protected document.
- (5) The regulations may prescribe procedures for making and determining claims that a document is a protected document.

**83L Lifting of protection**

- (1) Documents prepared in relation to a voluntary audit cease to be protected if the person asserting or relying on the protection uses or relies on (or attempts to use or rely on) the whole or any part of one or more of the documents, whether directly or indirectly, in any proceedings connected with the administration or enforcement of this Act, the environment protection legislation or such other legislation, if any, as may be prescribed.
- (2) This section does not apply where the person is using or relying on (or attempting to use or rely on) a document for the purpose of establishing that the document is protected.

**[35] Section 91 Payment of royalty**

Insert after section 91 (1):

- (1A) If a person who is liable to pay royalty fails to pay it as required by subsection (1), the person is guilty of an offence.  
Maximum penalty:
  - (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
  - (b) in the case of a natural person—2,000 penalty units or imprisonment for 12 months, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**[36] Section 91A**

Insert after section 91:

**91A Refunds and rebates of royalties**

- (1) The regulations may make provision for or with respect to the refund or rebate of royalty payable or paid under this Act.
- (2) Without limiting subsection (1), the regulations may prescribe the criteria for eligibility for a refund or rebate, which may include that a contribution has been made for the purpose of funding any programs for the benefit of the community.

**[37] Section 94C Fees payable in respect of petroleum title**

Insert after section 94C (2):

- (3) The holder of a petroleum title must not fail to pay any annual rental fee or administrative levy payable under this Part for the petroleum title.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or  
(b) in the case of a natural person—50 penalty units.

**[38] Section 94P Failure to pay fee**

Omit the section.

**[39] Section 94T**

Insert after section 94S:

**94T Waiver or refund of fees**

- (1) The Secretary may refund or waive payment of the whole or any part of a fee that this Act requires to be paid, on his or her own initiative or on the application of the person who is required to pay the fee, if the Secretary is satisfied that there is good cause for doing so.
- (2) The regulations may make further provision for the waiver or refund of fees payable under this Act.

**[40] Section 96 Applications for transfer of title**

Insert at the end of section 96 (3):

**Note.** Schedule 1B makes provision about the consideration of applications for the transfer of a petroleum title and the grant or refusal of such an application.

**[41] Part 8A**

Insert after Part 8:

## **Part 8A Records and reports**

**97A Keeping of geological plans, maps and records**

To the extent required by the regulations, every holder of a petroleum title must:

- (a) keep accurate geological plans, maps and records relating to the land comprised in the title, and  
(b) furnish to the Minister such geological and other plans and information as to the progress of operations on such land as the Minister may from time to time require.

**97B Furnishing of statistics, returns and other information**

- (1) Every holder of a petroleum title and any other person carrying on any operation in connection with any such title who is called on to do so must, at such times and in such manner as the Minister may require, furnish such statistics, returns and other information as may be required and must keep such records as may be necessary for the completion of any such statistics and returns.

- (2) Any information required under this section in respect of any particulars supplied in or omitted from a return must be furnished within such period as may be specified by the Minister.
- (3) Statistics, returns and other information obtained pursuant to this section, are to be treated as confidential, but the Minister may cause to be published or otherwise made available the results of such statistics, returns and other information with respect to the whole of New South Wales or any portion of the State and such details furnished on an individual return (other than details relating to working expenses) as the Minister may think fit.
- (4) A person who contravenes this section is guilty of an offence.  
Maximum penalty: 200 penalty units.

#### **97C Reports**

- (1) The holder of a petroleum title must prepare and lodge reports of all operations carried out under the petroleum title.  
**Note.** Clause 6 (2) (g) of Schedule 1B provides that reports may also be required by the conditions of a petroleum title.
- (2) The regulations may make provision for or with respect to the following:
  - (a) the content, form or lodgment of the reports,
  - (b) the exemption of any person, class of persons, petroleum titles or class of petroleum titles from a requirement of this section or the regulations under this section.
- (3) A person who fails, without reasonable excuse, to prepare or lodge a report in accordance with this section or the regulations is guilty of an offence.  
Maximum penalty:
  - (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
  - (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.
- (4) If there is an inconsistency between a condition of a petroleum title and a reporting requirement imposed under this section, the condition prevails to the extent of the inconsistency.

#### **97D Record-keeping**

Any record required to be created and maintained under this Act, the regulations, a condition of a petroleum title or a term of an activity approval must be kept in a legible form, or in a form that can readily be reduced to a legible form for production to any inspector.

#### **97E Retention of records relating to petroleum titles**

The holder of a petroleum title must retain any records required to be created and maintained under this Act, the regulations, a condition of a petroleum title or a term of an activity approval in relation to the petroleum title for not less than 4 years after the expiry or cancellation of the petroleum title.

#### **97F Information or return provided, served or lodged by agents**

Any information or return received from or served or lodged by an agent duly appointed and notified in accordance with the regulations on behalf of any of

the following persons is taken to have been received from or served or lodged by that person:

- (a) the holder of a petroleum title,
- (b) an applicant for a petroleum title or for the renewal, transfer or cancellation of a petroleum title,
- (c) an applicant for an activity approval or for the cancellation of an activity approval,
- (d) any person who owns or occupies land over which a petroleum title is in force or to which an application for a petroleum title relates.

**97G Samples of strata, petroleum and water**

- (1) The holder of a petroleum title must collect any samples of strata, petroleum, water or any other thing, as required by the regulations.
- (2) Those samples must be collected, labelled for reference or preserved in the manner required by the regulations.

**[42] Part 9**

Omit the Part. Insert instead:

**Part 9 Powers of entry and inspection**

**Division 1 Preliminary**

**98 Purposes for which powers under Part may be exercised**

Powers may be exercised under this Part for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or any petroleum title, direction, notice or requirement issued or made under this Act,
- (b) for obtaining information or records for purposes connected with the administration of this Act,
- (c) generally for administering this Act.

**99 Effect on other functions**

Nothing in this Part:

- (a) affects any function under any other Part of this Act or under any other Act, or
- (b) limits the conditions that may be attached to a petroleum title.

**Division 2 Powers to require information and records**

**100 Application of Division**

This Division applies whether or not a power of entry under Division 3 is being or has been exercised.

**101 Requirement to provide information and records**

- (1) An inspector may, by written notice given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice in connection with any matter relating to the administration of this Act.

- (2) The notice must specify the manner in which the information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) If a record required to be furnished under the notice is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (4) The notice may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (5) The inspector to whom a record is furnished under the notice may take copies of the record.

### **Division 3 Powers of entry and search**

#### **102 Powers to enter premises**

- (1) An inspector may enter:
  - (a) any premises at which the inspector reasonably suspects that any prospecting operations or mining of petroleum are being or are about to be carried out, at any time, and
  - (b) any premises that the inspector reasonably suspects have been, are being or are likely to be affected by prospecting operations or mining of petroleum, at any time, and
  - (c) any premises where the inspector reasonably believes that documents that relate to any activity referred to in paragraph (a) or (b) are kept, at any time.
- (2) The power to enter premises authorises entry by foot or by means of a motor vehicle or other vehicle, or by an aircraft, or in any other manner.
- (3) Entry may be effected with the aid of such police officers or other inspectors as the inspector considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 104A.

#### **103 Entry into residential premises only with permission or warrant**

This Division does not entitle an inspector to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 104A.

#### **104 Powers of inspectors to do things at premises**

- (1) An inspector may, at any premises lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An inspector may do any or all of the following:
  - (a) examine and inspect any works, plant, vehicle, aircraft or other article,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the inspector considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the inspector considers necessary,
  - (e) require records to be produced for inspection,

- (f) examine and inspect any records,
  - (g) take extracts from, or a copy of, any records,
  - (h) seize anything that the inspector has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (j) do any other thing the inspector is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize:
- (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

#### **104A Search warrants**

- (1) An inspector may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the inspector believes on reasonable grounds that:
- (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
  - (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
- (a) to enter the premises, and
  - (b) to exercise any function of an inspector under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) **Definitions**

In this section:

***matter or a thing*** that is connected with an offence means:

- (a) matter or a thing with respect to which the offence has been committed, or
- (b) matter or a thing that will afford evidence of the commission of an offence, or
- (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

***offence*** includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

#### **104B Inspectors may request assistance**

A person may accompany an inspector and take all reasonable steps to assist the inspector in the exercise of his or her functions under this Part if the

inspector is of the opinion that the person is capable of providing assistance to the inspector in the exercise of those functions.

