

# Petroleum (Onshore) Act 1991 No 84

[1991-84]



New South Wales

## Status Information

### Currency of version

Historical version for 9 June 2010 to 8 July 2010 (accessed 20 March 2025 at 17:03)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Mining Amendment Act 2008 No 19](#), Sch 2.8 [2] (not commenced)
  - [Personal Property Securities Legislation Amendment Act 2010 No 57](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act 2010 No 59](#) (not commenced — to commence on 9.7.2010)

### Authorisation

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File last modified 28 June 2010

# Petroleum (Onshore) Act 1991 No 84



New South Wales

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# Petroleum (Onshore) Act 1991 No 84



New South Wales

An Act to regulate the search for and mining of petroleum; to repeal the *Petroleum Act 1955*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Petroleum (Onshore) Act 1991*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**appropriate fee** means a fee determined under section 138A.

**appropriate lodgment fee** means a lodgment fee determined under section 138A (a).

**appropriate petroleum title fee** means a petroleum title fee determined under section 138A (b).

**block** means a graticular section referred to in section 4.

**Commonwealth Native Title Act** means the *Native Title Act 1993* of the Commonwealth.

**Department** means the Department of Mineral Resources.

**Director-General** means the Director-General of the Department.

**drilling** means the perforation of the earth's surface crust by mechanical means, whether the hole caused by the perforation is vertical, inclined or horizontal, and includes all operations for preventing collapse of the sides of any such hole or for preventing it from being filled with extraneous materials including water.

**geological survey** includes the examination of areas in the field, the collection of the necessary specimens of rocks and other materials, investigations in the laboratory, the preparation of geological maps and geological sections, and all other operations essential for the determination of the geological nature, formation and structure of any such area.

**geophysical survey** means the examination of an area with the aid of instruments with the object of determining some or all of the physical constituents of geological formations on or below the surface of the earth in such area.

**land** includes land covered by water.

**landholder** means, in relation to any land:

- (a) the owner of an estate in fee simple in the land, or
- (b) a native title holder of the land, or
- (c) the holder of a lease or licence granted under the [Crown Lands Act 1989](#) over the land, or
- (d) the holder of a tenure referred to in Part 1 or 2 of Schedule 1 to the [Crown Lands \(Continued Tenures\) Act 1989](#) in the land, or
- (e) the holder of a permissive occupancy granted over the land, or
- (f) the holder of a lease granted under the [Western Lands Act 1901](#) over the land, or
- (g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, being:
  - (i) a mortgagee in possession of the land, or
  - (ii) a lessee of the land or other person entitled to an exclusive right of occupation of the land, or
  - (iii) a Minister or public authority having the benefit of a covenant affecting the land that is imposed by a Minister on behalf of the Crown under the [Crown Lands Act 1989](#), or
  - (iv) a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement, or
  - (v) a person prescribed by the regulations for the purposes of this paragraph, or
- (g1) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, other than a person to whom paragraph (g) applies, but only in a provision of this Act in which a reference to a landholder is expressed to include a **secondary landholder**, or

**Note—**

See s 255A, Part 13, s 383C.

(h) a person of a class prescribed by or determined in accordance with the regulations to be landholders for the purposes of this definition,

but does not include a person of a class prescribed as outside the scope of this definition.

**onshore area** means any area of land in New South Wales that is not included in the territorial sea within the meaning of the *Petroleum (Offshore) Act 1982*.

**petroleum** means:

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state, or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state, or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium, carbon dioxide and water,

and includes any substance referred to in paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal or oil shale or any substance prescribed to be a mineral for the purposes of the *Mining Act 1992*.

**petroleum deposit** means any naturally occurring accumulation of petroleum on or below the surface of the earth.

**petroleum title** means an exploration licence, assessment lease, production lease or special prospecting authority in force under this Act.

**prospect** means to carry out works on, or to remove samples from, land for the purpose of testing the quality and quantity of petroleum in the land and the potential to recover petroleum from the land, but does not include any activity declared by the regulations not to constitute prospecting.

**secondary landholder**—see paragraph (g1) of the definition of **landholder**.

**well** means a hole made by drilling in connection with exploration for petroleum or operations for the recovery of petroleum, but does not include a seismic shot hole.