**104C Assistance to be given to inspectors**

- (1) This section applies for the purpose of enabling an inspector to exercise any of the powers of an inspector under this Part in connection with any premises.
- (2) The Secretary may, by written notice given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

**104D Care to be taken**

In the exercise of a power of entering or searching premises under this Part, the inspector must do as little damage as possible.

**104E Compensation**

The Crown is to compensate all interested parties for any damage caused by an inspector, a person employed in the Department, a geologist, a geophysicist or a geochemist in exercising a power under this Part of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the inspector or other person in the exercise of the power of entry.

**104F Power of inspectors to require answers**

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for a purpose to which this Part applies to answer questions in relation to those matters.
- (2) The Secretary may, by written notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) An inspector may, by written notice, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances, or a place and time is not nominated by the person—a place and time nominated by the inspector that is reasonable in the circumstances.

**104G Recording of evidence**

- (1) An inspector may cause any questions and answers to questions given under this Part to be recorded if the inspector has informed the person who is to be questioned that the record is to be made.

- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the inspector.
- (3) A copy of any such record must be provided by the inspector to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

**104H Power of inspectors to demand name and address**

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have offended or to be offending against a provision of this Act or the regulations to state his or her full name and residential address.
- (2) An inspector may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence under section 104O to fail to comply with any such request.
- (3) The maximum penalty for an offence under section 104O in connection with a requirement under this section is 100 penalty units, despite anything to the contrary in that section.

**104I Application of Division**

The powers in sections 104F, 104G and 104H may be exercised whether or not a power of entry in this Division is being or has been exercised.

**Division 4 Powers with respect to articles**

**104J Application of Division**

Nothing in this Division limits the functions that may be exercised under any other Division of this Part.

**104K Power to inspect and test**

- (1) An inspector may, for the purposes of this Part, inspect and test any article.
- (2) The inspector may, for the purposes of any such inspection or testing:
  - (a) enter the article, and
  - (b) enter, in accordance with this Act, the premises where the article is located, and
  - (c) operate the article, and
  - (d) take photographs or video films of the article, and
  - (e) inspect or test any substance being carried by the article or in any container on the article, and
  - (f) take a sample of any such substance for testing.
- (3) In this section:  
*article* includes any plant, motor or other vehicle, aircraft, vessel or other thing of any description.

## **Division 5 Other entry powers**

### **104L Survey**

- (1) Any person employed in the Department authorised by the Secretary for the purposes of this Part, or a registered surveyor so authorised, may at all reasonable times enter any land with such assistants as he or she may think necessary:
  - (a) for the purpose of carrying out any survey, or
  - (b) for the purpose of defining any road, or
  - (c) for the purpose of carrying out a geological or geophysical survey, or
  - (d) for any other purpose authorised by this Act or the regulations.
- (2) In this section, *registered surveyor* means a registered land surveyor or registered mining surveyor within the meaning of the *Surveying and Spatial Information Act 2002*.

### **104M Sampling**

A geologist, geophysicist or geochemist employed in the Department and authorised by the Secretary for the purposes of this Part may, at all reasonable times, enter any land with such assistants as he or she may think necessary for the purpose of removing any sample of petroleum, water or strata.

### **104N Notice to landholder**

- (1) Before a person enters any land pursuant to this Division, the person must:
  - (a) if practicable, give reasonable notice to the landholder of the person's intention to do so, and
  - (b) if required by that landholder, produce evidence that the person is authorised by the Secretary for the purposes of this Part.
- (2) Evidence referred to in subsection (1) (b) is to be in the form prescribed by the regulations.
- (3) In this section, *landholder* includes a secondary landholder.

## **Division 6 General**

### **104O Offences**

- (1) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under this Part is guilty of an offence.
- (2) A person who wilfully delays or obstructs an inspector in the exercise of the inspector's powers under this Part is guilty of an offence.
- (3) A person who impersonates an inspector is guilty of an offence.  
Maximum penalty:
  - (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
  - (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

**104P Provisions relating to requirements to furnish records or information or answer questions**

(1) **Warning to be given on each occasion**

A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) **Self-incrimination not an excuse**

A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

(3) **Information or answer not admissible if objection made**

However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

(4) **Records admissible**

Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) **Further information**

Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

(6) **Section extends to requirement to state name and address**

This section extends to a requirement under this Part to state a person's name and address.

**104Q Revocation or variation**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting subsection (2), a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by an inspector (whether or not the inspector who gave the notice).

**[43] Section 106B Security required to be given**

Insert after section 106B (6):

- (7) A condition may be imposed under this section in relation to any impact that is the result of work carried out under the relevant petroleum title, whether or not that impact is in relation to land over which the petroleum title is to be or was granted.

**[44] Parts 12–13A**

Omit Parts 12 and 13. Insert instead:

## **Part 12 Land and Environment Court proceedings**

### **112B Jurisdiction of Land and Environment Court**

- (1) The Land and Environment Court has jurisdiction to hear and determine proceedings relating to any of the following matters:
  - (a) any demand concerning the ascertainment and adjustment of boundaries of land held under a petroleum title, or occupied by virtue of an easement or right of way granted under this Act, where such boundaries are in dispute or doubtful—in which case the Court is to ascertain and determine such boundaries by such means as may be found convenient, and may make and give all such orders and directions as may be necessary for the purpose of carrying out or giving effect to its determination,
  - (b) the right to the occupation of areas of land comprised in a petroleum title and the right to or ownership of petroleum and other materials obtained from them,
  - (c) the right to the use of areas of land comprised in an easement or right of way granted under this Act,
  - (d) any encroachments on, infringements of or damage to any land comprised in a petroleum title,
  - (e) any encroachments on, infringements of or damage to an easement or right of way granted under this Act,
  - (f) any demand for debt or damages or both arising out of or made in respect of any contract whatever relating to the search for or mining of petroleum,
  - (g) the right to any petroleum in or to be taken out of any land comprised in a petroleum title or in respect of any matter concerning or arising out of any contract relating to any such petroleum,
  - (h) any demand concerning or arising out of any partnership or joint venture for or in relation to the search for or mining of petroleum in any land comprised in or held under any petroleum title, easement or right of way granted under this Act, or any partnership or joint venture in any such land, or in any works, machinery or petroleum, or concerning or arising out of any contract for or in connection with any such search or mining, or for the dissolution wholly or in part of any such partnership or joint venture,
  - (i) any demand concerning contributions to calls or to the expense of working or using any such land or works or any share or interest in any such contributions,

- (j) any demand concerning or arising out of any mortgage or assignment by way of security of or charge on any such land, works, machinery, petroleum or any share or interest in any such mortgage or assignment,
  - (k) any demand concerning the cancellation and delivery up of instruments relating to:
    - (i) mortgages, charges or encumbrances of or on any such land, works, machinery or petroleum, or any share or interest in them, or
    - (ii) any assignment of such mortgages, charges and encumbrances, or
    - (iii) any contract respecting the working or use of any such land, works or machinery or any partnership or joint venture for or in relation to the search for or mining of petroleum or the total or partial dissolution of any such partnership or joint venture,
  - (l) any money claimed to be due on any account relating to a partnership or joint venture for or in relation to the search for or mining of petroleum or in any way accruing to the complainant from any such partnership or joint venture, or any adventure or interest,
  - (m) any question or dispute as to:
    - (i) the validity of a petroleum title, or
    - (ii) the decision of the Minister in relation to an application for the granting, renewal or transfer of a petroleum title, or
    - (iii) the decision of the Minister to cancel a petroleum title,
  - (n) the recovery of any money which any person is liable to pay under this Act or the regulations and for which no other mode of recovery is provided under this Act or the regulations,
  - (o) all questions and disputes which may arise:
    - (i) between holders of petroleum titles, or
    - (ii) between holders of petroleum titles and landholders,
  - (p) all questions or disputes which may arise as to operations on or the working or management of the land comprised in a petroleum title,
  - (q) any other matter in respect of which jurisdiction is conferred on the Court by this Act.
- (2) Nothing in this section limits or restricts the jurisdiction conferred on any other court by any other Act or law.

**112C Land and Environment Court may order deposit of petroleum, money or chattels or prohibit extraction of petroleum**

- (1) On application by any party to proceedings in the Land and Environment Court, the Court may order any other party to the proceedings:
  - (a) to deposit, pending its decision, any petroleum, money or chattels:
    - (i) the right to which will, in the opinion of the Court, be put in issue in the course of those proceedings, and
    - (ii) which may then be in, or at any time before the termination of the proceedings may come into, the possession or control of that other party, or
  - (b) not to extract any petroleum the right to which will, in the opinion of the Court, be put in issue in the course of those proceedings.