- (2) A reference in this Act to land comprised in a petroleum title or in any instrument includes, where the title or instrument is a lease, a reference to land demised by the lease.

### **3A Notes**

Notes in the text of this Act do not form part of this Act.

### **4 Graticulation of the Earth's surface**

For the purposes of this Act, the surface of the Earth is taken to be divided:

- (a) by the meridian of Greenwich and by meridians of longitude that are at a distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude, and
- (b) by the equator and by parallels of latitude that are at a distance from the equator of 5 minutes, or a multiple of 5 minutes, of latitude,

into graticular sections, each of which is bounded:

- (c) by portions of 2 of those meridians that are at a distance from each other of 5 minutes of longitude, and
- (d) by portions of 2 of those parallels that are at a distance from each other of 5 minutes of latitude.

### **5 Points to be ascertained by reference to Geocentric Datum of Australia**

The position on the surface of the Earth of a point, line or area that is necessary to be determined for the purposes of this Act, or of any order, instrument or notification under this Act, is to be determined by reference to the Geocentric Datum of Australia within the meaning of the [Surveying and Spatial Information Act 2002](#).

## **Part 2 Rights of the Crown as to petroleum, helium and carbon dioxide**

### **6 These substances are the property of the Crown**

- (1) All petroleum, helium and carbon dioxide existing in a natural state on or below the surface of any land in the State is the property of the Crown, and is taken to have been so always. No compensation is payable by the Crown for any such petroleum, helium or carbon dioxide that was at any time vested in any person other than the Crown.
- (2) All Crown grants and leases and every licence and other instrument of title or tenure under any Act relating to lands of the Crown whether granted before or after the commencement of this section, are to be regarded as containing a reservation to the Crown of all petroleum, helium and carbon dioxide existing in a natural state on or below the surface of the land comprised in the instrument concerned.

### **7 Offence of prospecting or mining without authority**

- (1) A person must not prospect for or mine petroleum except in accordance with a

petroleum title.

Maximum penalty for prospecting in contravention of this section: 200 penalty units.

Maximum penalty for mining in contravention of this section:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in case of an offence dealt with on indictment, or
  - (b) 200 penalty units or imprisonment for 2 years, or both, in case of an offence dealt with summarily.
- (2) Nothing in this section prevents a person from prospecting for or mining petroleum if the person is entitled to do so by virtue of a legal instrument:
- (a) approved by the Minister under Part 8, or
  - (b) approved under the *Mining Act 1992* by the Minister administering that Act.

## **Part 3 Petroleum titles**

### **Division 1 Provisions relating to titles generally**

#### **8 Invitation of applications**

The Minister may, by notification in the Gazette, invite applications for petroleum titles.

#### **9 Grant of petroleum titles**

- (1) The Minister may grant a petroleum title over any onshore area within the State, except:
- (a) an area designated by the Minister, by notification published in the Gazette, as an area in respect of which a petroleum title is not to be granted, or
  - (b) an area included in an existing petroleum title held by a person other than the applicant, or
  - (c) an area included in another application for a petroleum title:
    - (i) that was made before the applicant's application, and
    - (ii) that has not been withdrawn or otherwise finally disposed of.
- (2) A notification under subsection (1) (a) may be varied or rescinded by a subsequent notification.
- (3) A petroleum title may be granted over land of any title or tenure.
- (4) 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.

- (5) Notification of the grant of a petroleum title or of a refusal to grant an application is to be published in the Gazette.
- (6) 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).

#### **10 Applications to relate to one area only**

An application for a petroleum title must relate to only one area.

#### **11 Making of applications for petroleum titles**

An application for a petroleum title must be made in a form approved by the Minister and may be delivered or forwarded by post to the Director-General.

#### **12 Fee for processing applications**

An application for a petroleum title must be accompanied by the appropriate lodgment fee in respect of the application.

#### **13 Applications to be supported by plans**

An application for a petroleum title must be accompanied by a map or plan, drawn in accordance with the regulations, on which there is delineated the boundaries of the area to which the title is intended to apply.

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

An application for a petroleum title must be accompanied by a proposed work program complying with the regulations and indicating the nature and extent of operations to be carried on under the authority of the title.

#### **15 Applications to be supported by evidence of financial standing**

- (1) An application for a petroleum title must be accompanied by evidence of:
  - (a) the financial standing of the applicant, and
  - (b) the technical qualifications of the applicant and of the applicant's technical advisers, and
  - (c) the ability of the applicant to comply with the provisions of this Act and the regulations relating to the petroleum title for which application is made.
- (2) The applicant, if so requested in writing by the Minister, must furnish such further evidence relating to the matters referred to in subsection (1) as the Minister requires.
- (3) If the applicant fails to furnish such further evidence to the satisfaction of the Minister within 30 days of such a request, the application may be refused.

## **16 Security required to be given**

- (1) On granting a petroleum title, the Minister may impose a condition requiring the holder of the title to give and maintain security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the holder's obligations under this Act in respect of the title and to maintain that security until those obligations are fulfilled or no longer apply.
- (2) A condition requiring security to be given and maintained by the holder of a petroleum title may be expressed so as to require the security given and maintained in relation to some other petroleum title to be extended to the firstmentioned petroleum title.
- (3) If the Minister proposes to grant a petroleum title to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.
- (4) The Minister may at any time impose a condition of a kind referred to in subsection (1) on an existing petroleum title that is not subject to any such condition by causing a written notice to be served on the holder of the petroleum title.
- (5) The Minister may, by causing a written notice to be served on the holder, amend any 2 or more petroleum titles held by the same holder that contain a condition of a kind referred to in subsection (1) so as to require a single security to be given and maintained.
- (6) The Minister may, by causing a written notice to be served on the holder, vary a condition imposed under this section, so as to vary the amount and form of security that is required to be given and maintained.
- (7) A condition imposed or varied under this section takes effect on the date the written notice of the condition or variation is served on the holder concerned, or on such later date as may be specified in the notice.

### **16A Forfeiture of security**

- (1) All or such part of any security in relation to a petroleum title as the Minister may determine is to be forfeited to the Crown if the holder of the title fails to fulfil the obligations imposed under or arising out of this Act in relation to the title.
- (2) Forfeiture is effected by the service of a written notice on the holder of the relevant petroleum title.
- (3) Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the petroleum title.



### **17 Form of titles**

Every petroleum title is to be in the form approved by the Minister.

### **18 Title to nominee**

- (1) A petroleum title may, at the request in writing of the applicant, be granted to a person nominated by the applicant.
- (2) When such a request is made, a reference in this Act to the applicant for a title includes a reference to the nominee.

### **19 Renewal of title**

- (1) The holder of a petroleum title may apply for renewal of the title by application made within the time prescribed by subsection (2) or (2A).
- (2) The prescribed time in relation to a special prospecting authority or an exploration licence is not earlier than 2 months and not later than 1 month before the authority or licence ceases to have effect.
- (2A) The prescribed time in relation to a petroleum title other than a special prospecting authority or an exploration licence is not earlier than 5 years and not later than 1 year (or, if the term of the title is for 1 year or less, not earlier than 2 months and not later than 1 month) before the title ceases to have effect.
- (2B) After considering an application for renewal of a petroleum title, the Minister:
  - (a) may renew the petroleum title, or
  - (b) may refuse the application.
- (3) The Minister may refuse to grant a renewal of a title on any ground on which the Minister might have refused to grant the title originally or might have cancelled the title during its term.
- (3A) The Minister may also refuse to grant a renewal of title unless:
  - (a) all data and reports due under the regulations have been submitted, and
  - (b) all data gathered, and operations carried on, during any period not covered in any such report are made the subject of a full report submitted to the Minister.
- (4) A renewed title may, at the discretion of the Minister, be granted for a shorter term than that of the original title.
- (5) Any requirements, prohibitions and restrictions under this Act that relate to titles and applications for titles apply (except to the extent provided by this Act or the regulations) in the same way to renewals and applications for renewal.

### **19A Withdrawal of application for grant or renewal of petroleum title**

- (1) An application for a petroleum title, or for the renewal of a petroleum title, may be withdrawn by means of a written notice of withdrawal signed by the applicant and lodged with the Director-General.
- (2) An application ceases to have effect when a notice of withdrawal is lodged under this section.
- (3) The withdrawal of an application under this section is irrevocable.