- (2) An order under subsection (1) (a) must specify the thing to be so deposited and must direct the deposit to be made, at or before a time specified in the order, with a person or at a place so specified.

**112D Land and Environment Court may grant injunction**

- (1) If an application is made to the Land and Environment Court by a person claiming to hold a legal or equitable interest in any land subject to a petroleum title, or in any property, the Court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person:
- (a) from encroaching on, occupying, using or working the land or property, or
  - (b) from seeking or extracting any petroleum from the land, or
  - (c) from selling or disposing of or otherwise interfering with the property, or
  - (d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.
- (2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.

**112E Granting of injunctions in cases of urgency**

- (1) If an applicant for an injunction satisfies the Land and Environment Court that there are urgent reasons for granting the injunction, the Court may, in any case in which the Court might otherwise grant an injunction, grant an injunction to have effect for a period of not more than 2 months (including the day on which the injunction is made) without notice of the application having been served on any other party.
- (2) The Land and Environment Court may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this section, but application for a further injunction may be made under section 112D, either during or after the period of the injunction granted under this section.

**112F Orders protecting adjacent petroleum titles**

- (1) The holder of a petroleum title over land which is adjacent to:
- (a) land that is the subject of an injunction, or
  - (b) land on which is located property that is the subject of an injunction,
- may apply to the Land and Environment Court for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the petroleum title is held.
- (2) The Land and Environment Court:
- (a) may order, on such terms as the Court thinks fit, such working of that land or property as in the Court's opinion will be sufficient to prevent that damage or depreciation, and
  - (b) may make such further order as to the cost of that working as the Court considers just.
- (3) An order may not be made under this section unless the applicant shows to the satisfaction of the Land and Environment Court that the petroleum title concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

**112G Court may order payment of money or delivery of petroleum**

- (1) If any money or petroleum is claimed in the Land and Environment Court, the Court may order the payment of such money or the delivery of such petroleum as it may find to be due or deliverable by one party to another, where possible.
- (2) If such a claim arises out of a petroleum mining partnership, adventure or interest, the Land and Environment Court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be necessary to ascertain what money or petroleum (if any) is so due by one party to the other, and may make such further order as it considers just.
- (3) If the Land and Environment Court orders payment of money in respect of any debt, damages, costs or otherwise, the Court may make a further order:
  - (a) that any petroleum in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the Court) be delivered up to the party entitled to the payment, and
  - (b) that the petroleum to that extent be seized and delivered accordingly.
- (4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the petroleum so delivered to the party entitled to payment.

## **Part 12A Administration**

**113A Exclusion of personal liability**

An act or omission of:

- (a) the Minister or the Secretary, or
- (b) a member of staff of the Department, or
- (c) a body constituted under this Act, a member of any such body or a member of staff of any such body, or
- (d) an authorised person within the meaning of section 78D, or
- (e) a person acting under the direction of a person or body referred to in paragraph (a), (b), (c) or (d),

does not subject the Minister, the Secretary, or any such member or member of staff or any person so acting, personally to any action, liability, claim or demand if the act or omission was done or omitted in good faith and for the purpose of executing this Act.

**113B Delegation of functions by Minister or Secretary**

- (1) The Minister may delegate any of the following functions (except this power of delegation) of the Minister to any person:
  - (a) any function under this Act,
  - (b) any function under the *Environmental Planning and Assessment Act 1979*.
- (2) The Secretary may delegate any function under this Act (except this power of delegation or any function delegated to the Secretary by the Minister) to any person.
- (3) A reference in this section to a function under this Act includes a reference to a function under the regulations and a function under a condition of a petroleum title.

**113C Minister or officer not to be interested in petroleum title**

- (1) A person must not, while holding office in an official capacity for the purposes of this Act and while exercising functions in that capacity, hold either directly or indirectly a beneficial interest in a petroleum title.  
Maximum penalty: 200 penalty units.
- (2) The following are persons who hold office in an *official capacity* for the purposes of this Act:
  - (a) the Minister,
  - (b) an inspector,
  - (c) a Public Service employee, who exercises functions under this Act or the *Mining Act 1992*,
  - (d) any other person who exercises any judicial or official functions under this Act or the *Mining Act 1992*.

## **Part 13 Release of information**

### **Division 1 Preliminary**

**113D Definitions**

- (1) In this Part, a reference to a *core*, *cutting* or *sample* includes a reference to a portion of a core, cutting or sample.
- (2) For the purposes of this Part:
  - (a) cores and cuttings, and well data logs, sample descriptions and other documents, relating to the drilling of a well, are taken to have been furnished to the Minister not later than one month after the drilling of the well was, in the opinion of the Minister, substantially completed, and
  - (b) geophysical or geochemical data relating to geophysical or geochemical surveys are taken to have been furnished to the Minister not later than one year after the geophysical or geochemical field work was, in the opinion of the Minister, substantially completed.
- (3) A reference to information furnished to the Minister under this Act includes a reference to a return or other information relating to royalty under this Act that is obtained by the Minister, or a delegate of the Minister, from a tax officer (within the meaning of the *Taxation Administration Act 1996*).

### **Division 2 Release of certain data, samples and work programs**

**113E Release of certain data**

The Minister may, at any time later than 2 years after being furnished with the information:

- (a) make publicly known, or
- (b) on request by a person and, if the Minister so requires, on payment of the fee prescribed by the regulations, make available to that person,

any information that has been furnished to the Minister under this Act, being information that relates to the subsoil, or to petroleum, in a block, but not including any matter contained in a report, return or document that, in the opinion of the Minister, is a conclusion drawn in whole or in part from, or an opinion based in whole or in part on, any such information.

**113F Release of samples**

- (1) The Minister may, at any time later than 2 years after being furnished with them:
  - (a) make publicly known any particulars of, or
  - (b) on request by a person and, if the Minister so requires, on payment of the fee prescribed by the regulations, permit that person to inspect, any cores or cuttings from, or samples of, the subsoil in a block, or samples of petroleum recovered in a block, that have been furnished to the Minister under this Act.
- (2) Except as provided by subsection (1), or for the purposes of the administration of this Act and the regulations, the Minister must not permit any person to inspect any core, cutting or sample furnished to the Minister under this Act.

**113G Release of summaries of work programs**

The Minister may, at any time:

- (a) make publicly known, or
- (b) on request by a person and, if the Minister so requires, on payment of the fee prescribed by the regulations, make available to that person, a summary of any work program that has been furnished to the Minister under this Act, including a work program that has been varied during the life of a petroleum title.

**Division 3 Release of assessments, subject to objections**

**113H Release of assessments**

The Minister may, at any time later than 5 years after being furnished with the information:

- (a) make publicly known, or
- (b) on request by a person and, if the Minister so requires, on payment of the fee prescribed by the regulations, make available to that person, any information that has been furnished to the Minister under this Act, being information that relates to the subsoil, or to petroleum, in a block, and that, in the opinion of the Minister, is a conclusion drawn in whole or in part from, or an opinion based in whole or in part on, any such information.

**113I Invitation of objections to release of assessments**

- (1) Before the Minister makes available or publicly known any information under section 113H, the Minister must, if it is practicable to do so, serve a notice on each interested person:
  - (a) stating that the Minister proposes to make the information available or publicly known, and
  - (b) inviting persons having a right to make an objection to give to the Minister, by such day as is specified in the notice (being a day not earlier than 45 days after the publication of the notice), a notice objecting to the whole or any part of the information being made available or publicly known, and
  - (c) stating that, if a person does not make an objection in accordance with the invitation, the person will be taken to have consented to the information being made available or publicly known.

- (2) In this section:  
*interested person* means any of the following:
- (a) the person who furnished the document containing the information,
  - (b) any transferee of a petroleum title transferred by the person who furnished the document containing the information,
  - (c) any other person whose lawful business, commercial or financial affairs could reasonably be expected to be adversely affected by the disclosure.

#### **113J Objections**

- (1) A person has no right to make an objection to information being made available or publicly known under section 113H except on the grounds that to do so would disclose a trade secret or would disclose other information the disclosure of which would, or could reasonably be expected to, adversely affect the person in respect of his or her lawful business, commercial or financial affairs.
- (2) A notice of objection must set out the reasons for making the objection.