### **20 Continuation of title pending renewal**

If an application for the renewal of a title has not been withdrawn or otherwise finally disposed of before the date on which the title would, but for this section, expire, the title continues in force until the date on which the application is withdrawn or otherwise finally disposed of.

### **20A Waiver of minor procedural matters**

- (1) The Minister may grant or renew a petroleum title even though the applicant or holder has failed to comply with a requirement of this Act or the regulations:
  - (a) as to the time within which anything is required to be done, 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 grant or renew a petroleum title in the case of an applicant or holder who has failed to comply with such a requirement unless the Minister is satisfied that the failure is unlikely:
  - (a) adversely to affect any person's rights under this Act or the regulations, or
  - (b) to result in any person's being deprived of information necessary for the effective exercise of those rights.

### **21 Grounds on which application may be refused**

An application for a petroleum title may be refused if:

- (a) the application is not made in accordance with this Part and any other relevant provisions of this Act or the regulations, or
- (b) the grant of the title concerned would contravene this Act, or

- (c) the proposed work program does not meet the Minister's minimum standards in relation to the nature and extent of activities that should be carried on by the holder of the title under the authority of the title, or
- (d) the applicant does not meet the Minister's minimum standards in relation to technical and financial capability to carry out the proposed work program, or
- (e) having regard to the nature and extent of the activities proposed to be carried on by the applicant under the authority of the title, the Minister decides that, in the public interest, it would be better not to grant the title or to grant to someone else the same or another kind of title over the land concerned.

## **22 Cancellation or operational suspension of titles**

- (1) A petroleum title may be cancelled by the Minister if its holder, at any time during the term of the title:
  - (a) fails to fulfil or contravenes any of the conditions of the title, or
  - (b) fails to use the land comprised in the title in good faith for the purposes for which it has been granted, or
  - (c) uses the land for a purpose other than that for which the title has been granted.
- (2) A petroleum title may be cancelled either wholly or in part by the Minister on the written request of the holder of the title.
- (2AA) A request for cancellation of a petroleum title may be withdrawn by means of a written notice of withdrawal signed by the holder of the title and lodged with the Director-General. The request ceases to have effect when the notice of withdrawal is lodged.
- (2A) The Minister may refuse to cancel a title in whole or in part unless:
  - (a) all data and reports due under the regulations have been submitted, and
  - (b) all data gathered, and operations carried on, during any period not covered in any such report are made the subject of a full report submitted to the Minister.
- (3) If during the term of any petroleum title any part of the land comprised in the title is required for any public purpose, the Minister may, on one month's notice given by the Minister to the holder of the title, cancel the title so far as it relates to the relevant part of the land, either with or without restrictions as to depth.
- (3A) The Minister may suspend all or any specified operations under a petroleum title until further notice if the holder of the title contravenes:
  - (a) a requirement under this Act to pay royalty, or to give or maintain security for the performance of the holder's obligations under the title, or

- (b) any condition of the title that is identified in the title as a condition related to environmental management.
- (4) Cancellation of, or suspension of operations under, a petroleum title takes effect on the date on which written notice of the cancellation or suspension concerned is served on the holder of the title, or on such later date as is specified in the notice.
- (4A) Notice of a cancellation of a petroleum title is to be published in the Gazette as soon as practicable after the cancellation takes effect.
- (5) No compensation is payable by the Crown for or in respect of the cancellation of, or a suspension of operations under, a petroleum title.
- (6) Before cancelling a title on a ground referred to in subsection (1), or suspending operations under a title, the Minister:
  - (a) must cause written notice of the proposed cancellation or suspension, and of the grounds of the proposed cancellation or suspension, to be served on the holder of the title, and
  - (b) must give the holder of the title a reasonable opportunity to make representations with respect to the proposed cancellation or suspension, and
  - (c) must take any such representations into consideration.
- (7) A suspension under this section is revoked on the date on which written notice from the Minister is served on the holder of the affected petroleum title or on such later date as is specified in the notice.
- (8) While any operations under a petroleum title are suspended, the title confers no right on its holder to carry out the operations concerned.