#### **113K Consideration of objections**

- (1) The Minister must consider any objection received and must determine it by allowing the objection wholly or in part or by rejecting it.
- (2) The Minister is to notify the objector in writing of the decision.
- (3) The Minister cannot make available or make publicly known any information under section 113H while an objection is undetermined.

### **Division 4 Use and disclosure of information**

#### **113L Documents or information provided under conditions requiring reporting**

- (1) Any document or information provided under a condition of a petroleum title referred to in clause 6 (2) (g) of Schedule 1B may be taken into consideration by the Secretary or the Minister and used for the purposes of this Act, including for the purposes of the prosecution of offences under this Act or the regulations.
- (2) The Secretary is authorised, despite any other Act or law, to provide a relevant agency with any such document or information.
- (3) Any such document or information is required to be provided by the holder of a petroleum title, whether or not the document or information might incriminate the holder.
- (4) However, information provided by a natural person in compliance with a condition of a petroleum title referred to in clause 6 (2) (g) of Schedule 1B is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence for providing false and misleading information) if the person, when providing the information, objected to the provision of the information on the grounds that it might incriminate him or her.

- (5) In this section:  
**relevant agency** means:
- (a) the Department, or
  - (b) a public authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979* or such other legislation, if any, as may be prescribed by the regulations.

**113M Disclosure of information**

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
  - (b) in accordance with Division 2 or 3, or
  - (c) in connection with the administration or execution of this Act, or
  - (d) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (e) with the concurrence of the Minister, or
  - (f) in accordance with a requirement imposed under the *Government Information (Public Access) Act 2009*, or
  - (g) by an inspector or a member of staff of the Department who exercises functions under this Act or the *Mining Act 1992* to an officer or authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979*, work health and safety legislation (within the meaning of the *Mining Act 1992*) or any other legislation prescribed by the regulations, or
  - (h) in accordance with the regulations.
- Maximum penalty: 100 penalty units.
- (2) A reference in this section to information obtained in connection with the administration or execution of this Act includes a reference to a return or other information relating to royalty under this Act that is obtained by the Minister, or a delegate of the Minister, from a tax officer (within the meaning of the *Taxation Administration Act 1996*).

**113N Exchange of information**

- (1) The regulator may enter into an arrangement (***an information sharing arrangement***) with a relevant agency for the purposes of sharing or exchanging any information that is held by the regulator or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists the regulator or relevant agency:
- (a) to determine applications made under the resources legislation or legislation made under the corresponding law of another jurisdiction, or
  - (b) to determine whether to cancel, revoke, suspend or vary a petroleum title, activity approval or other approval, or an exemption or declaration, that is granted, made or given under that legislation, or
  - (c) to facilitate the carrying out of inspections, probity checks or other enforcement action under that legislation.

- (3) Under an information sharing arrangement, the regulator and the relevant agency are, despite any other Act or law of the State, authorised:
- (a) to request and receive information that is held by the other party to the arrangement, and
  - (b) to disclose that information to the other party.
- (4) In this section:
- regulator** means the Minister or the Secretary.
- relevant agency** means any of the following:
- (a) a government agency or holder of a statutory office with any functions similar to or related to those imposed on the regulator by or under the resources legislation,
  - (b) any government agency of the Commonwealth or another State or Territory with functions similar to or related to those imposed on the regulator under any of the resources legislation,
  - (c) any other person or body, or person or body of a class, prescribed by the regulations.

## **Part 13A Offences, enforcement and undertakings about contraventions**

### **Division 1 Offences**

#### **125B Obstruction**

A person must not, without reasonable excuse, obstruct, hinder or resist any of the following persons in the exercise of a function under this Act:

- (a) an inspector,
- (b) an authorised person within the meaning of section 78D,
- (b) a member of staff of the Department, or Public Service employee, who exercises functions under this Act or the *Mining Act 1992*,
- (c) any other person who exercises any judicial or official functions under this Act or the *Mining Act 1992*.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of an individual—2,000 penalty units.

#### **125C Obstruction of holder of petroleum title**

A person must not, without reasonable excuse, obstruct or hinder the holder of a petroleum title from doing any act that the holder is authorised by this Act to do.

Maximum penalty: 100 penalty units.

#### **125D Providing false or misleading information**

A person must not provide any information, record or return in purported compliance with any requirement by or under this Act:

- (a) knowing that the information, record or return is false or misleading in a material particular, or

- (b) being reckless as to whether the information, record or return is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
- (b) in the case of a natural person—500 penalty units.

**125E Contravention of condition of petroleum title—offence by holder**

- (1) If a condition of a petroleum title is contravened by any person, each holder of the petroleum title is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 125H.

- (2) In imposing a penalty under this section, the court is to take into consideration the following (so far as they are relevant):
  - (a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence,
  - (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
  - (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,
  - (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
  - (e) any other matters the court considers relevant.

**125F Defences**

- (1) It is a defence to a prosecution of the holder of a petroleum title for an offence against section 125E if the holder establishes that:
  - (a) the contravention of the condition was by, or caused by, another person, and
  - (b) the other person was not associated with the holder at the time the condition was contravened, and
  - (c) the holder took all reasonable steps to prevent the contravention of the condition.
- (2) A person is associated with the holder for the purposes of subsection (1) (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or subcontractor of the holder.
- (3) It is a defence to a prosecution for an offence against section 125E if the defendant satisfies the court that the act or omission constituting the contravention was reasonably necessary in order for the defendant to comply with:
  - (a) an order or direction (of which the Secretary was given notice before the acts or omissions occurred) issued under the mine safety legislation, the *Environmental Planning and Assessment Act 1979* or the *Protection of the Environment Operations Act 1997*, or

- (b) a condition of a petroleum title, or
- (c) a direction under this Act.

(4) In this section:

***mine safety legislation*** means the *Work Health and Safety Act 2011* and any other legislation that is prescribed by the regulations.

**125G Aiding and abetting commission of offence**

A person who:

- (a) causes or permits the commission of an offence against this Act or the regulations, or
  - (b) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or
  - (c) attempts to commit an offence against this Act or the regulations, or
  - (d) conspires to commit an offence against this Act or the regulations,
- is guilty of that offence and liable to the penalty prescribed by this Act or the regulations in relation to that offence.

**125H Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an ***executive liability offence*** is an offence against section 7, 78A or 125E that is committed by a corporation.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive

liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section:

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**125I Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 125H.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or

- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

#### **125J Continuing offences**

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission:
  - (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of the amount specified for that offence, and
  - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of the amount specified for that offence.
- (2) An obligation to do something is to be regarded as continuing until the act is done despite the fact that a period within which, or time before which, the act is required to be done has expired or passed.
- (3) An omission is to be regarded as continuing for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.
- (4) However, this section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.

### **Division 2 Proceedings for offences**

#### **125L Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are, except as provided by this section, to be dealt with summarily by:
  - (a) the Land and Environment Court, or
  - (b) the Local Court.

- (2) If proceedings for an offence against this Act or the regulations are brought in the Local Court:
  - (a) the maximum period of imprisonment that the Court may impose is 12 months, and
  - (b) the maximum monetary penalty that the Court may impose is 2,000 penalty units.
- (3) Proceedings against an individual for an offence of mining in contravention of section 7 or 91 may be taken on indictment.

**125M Time within which summary proceedings may be commenced**

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
  - (a) in the case of an offence under section 7, 78A, 83F, 91, 104O, 125B or 125E—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
  - (b) in any other case—within but not later than 12 months after that date.
- (2) Proceedings for an offence under this Act or the regulations may also be commenced:
  - (a) in the case of an offence under section 7, 78A, 83F, 91, 104O, 125B or 125E—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of an inspector, or
  - (b) in any other case—within but not later than 12 months after that date.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of an inspector and need not contain particulars of the date on which the offence was committed.
- (4) The date on which evidence first came to the attention of an inspector is the date specified in the court attendance notice or application, unless the contrary is established.
- (5) This section applies only to proceedings that are to be dealt with summarily.
- (6) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (7) In this section:  
**evidence** of an offence means evidence of any act or omission constituting the offence.

**125N Penalty notices for offences**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.

- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (10) In this section, **authorised officer** means a member of staff of the Department who exercises functions under this Act or the *Mining Act 1992* authorised in writing by the Department as an authorised officer for the purposes of this section.

### **Division 3      Restraining orders**

#### **125O    Application of Division**

- (1) This Division applies where:
  - (a) proceedings have been commenced against a person for an offence against this Act or the regulations and, as a result of those proceedings, the person may be required to pay an amount referred to in section 125ZD, or
  - (b) proceedings have been commenced against a person under section 125ZD.
- (2) In this Division:  
**the defendant** means the person referred to in subsection (1) (a) or (b).

#### **125P    Nature of restraining order**

A restraining order is an order of a court directing that any property of the defendant is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order.

#### **125Q    Application for restraining order**

- (1) A person bringing proceedings (as referred to in section 125O) may apply for a restraining order in relation to property of the defendant.

- (2) An application under this section may be made to the Land and Environment Court.
- (3) On an application under this section:
  - (a) the court may, if it thinks fit, require the person making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and
  - (b) a person to whom the court requires notice be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

**125R Making of restraining order**

On an application under section 125Q, the court may make a restraining order in relation to the defendant's property if it is satisfied (on the information contained in or accompanying the application) that:

- (a) the defendant has committed the relevant offence, and
- (b) amounts are or are likely to be payable under section 125ZD or 125ZE, and
- (c) it is appropriate to make an order under this section in the circumstances of the case.

**125S Undertakings**

The court may refuse to make a restraining order if the person making the application refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making or operation of the order.

**125T Ancillary orders**

- (1) A court that makes a restraining order may make any ancillary orders that the court considers appropriate.
- (2) Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following:
  - (a) an order for the examination on oath of:
    - (i) the defendant, or
    - (ii) another person,before the court, or an officer of the court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,
  - (b) an order varying the restraining order in respect of the property to which it relates,
  - (c) an order varying any conditions to which the restraining order was subject.
- (3) An ancillary order may be made on application:
  - (a) by the applicant for the restraining order, or
  - (b) by the defendant, or
  - (c) with the leave of the court, by any other person.
- (4) Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.

**125U Charge on property subject to restraining orders**

- (1) If:
  - (a) a court has made a restraining order in respect of particular property or all of the property of the defendant, and
  - (b) the court orders the payment of an amount referred to in section 125ZD or 125ZE,  
there is created by force of this section, on the making of the order referred to in paragraph (b), a charge on all the property to which the restraining order applies to secure the payment to a public authority or person (which extends, for the purposes of this Division, to the Crown) of the amount referred to in section 125ZD or 125ZE.
- (2) Such a charge ceases to have effect in respect of the property:
  - (a) on payment by the defendant to the public authority or person of the amount concerned, or
  - (b) on the sale or other disposition of the property with the consent of the court, or
  - (c) on the sale of the property to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,  
whichever occurs first.
- (3) Such a charge is subject to every charge or encumbrance to which the property was subject immediately before the order referred to in subsection (1) (b) was made and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.
- (4) Such a charge is not affected by any change of ownership of the property, except as provided by subsection (2).
- (5) If:
  - (a) such a charge is created on property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, and
  - (b) the charge is so registered,  
a person who purchases or otherwise acquires the property after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.
- (6) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

**125V Registration of restraining orders**

- (1) If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept under those provisions.
- (2) If the particulars of a restraining order are so recorded, a person who afterwards deals with the property is, for the purposes of section 125U (2), taken to have notice of the charge created by this Act on the making of the order.

- (3) If a restraining order applies to land under the provisions of the *Real Property Act 1900*, a caveat may be lodged under that Act in relation to the order.

**125W Recovery of costs of registering charge on land**

- (1) A person or public authority who registers a charge on land to which a restraining order applies under section 125U may, by written notice, require the defendant to pay all or any of the reasonable costs and expenses incurred by the person or authority in respect of the lodgment and registration of the charge (including the costs of discharging the charge).
- (2) The person or public authority may recover from the defendant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

**125X Recovery of costs of lodging caveat**

- (1) A person or public authority who lodges a caveat in respect of land to which a restraining order applies under section 125V may, by written notice, require the defendant to pay all or any of the reasonable costs and expenses incurred by the person or authority in respect of the lodgment and registration of the caveat (including the costs of withdrawal of the caveat).
- (2) The person or public authority may recover from the defendant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

**125Y Contravention of restraining orders**

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence.  
Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 12 months, or both.
- (2) If:
- (a) a restraining order is made against property, and
  - (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and
  - (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,
- the person who applied for the restraining order may apply to the court that made the restraining order for an order that the disposition or dealing with the property be set aside.
- (3) If an application is made under subsection (2), the court may make an order:
- (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
  - (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

**125Z Court may revoke restraining order**

- (1) The court that made a restraining order may revoke the order, on application made to it by the person in relation to whose property it was made.

- (2) The court may refuse to revoke the order if the person does not:
  - (a) give security satisfactory to the court for the payment of any amount referred to in section 125ZD or 125ZE that may be imposed on or ordered to be paid by the person under this Act in respect of the person's conviction for the offence, or
  - (b) give undertakings satisfactory to the court concerning the person's property.
- (3) Subsection (2) does not limit the discretion of the court to revoke or refuse to revoke a restraining order.

**125ZA Time when restraining order ceases to be in force**

If, after a restraining order was made in reliance on the charging of a person with an offence against this Act or the regulations:

- (a) the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal—the restraining order ceases to be in force when the charge is withdrawn, or
- (b) the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal—the restraining order ceases to be in force when the acquittal occurs.

**Division 4 Court orders in connection with offences**

**125ZB Operation of Division**

- (1) This Division applies where a court finds an offence against this Act or the regulations proved.
- (2) Without limiting the generality of subsection (1), a court finds an offence proved if:
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).
- (3) In this Division:  
*the court* means the court that finds the offence proved.  
*the offender* means the person who is found to have committed the offence.

**125ZC Orders generally**

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

**125ZD Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that:
  - (a) the Crown or a public authority has incurred costs and expenses in connection with:

- (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) the Crown or another person or a public authority has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,  
order the offender to pay to the Crown, public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) However, a court is not to make an order for payment to a person under subsection (1) to the extent that the payment would represent the value of petroleum owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in connection with the offence.
  - (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
  - (4) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
  - (5) The Local Court is not to make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.

**125ZE Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
  - (a) the Crown or a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including the Crown and a public authority) has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,  
the Crown, public authority or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt in a court of competent jurisdiction.
- (3) However, a person may not recover an amount that would represent the value of petroleum owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in connection with the offence.

**125ZF Orders regarding costs and expenses of investigation**

- (1) The court may, if it appears to the court that the Crown or a public authority has reasonably incurred costs and expenses during the investigation of the

- offence, order the offender to pay to the Crown or the authority the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
  - (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
  - (4) In this section:  
**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses:
    - (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
    - (b) of transporting, storing or disposing of evidence, during the investigation of the offence.

#### **125ZG Orders regarding other monetary benefits**

- (1) The court may order the offender to pay, as an additional penalty for committing the offence, an amount that the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) However, in calculating the amount of these monetary benefits, the court is to exclude any monetary benefits acquired in connection with the fossicking or prospecting for, or the mining of, privately owned petroleum.
- (3) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (4) In this section:  
**monetary benefits** means monetary, financial or economic benefits.  
**the court** does not include the Local Court.

#### **125ZH Additional orders**

- (1) The court may do any one or more of the following:
  - (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,
  - (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
  - (c) order the offender to carry out a specified project for the rehabilitation of the area comprised in a current or former petroleum title,
  - (d) order the offender to carry out an audit of activities carried on by the offender,
  - (e) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,

- (f) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (g) order the offender to pay any royalty that is due and payable by the offender under this Act,
- (h) if the Secretary is a party to proceedings, order the offender to provide to the Secretary and maintain a security deposit, in a form and amount, and on such terms (if any), specified by the court, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment.

However, the Local Court is not authorised to make an order referred to in paragraph (c), (d), (e) or (h).

- (2) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) If the offender contravenes an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:
  - (a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender, and
  - (b) the contravention of the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.
- (5) Section 106I applies with respect to a security deposit provided under an order referred to in subsection (1) (i) as if it were provided under a security deposit condition.

## **Division 5 Court orders in connection with suspected contraventions**

### **125ZI Order for recovery of costs related to prospecting or mining without authority**

- (1) The Land and Environment Court or a Local Court may make an order under this section if the court is satisfied, on the balance of probabilities, that a person has prospected for or mined for petroleum otherwise than in accordance with a petroleum title.
- (2) The court may order a person to pay to a government agency or person costs and expenses incurred, or compensation for loss or damage suffered, as the case may be, in such amount as is fixed by the order, if it appears to the court that:
  - (a) a government agency has incurred costs and expenses in connection with:
    - (i) the prevention, control, mitigation or management of any environmental impact caused by the prospecting or mining, or
    - (ii) rehabilitating land or water damaged or affected by the prospecting or mining, or
  - (b) a person (including a government agency) has, by reason of the prospecting or mining, suffered loss of or damage to property or has incurred costs and expenses in preventing, controlling, mitigating or managing any such loss or damage, or attempting to do so.