### **23 Conditions of titles**

- (1) A petroleum title is subject to:
  - (a) the conditions imposed by the Minister and specified in the title, and
  - (b) any conditions prescribed by the regulations.
- (2) In the event of any inconsistency between conditions prescribed by the regulations and conditions imposed by the Minister, the latter prevail to the extent of the inconsistency.
- (3) The conditions that may be imposed on a title include (but are not limited to) conditions with respect to:
  - (a) work to be carried out by the holder of the title in or in relation to the land comprised in the title during or after the term of the title, and

(b) amounts to be expended by the holder of the title in carrying out any such work.

- (4) Conditions of the kind referred to in subsection (3) may include provision for the carrying out of an approved work program, and approved expenditure, for each year of the term of the title. Such conditions may be varied by the Minister from time to time by notice in writing served on the holder of the title.

#### **24 Suspension of conditions of petroleum title**

- (1) The Minister may from time to time, on written application being made by the holder of any petroleum title, and if the Minister considers that adequate reasons have been furnished, authorise suspension of any or all of the conditions relating to the working of the land comprised in the title.
- (2) The period of such a suspension cannot on any occasion exceed 6 months.
- (3) In granting such a suspension, the Minister may impose conditions:
- (a) for the protection of any wells, equipment or works on the land, or
  - (b) for the protection of any petroleum deposits, water or minerals in the land or in any adjacent land, or
  - (c) for any other purpose.

#### **25 Limitation on challenges to validity of titles**

- (1) The grant of a petroleum title cannot be challenged in any legal proceedings commenced later than 3 months after the date on which notification of the grant of the title is published in the Gazette.
- (2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the time limited by subsection (1).

#### **26 Title taken to be personal property**

Every petroleum title and any interest in any such title is to be taken in law to be personal property and not to be of the nature of real estate. It may be disposed of during the lifetime of the holder and on the holder's death descends or devolves on intestacy or by will as personal property.

#### **27 Discovery of petroleum to be notified**

If petroleum is discovered in land comprised in a petroleum title, the holder of the title:

- (a) must immediately inform the Minister of the discovery, and
- (b) must, within a period of 3 days after the date of the discovery, furnish to the Minister

particulars in writing of the discovery.

## **28 Directions by Director-General on discovery of petroleum**

- (1) If petroleum is discovered in land comprised in a petroleum title, the Director-General may, from time to time, by instrument in writing served on the holder of the title, direct the holder to furnish to the Director-General, within the period specified in the instrument, particulars in writing of any one or more of the following:
  - (a) the chemical composition and the physical properties of the petroleum, and
  - (b) the nature of the stratum in which the petroleum occurs, and
  - (c) any other matters relating to the discovery that are specified by the Director-General in the instrument.
- (2) The Director-General may, by instrument in writing served on the holder of the title, direct the holder to do, within the period specified in the instrument, such things as the Director-General thinks necessary and specifies in the instrument to determine the chemical composition and physical properties of the petroleum and to determine the quantity of petroleum in the petroleum deposit to which the discovery relates or, if part only of that petroleum deposit is within the land comprised in the title, in the part of the petroleum deposit that is within that land.

## **28A Right to explore for natural reservoirs**

- (1) In addition to the other rights conferred by the title, every petroleum title confers on its holder the right to carry on such operations as are necessary to explore the land comprised in the title for the existence and availability of natural reservoirs.
- (2) The right conferred by operation of subsection (1) is subject to any order of the Minister served on the holder of the title and section 29.
- (3) By order under this section, the Minister may prohibit, or direct the holder of the title to desist from, carrying on operations of a kind specified in the order.
- (4) Contravention of an order under this section is taken to be a breach of the conditions of the title.

## **Division 2 Exploration licences**

### **29 Rights of holders of exploration licences**

The holder of an exploration licence has the exclusive right, in accordance with the conditions of the licence, to prospect for petroleum on the land comprised in the licence.

### **30 Area of exploration licence**

- (1) The area comprised in an exploration licence must be:

- (a) not more than 140 blocks, and
  - (b) not less than 1 block, except in cases where for special reasons the Minister considers that a smaller area is necessary or desirable.
- (2) The size of the area over which the renewal of an exploration licence is granted must not exceed 75 per cent 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,
- unless the Minister, being satisfied that special circumstances exist, otherwise determines.