- (3) However, the court is not to make an order for payment to a person under the section to the extent that the payment would represent the value of petroleum owned by that person that the person who carried out the suspected unlawful prospecting or mining had obtained by prospecting or mining carried out with the consent of that person and in connection with the suspected contravention.
- (4) An order made by the Local Court under this section is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (5) An order made by the Land and Environment Court under this section is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (6) The Local Court may not make an order under this section for the payment of an amount that exceeds the jurisdictional limit of the Local Court under the *Civil Procedure Act 2005*.
- (7) The court may make an order under this section whether or not the person against whom the order is made:
  - (a) has been convicted of an offence under this Act in relation to the prospecting or mining, or
  - (b) has been issued with a penalty notice under this Act in relation to the prospecting or mining, and whether or not the amount of penalty prescribed for the offence has been paid under any such penalty notice, or
  - (c) has had any other action taken against the person in respect of an offence under this Act in relation to the prospecting or mining.
- (8) This section does not prevent the taking of proceedings for an offence of prospecting or mining for petroleum except in accordance with a petroleum title.

## **Division 6 Enforceable undertakings**

### **125ZJ Secretary may accept enforceable undertakings**

- (1) The Secretary may accept a written undertaking (an *enforceable undertaking*) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
- (2) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.
- (3) The Secretary must issue, and make public general guidelines for or in relation to the acceptance of enforceable undertakings under this Act.

### **125ZK Notice of decision and reasons for decision**

- (1) The Secretary must give the person seeking to make an enforceable undertaking written notice of the Secretary's decision to accept or reject the enforceable undertaking and of the reasons for the decision.
- (2) The Secretary must publish, and make public, notice of a decision to accept an enforceable undertaking and the reasons for that decision.

**125ZL When an enforceable undertaking is enforceable**

An enforceable undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the Secretary.

**125ZM Compliance with enforceable undertaking**

A person must not contravene an enforceable undertaking made by that person that is in effect.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**125ZN Contravention of enforceable undertaking**

- (1) The Secretary may apply to the District Court for an order if a person contravenes an enforceable undertaking.
- (2) If the Court is satisfied that the person who made the enforceable undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make one or both of the following orders:
  - (a) an order directing the person to comply with the undertaking,
  - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State:
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Secretary in monitoring compliance with the enforceable undertaking in the future.

**Note.** Section 125ZP specifies circumstances affecting proceedings for a contravention for which an enforceable undertaking has been given.

**125ZO Withdrawal or variation of enforceable undertaking**

- (1) A person who has made an enforceable undertaking may at any time, with the written agreement of the Secretary:
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The Secretary must publish, and make public, notice of the withdrawal or variation of an enforceable undertaking.

**125ZP Proceeding for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an enforceable undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an enforceable undertaking in relation to that contravention and has completely discharged the enforceable undertaking.

- (3) The Secretary may accept an enforceable undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (4) If the Secretary accepts an enforceable undertaking before the proceedings are finalised, the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.

## **Division 7 Evidentiary provisions**

### **125ZQ Certificate evidence of certain matters**

- (1) A document signed by the Secretary, or by an officer designated by the Secretary for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The following matters are specified for the purposes of subsection (1):
  - (a) that an instrument, a copy of which is set out in or annexed to the document, being an instrument purporting:
    - (i) to be issued, made or given for the purposes of this Act, and
    - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,  
was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, the holder of a specified petroleum title or a petroleum title of a specified kind,
  - (c) that specified land was or was not, at a specified time or during a specified period, the subject of a specified petroleum title or a petroleum title of a specified kind,
  - (d) that a petroleum title was or was not, at a specified time or during a specified period, subject to specified conditions,
  - (e) that a petroleum title was, at a specified time, cancelled or suspended for a specified period or was cancelled or suspended subject to specified conditions,
  - (f) that a condition was, at a specified time, revoked or varied in a specified manner or that a new condition was, at a specified time, imposed on a petroleum title or on the suspension of a petroleum title,
  - (g) that a person was or was not, at a specified time or during a specified period, an inspector,
  - (h) that a person was or was not, at a specified time or during a specified period, a member of staff of the Department or a council,
  - (i) that information required to be furnished pursuant to this Act or the regulations was or was not received,
  - (j) that a document is a copy of part of, or an extract from, a register kept under this Act,
  - (k) that a specified amount is payable under this Act or the regulations by a specified person and has not been paid,
  - (l) that petroleum of a specified value was recovered by a specified person or from specified land, at a specified time or during a specified period,

- (m) that a specified legal or equitable interest (being a legal or equitable interest of a kind referred to in section 97) was or was not registered under this Act,
  - (n) that the Crown or a public authority has incurred costs or expenses of a specified amount under section 78D,
  - (o) that the Crown or a public authority has incurred costs or expenses of a specified amount in connection with the investigation of a specified offence under this Act,
  - (p) that a specified function under this Act was delegated to a specified person under section 113B during a specified period.
- (3) For the purposes of the certification of a matter referred to in subsection (2) (h), the person who appointed the inspector or royalty officer concerned is taken to be an officer designated by the Secretary (as referred to in subsection (1)).
- (4) In the absence of information that would enable the accurate determination of an amount payable, as referred to in subsection (2) (k), or the value of petroleum, as referred to in subsection (2) (l), the following provisions have effect:
- (a) the amount or value certified may be an estimate of that amount or value (based on the information available to the person making the certification),
  - (b) the estimate is presumed to be accurate and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate determination, but can be challenged by the provision of information that enables a more accurate estimate to be made,
  - (c) if the estimate is successfully challenged and as a result a more accurate estimate is substituted, no proceedings are open to challenge merely because of the less accurate estimate and proceedings may continue to be heard and be determined on the basis of the substituted estimate.

## **Division 8      General**

### **125ZR    Continuing effect of notices and conditions**

- (1) A notice given, or a condition of a petroleum title imposed, under this Act or the regulations that specifies a time by which, or period within which, the notice or condition must be complied with continues to have effect until the notice or condition is complied with even though the time has passed or the period has expired.
- (2) A notice that does not specify a time by which, or period within which, the notice must be complied with continues to have effect until the notice is complied with.
- (3) This section does not apply to the extent that any requirement under a notice or a condition of a petroleum title is revoked.
- (4) Nothing in this section affects the powers of a regulatory authority with respect to the enforcement of a notice or a condition of a petroleum title.

### **[45]    Sections 126, 126A and 127**

Omit the sections.

**[46] Sections 129A and 129B**

Insert before section 130:

**129A Extraterritorial application**

A notice may be given under this Act to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter relates to the administration of this Act (including, but not limited to investigation of, or enforcement action relating to, offences against this Act).

**129B Waiver of minor procedural matters**

- (1) The Minister may waive any requirement of this Act or the regulations:
  - (a) as to the time within which anything is required to be done (but not the time for lodging any application for renewal of a petroleum title after the date of expiry), or
  - (b) as to the details to be contained in any notice to be served, lodged or caused to be published by the applicant, or
  - (c) as to the documents or particulars to accompany the application, or
  - (d) as to the furnishing of information by the applicant.
- (2) This section does not authorise the Minister to waive a requirement unless the Minister is satisfied that the waiver is unlikely:
  - (a) to adversely affect any person's rights under this Act or the regulations, or
  - (b) to result in any person being deprived of information necessary for the effective exercise of those rights.

**[47] Sections 131–133, 135, 136, 136A, 137 and 137A**

Omit the sections.

**[48] Section 138 Regulations**

Omit section 138 (2). Insert instead:

- (2) The regulations may adopt or provide for the adoption of any document (including, for example, a code of practice or set of standards published by any person or body) and for the application of the provisions of that document, as in force for the time being, for any of the purposes of this Act or the regulations.

**[49] Sections 138B References to certain officers in petroleum titles**

Omit "section 126" from section 138B (2). Insert instead "section 113B (1)".