### **31 Term of exploration licence**

- (1) The initial term of an exploration licence is to be a term (not exceeding 6 years) fixed by the Minister.
- (2) (Repealed)

### **32 Direction to holder of exploration licence to apply for lease**

- (1) If petroleum is discovered in land comprised in an exploration licence the Minister may, by instrument in writing, direct the holder of the licence to apply, within such period as may be specified in the direction, for an assessment lease or a production lease in respect of so much of that land as is so specified.
- (2) If the holder of an exploration licence does not apply for an assessment lease or production lease in accordance with directions given under this section, the Minister may cancel the licence.

#### **Note—**

Section 22 (4) specifies the time at which cancellation of a petroleum title (which includes an exploration licence) takes effect.

## **Division 3 Assessment leases**

### **33 Rights of holders of assessment leases**

The holder of an assessment lease has the exclusive right to prospect for petroleum and to assess any petroleum deposit on the land comprised in the lease.

#### **Note—**

An assessment lease is designed to allow retention of rights over an area in which a significant petroleum deposit has been identified, if mining the deposit is not commercially viable in the short term but there is a reasonable prospect that it will be in the longer term. The holder is allowed to continue prospecting operations and to recover petroleum in the course of assessing the viability of commercial mining.

### **34 Area of assessment lease**

The area comprised in an assessment lease must be not more than 4 blocks.

### **35 Term of petroleum assessment lease**

The initial term of an assessment lease is to be a term (not exceeding 6 years) fixed by the Minister.

### **36 Notice to be given of application for assessment lease**

- (1) An applicant, or a person intending to apply, for an assessment lease must either before, or within 21 days after, lodging the application, cause to be published both in a newspaper circulating in the vicinity of the area over which the lease is sought and in a newspaper circulating generally in the State a notice:
  - (a) stating that an application for an assessment lease has been, or will be lodged (as the case requires), and
  - (b) containing particulars sufficient to lead to the ready identification of the area of land over which the lease is sought, and consisting of a plan and a description of that area and a statement indicating the approximate direction and approximate distance of the town nearest to that area.
- (2) Within 21 days after receipt from an applicant, or a person intending to apply, for an assessment lease of a written request:
  - (a) that is expressed to be made for the purposes of this section, and
  - (b) that is accompanied by particulars of the kind referred to in subsection (1) (b) in relation to the proposed lease,  
  
the council for a local government area that includes the area over which the lease is sought may furnish the holder of the lease with the names and addresses of landholders whose lands lie wholly or partly within that area.
- (3) An assessment lease is not to be granted unless the Minister is satisfied that notice has been published as required by subsection (1) and that:
  - (a) a copy of that notice, accompanied by the particulars mentioned in subsection (4), has been served on all landholders whose names and addresses have been furnished, in connection with the proposed lease, under subsection (2), or
  - (b) 21 days have elapsed since a request under subsection (2) was made and the council concerned has not complied with the request.
- (4) The particulars referred to in subsection (3) (a) are the following:
  - (a) the duration of the term of the proposed lease, and



- (b) contact details of the applicant or intended applicant, and
- (c) any other particulars prescribed by the regulations.

### **37 Direction to holder of assessment lease to apply for production lease**

- (1) The Minister may, by instrument in writing, direct the holder of an assessment lease to apply, within such period as may be specified in the direction, for a production lease in respect of so much of the land comprised in the assessment lease as is so specified.
- (2) If the holder of an assessment lease does not apply for a production lease in accordance with directions given under this section, the Minister may cancel the assessment lease.

**Note—**

Section 22 (4) specifies the time at which cancellation of a petroleum title (which includes an assessment lease) takes effect.

## **Division 4 Special prospecting authorities**

### **38 Rights of holders of special prospecting authorities**

The holder of a special prospecting authority has the exclusive right to conduct speculative geological, geophysical or geochemical surveys or scientific investigations on and in respect of the land comprised in the authority.

### **39 Area of special prospecting authority**

The area comprised in a special prospecting authority is an area considered feasible by the Minister, having regard to the surveys and other operations sought to be carried out by the holder.