**[50] Schedule 1B**

Insert in appropriate order:

## **Schedule 1B Further provisions relating to petroleum titles generally**

### **Part 1 Preliminary**

#### **1 Application of Schedule**

This Schedule applies to and in respect of the following:

- (a) applications for, and decisions made by the Minister, in relation to the grant, renewal or transfer of a petroleum title,
- (b) the imposition of conditions on, or variation or suspension of conditions of, a petroleum title,
- (c) the variation of a petroleum title.

### **Part 2 Considering applications**

#### **2 Protection of the environment must be taken into account in considering applications**

- (1) The Minister must take into account the need to conserve and protect the environment in or on the land over which the petroleum title is sought (or, in the case of a variation, to which it applies) in considering an application to which this Schedule applies.
- (2) The Minister may cause such studies (including environmental impact studies) to be carried out as the Minister considers necessary to assist in making a decision on the application.
- (3) If public money is spent under subclause (2) in having studies carried out or engaging persons to provide advice, the Minister may, by written notice, require the applicant concerned to reimburse the Government, within the time specified in the notice, for the money, or any part of the money, reasonably incurred.
- (4) The Minister may recover from the applicant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

#### **3 Other matters that may be taken into account in considering applications**

Without limiting the generality of any other provision of this Act, the Minister may take into account any one or more of the following when considering an application to which this Schedule applies:

- (a) whether, in the opinion of the Minister, the applicant meets the minimum standards, made public by the Minister, required to be met with respect to the technical and financial capability to carry out the proposed work program,
- (b) if the application relates to a transfer—whether, in the opinion of the Minister, the transferee meets the minimum standards, made public by the Minister, required to be met with respect to the technical and financial capability to carry out the proposed work program,
- (c) if the applicant is a natural person—the compliance history of the applicant,

- (d) if the applicant is a body corporate—the compliance history of any director of the body corporate or of any related body corporate,
- (e) if the application relates to a transfer and the proposed transferee is a natural person—the compliance history of the proposed transferee,
- (f) if the application relates to a transfer and the proposed transferee is a body corporate—the compliance history of any director of that body corporate,
- (g) whether, in the opinion of the Minister, the work program proposed to be carried out by the applicant meets the minimum standards, made public by the Minister, required to be met with respect to work programs for a petroleum title of the kind concerned.

#### **4 Minister may require further information**

- (1) The Minister may require a person who makes an application to which this Schedule applies to furnish further information in connection with the application, including (if the applicant is a body corporate) information as to the extent to which the controlling power in the body corporate's affairs is held by:
  - (a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or
  - (c) a natural person who is a resident of a foreign country.
- (2) The application may be refused if the applicant does not furnish that further information within the period specified by the Minister by written notice when the request for further information is made.

#### **5 Grounds for refusal of applications**

Without limiting the generality of any other provision of this Act, the Minister may refuse an application to which this Schedule applies on any one or more of the following grounds:

- (a) the Minister considers that the applicant (or if the application relates to a transfer, the transferee) has an unsatisfactory compliance history,
- (b) the Minister considers that the applicant (or if the application relates to a transfer, the transferee) does not meet the applicable minimum standards with respect to work programs and the technical and financial capability to carry out the proposed work program,
- (c) the applicant has not paid any fee payable in connection with the application,
- (d) the applicant has failed to lodge any information required to accompany the application within 10 business days after the application is lodged.

### **Part 3 Conditions of petroleum titles**

#### **6 Conditions of petroleum titles**

- (1) A petroleum title is subject to:
  - (a) any condition imposed by the Minister under this Schedule (including any variation of such a condition), and
  - (b) any condition imposed by or under section 45C (2), 83D or 106B, and

- (c) any condition prescribed by the regulations.
- (2) Without limiting the generality of subclause (1), conditions imposed by the Minister or prescribed by the regulations may include conditions relating to the following:
  - (a) the development and conduct of petroleum operations,
  - (b) environmental management, protection and rehabilitation, including requiring the holder of the title:
    - (i) to carry out activities or not to carry out activities in order to protect, prevent, control or mitigate harm to the environment, and
    - (ii) to rehabilitate land or water that is or may be affected by activities under the petroleum title,
  - (c) compliance with codes of practice or sets of standards published by any person or body,
  - (d) ensuring the safety of the public in relation to prospecting and mining operations,
  - (e) the administration of petroleum titles,
  - (f) community relations,
  - (g) requiring the holder to provide the Minister with reports detailing any non-compliance with the conditions of the petroleum title, or any requirements of this Act or the regulations relating to activities under the petroleum title, and any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects of that non-compliance.
- (3) Any obligation imposed on the holder of a petroleum title in relation to environmental management, protection and rehabilitation:
  - (a) continues to have effect despite the cancellation of the petroleum title or it ceasing to have effect, and
  - (b) can be imposed despite anything to the contrary in section 93 of the *Environmental Planning and Assessment Act 1979*.
- (4) Unless an exemption from conditions imposed by the regulations applies, in the event of an inconsistency between conditions imposed by the Minister and those imposed by the regulations, the conditions imposed by the regulations prevail to the extent of any inconsistency.

## **7 Conditions imposed on petroleum titles by Minister**

- (1) The Minister may impose conditions on a petroleum title:
  - (a) at the time of the grant of the petroleum title, or
  - (b) at any later time, as permitted by this Schedule.
- (2) A condition imposed by the Minister takes effect as follows:
  - (a) if the condition is imposed on the grant of a petroleum title—when the grant takes effect,
  - (b) if the condition is imposed on the renewal of a petroleum title—when the renewal takes effect,
  - (c) if the condition is imposed when a full or partial transfer of a petroleum title is approved under this Act—when the transfer is registered under this Act,
  - (d) if the condition is a variation under clause 9—as provided by clause 9 (7),

- (e) in any other case—when written notice of the imposition of the condition is served on the holder of the petroleum title or at a later time specified in the notice.

#### **8 Exemption from conditions imposed by regulations**

- (1) The Minister may, by order published in the Gazette, exempt the holder of a petroleum title from compliance with a condition imposed by the regulations.
- (2) An exemption may be granted subject to conditions.
- (3) An exemption may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors, and
  - (b) apply differently according to different factors of a specified kind, and
  - (c) be granted for a specified period or for an indefinite period, and
  - (d) if granted for a specified period—be granted before, during or after that period.
- (4) The Minister may vary or revoke an exemption (including by imposing, varying or revoking a condition of the exemption) at any time by notice in writing to the holder of the petroleum title.
- (5) The regulations may make provision for or with respect to exemptions.

### **Part 4 Variation of petroleum titles and variation or suspension of their conditions**

#### **9 Variation of petroleum titles by Minister**

- (1) The Minister may vary a petroleum title (including the conditions of a petroleum title).
- (2) A variation of a petroleum title may include:
  - (a) the attaching of a condition to a petroleum title (whether or not any conditions have already been attached), or
  - (b) the substitution of a condition, or
  - (c) the omission of a condition, or
  - (d) the amendment of a condition, or
  - (e) the variation of the instrument by which a petroleum title is granted, including so as to:
    - (i) update the instrument, or
    - (ii) correct a minor error or misdescription, or
    - (iii) consolidate variations made to the petroleum title.
- (3) A petroleum title may be varied on application by the holder of the petroleum title or on the initiative of the Minister.
- (4) Except in the case of the renewal or transfer of a petroleum title, the Minister is not to vary a prescribed condition subsequent to the grant of the petroleum title unless the Minister:
  - (a) has given the holder of the petroleum title notice of the draft variation, and
  - (b) has invited the making of submissions to the Minister about the proposed variation and specified a deadline for the making of those

- submissions that is at least 28 days after the publication of the notice,  
and
- (c) has either received such submissions and has taken them into consideration or has not received any such submission after the deadline has elapsed.
- (5) A petroleum title may be varied at any time during its currency, including on its being transferred to another person.
  - (6) A petroleum title is varied by notice in writing given to the holder of the petroleum title.
  - (7) The variation of a condition by the Minister takes effect as follows:
    - (a) if the condition is varied on the renewal of a petroleum title—when the renewal takes effect,
    - (b) if the condition is varied when a full or partial transfer of a petroleum title is approved under this Act—when the transfer is registered under this Act,
    - (c) if a prescribed condition is varied other than at the renewal of a petroleum title or when a full or partial transfer of a petroleum title is approved under this Act—28 days after written notice of the variation of the condition is served on the holder of the petroleum title or at a later time specified in the notice,
    - (d) in any other case—when written notice of the variation of the condition is served on the holder of the petroleum title or at a later time specified in the notice.
  - (8) This clause does not apply to a condition that is prescribed by the regulations.
  - (9) In this clause:  
***prescribed condition*** means a condition that is not:
    - (a) imposed on the application of the holder of the petroleum title, or
    - (b) imposed under section 83D or 106B.

#### **10 Variation of conditions imposed by the regulations**

- (1) Before a regulation is made that varies any condition of a petroleum title imposed by the regulations, the Minister is required to ensure that:
  - (a) a notice is published in a daily newspaper circulating throughout New South Wales:
    - (i) stating the objects of the proposed regulation, and
    - (ii) advising where a copy of the regulation may be obtained or inspected, and
    - (iii) inviting comments and submissions within a specified time, but not less than 28 days from publication of the notice, and
  - (b) all the comments and submissions received within the time specified in the notice are considered.
- (2) For the purposes of this clause, a regulation varies a condition of a petroleum title if the regulation:
  - (a) imposes a new condition (whether or not any conditions have already been imposed), or
  - (b) substitutes a condition imposed by the regulations, or
  - (c) omits a condition imposed by the regulations, or

(d) amends a condition imposed by the regulations.

#### **11 Suspension of conditions of petroleum titles**

- (1) The Minister may (whether on the application of the holder of the petroleum title or on the initiative of the Minister) suspend any of the conditions of a petroleum title for such period, or until the happening of such event, as the Minister may determine.
- (2) The suspension of conditions of a petroleum title may be granted unconditionally or subject to such conditions as the Minister may consider appropriate.
- (3) The suspension of the conditions of a petroleum title takes effect on the date on which written notice of the suspension is served on the holder of the petroleum title or on such later date as may be specified in the notice.
- (4) An application for suspension of the conditions of a petroleum title may be withdrawn by means of a notice of withdrawal signed by the applicant and lodged with the Minister.
- (5) The application ceases to have effect when the notice is lodged.
- (6) The withdrawal of an application under this clause is irrevocable.
- (7) The Minister may vary the suspension of the conditions of a petroleum title (including the conditions to which the suspension is subject).
- (8) A variation includes the attaching of a condition to the suspension, the substitution of a condition, the omission of a condition or the amendment of a condition.
- (9) A suspension of the conditions of a petroleum title is varied by notice in writing given to the holder of the petroleum title.
- (10) The suspension of any condition of a petroleum title under this clause does not prevent any action being taken under this Act in respect of the petroleum title (including variation under clause 9).
- (11) This clause does not apply to a condition that is prescribed by the regulations.

#### **[51] Schedule 1 Savings and transitional provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

### **Part Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015**

#### **Definition**

In this Part:

*2015 amending Act* means the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*.

#### **Pending applications**

An application for a petroleum title, or transfer or renewal of a petroleum title, made but not decided before the commencement of this clause and that complied with this Act, as in force before the Act's amendment by the 2015 amending Act, is taken to have been duly made under this Act, as amended.

#### **Existing notifications of areas over which petroleum title may not be granted**

A notification under section 9 (1) (a) that was in force immediately before the amendment of section 9 (1) by the 2015 amending Act is taken to have been made under section 9 (1) as amended by the 2015 amending Act.

#### **Work programs accompanying existing applications**

A work program that accompanied an application for a petroleum title before the replacement of section 14 by the 2015 amending Act, and that complied with section 14 (and the regulations) as in force immediately before the substitution of the section, is taken to comply with section 14 as substituted.

#### **Existing conditions**

Subject to this Part, a condition of a petroleum title, in force under section 23 immediately before the repeal of that section by the 2015 amending Act, continues to have effect and is taken to be a condition imposed under Schedule 1B.

#### **Existing suspension of condition of petroleum title**

A condition of a petroleum title that was, immediately before the repeal of section 24 by the 2015 amending Act, suspended, is taken to have been suspended under clause 11 of Schedule 1B, on the date of the original suspension.

#### **Existing “activity approval” conditions in exploration licences**

- (1) Any condition to which an exploration licence was subject immediately before the commencement of section 31A, as inserted by the 2015 amending Act, that requires approval to carry out operations and that is identified in the licence using one of the following phrases is void:
  - (a) Category 1 prospecting operations,
  - (b) Category 2 prospecting operations,
  - (c) assessable prospecting operations.
- (2) However, an approval granted pursuant to a condition referred to in subclause (1) that was in force immediately before the commencement of this clause is taken to be an activity approval granted under section 31A and can be varied or voluntarily cancelled accordingly.
- (3) An application for approval to carry out prospecting operations made in compliance with a condition imposed on an assessment lease, being an application that had not been dealt with before the commencement of section 36A, as inserted by the 2015 amending Act, is to be dealt with in accordance with section 36A, as if it had been made under that section.
- (4) For the avoidance of doubt, compliance with section 31A or 36A is required in respect of any assessable prospecting operation carried out after the commencement of the section, even if it began before the commencement of the section.

#### **Existing directions to rehabilitate land**

A direction given under section 77, as in force before its substitution by the 2015 amending Act, and having effect immediately before that substitution, continues in force after that amendment as if section 77 had not been substituted.

#### **Existing inspectors**

- (1) A person who, on the repeal of section 113 by the 2015 amending Act, was constituted as an inspector by that section is, on that repeal, taken to be an inspector appointed under section 361 of the *Mining Act 1992* until whichever of the following first occurs:
  - (a) the person is appointed as an inspector under section 361 of the *Mining Act 1992*,
  - (b) the Secretary revokes the person's appointment under subclause (2),
  - (c) a day occurs that is one year after the day on which this clause commences.
- (2) The Secretary may revoke the appointment of a person who is taken to be appointed as an inspector under this clause or may subject the appointment to conditions, limitations or restrictions.

#### **Existing notices of cause of danger**

A notice that had effect under section 129 immediately before the commencement of the 2015 amending Act, and was issued by a person who, on the repeal of section 113 by the 2015 amending Act, was constituted as an inspector by that section, is taken to have been issued under this Act, as amended, and can be amended and revoked.

#### **Environmental information**

Sections 113M and 113N, as inserted by the 2015 amending Act, do not apply to information about harm caused, or likely to be caused, to the environment obtained by the Secretary before the commencement of those sections.

#### **Existing notices and conditions**

Section 125D, as inserted by the 2015 amending Act, extends to information given after the commencement of that section in compliance with a notice given or condition imposed under this Act before the commencement of that section if the time by which, or period within which, the notice or condition must have been complied with had not expired immediately before that commencement.

#### **Time for commencement of proceedings**

Section 125M, as inserted by the 2015 amending Act, does not extend to offences committed before the commencement of that section for which proceedings had not been commenced when the section commenced.

## **Schedule 3 Consequential amendment of other Acts**

### **3.1 Dams Safety Act 2015 No 26**

#### **Schedule 3 Amendment of other legislation**

Omit Schedule 3.7.

### **3.2 Environmental Planning and Assessment Act 1979 No 203**

#### **Section 91 What is “integrated development”?**

Omit “s 9” from the matter relating to the *Petroleum (Onshore) Act 1991* in the table to section 91 (1).

Insert instead “s 16”.

### **3.3 Fines Act 1996 No 99**

#### **Schedule 1 Statutory provisions under which penalty notices issued**

Omit “*Petroleum (Onshore) Act 1991*, section 137A”.

Insert instead “*Petroleum (Onshore) Act 1991*, section 125N”.

### **3.4 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

#### **Schedule 2 Search warrants under other Acts**

Omit “*Petroleum (Onshore) Act 1991*, section 104”.

Insert instead “*Petroleum (Onshore) Act 1991*, section 104A”.

### **3.5 Offshore Minerals Act 1999 No 42**

#### **Section 108**

Omit the section. Insert instead:

#### **108 Decision on an application for renewal**

After considering an application for the renewal of an exploration licence, the Minister may:

- (a) provisionally renew the licence, or
- (b) refuse to renew the licence.

**Note 1.** Under section 89, the renewal of the licence cannot be effective before it is registered (see section 334 for registration). The renewal will not be registered until it has been properly accepted (see section 114 for **proper acceptance**).

**Note 2.** Under section 118, new conditions may be imposed on renewal.

### **3.6 Protection of the Environment Operations Act 1997 No 156**

#### **Schedule 2A Enforcement of gas and other petroleum legislation (as inserted by Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Act 2015)**

Omit “section 7, 77, or 136A of the *Petroleum (Onshore) Act 1991*” from paragraph (a) of the definition of *petroleum offence* in clause 1.

Insert instead “section 7, 78A or 125E of the *Petroleum (Onshore) Act 1991*”.