### **40 Term of special prospecting authority**

The initial term of a special prospecting authority is to be a term (not exceeding 12 months) fixed by the Minister.

## **Division 5 Production leases**

### **41 Rights of holders of production leases**

The holder of a production lease has the exclusive right to conduct petroleum mining operations in and on the land included in the lease together with the right to construct and maintain on the land such works, buildings, plant, waterways, roads, pipelines, dams, reservoirs, tanks, pumping stations, tramways, railways, telephone lines, electric powerlines and other structures and equipment as are necessary for the full enjoyment of the lease or to fulfil the lessee's obligations under it.

## **42 Grant of production lease**

- (1) A production lease may be granted only to an applicant who has held the land concerned under an exploration licence or an assessment lease, unless the Minister, by notice published in the Gazette, has invited applications for a production lease in respect of the area concerned.
- (2) A person who has held the land concerned under an exploration licence or assessment lease is entitled to be granted a production lease in respect of the land if:
  - (a) the person has complied with the terms and conditions of the licence or lease, and
  - (b) to grant the production lease would not contravene the *Environmental Planning and Assessment Act 1979* or any other Act, and
  - (c) the person accepts the conditions of the lease.

## **43 Notice of application for production lease to be published**

An applicant, or a person intending to apply, for a production lease must either before, or within 21 days after, lodging the application, cause to be published in a newspaper circulating generally in the State a notice:

- (a) stating that an application for a production lease has been or will be lodged (as the case requires), and
- (b) containing particulars sufficient to lead to the ready identification of the area of land over which the lease is sought, and consisting of a plan and a description of that area and a statement indicating the approximate direction and approximate distance of the town nearest to that area.

## **44 Area of production lease**

The area comprised in a production lease must be not more than 4 blocks.

## **45 Term of production lease**

The initial term of a production lease is to be a term (not exceeding 21 years) fixed by the Minister.

# **Division 6 Low-impact prospecting titles—special provisions**

## **45A Object of Division**

The object of this Division is to provide for the grant of a class of low-impact exploration licence, or low-impact special prospecting authority, that may be approved under section 26A of the Commonwealth Native Title Act.

### **Note—**

See clause 14 (3) of Part 5 of Schedule 5 to the *Native Title Amendment Act 1998* of the Commonwealth for

preservation of approvals previously granted by the Commonwealth.

#### **45B Special low-impact class of prospecting title**

- (1) There is to be:
  - (a) a special class of exploration licence called a low-impact exploration licence, and
  - (b) a special class of special prospecting authority called a low-impact special prospecting authority.

Exploration licences and special prospecting authorities are referred to in this Division as ***prospecting titles***.

- (2) A prospecting title may be granted as a low-impact prospecting title if this Division is complied with.
- (3) The relevant provisions of this Act relating to prospecting titles apply to low-impact prospecting titles, except as otherwise provided by this Division.

#### **45C Authority conferred by low-impact prospecting title**

- (1) The Minister may, by order published in the Gazette, determine the kind of prospecting operations that may be authorised by a low-impact prospecting title, being operations that the Minister is satisfied are unlikely to have a significant impact on the land over which the title may be granted. Different kinds of operations may be determined for exploration licences and for special prospecting authorities.
- (2) The conditions to which a low-impact prospecting title is subject are to limit the prospecting operations authorised by the title to all or some of the prospecting operations of the kind determined by the Minister under this section.
- (3) A change in the prospecting operations determined by the Minister under this section does not affect a low-impact prospecting title that is in force at the time the change is made.

#### **45D Provisions relating to applications for low-impact prospecting titles**

- (1) A low-impact prospecting title may not be granted unless notice of the application for the title has been served on all:
  - (a) registered native title bodies corporate, and
  - (b) registered native title claimants, and
  - (c) representative Aboriginal/Torres Strait Islander bodies,in relation to any of the land that will be affected by the proposed prospecting operations to be authorised by the prospecting title.

- (2) The notice must contain a map or other description of the land over which the prospecting title is sought and a description of the kind of prospecting operations that may be authorised by the prospecting title.
- (3) An applicant may request the Minister to grant a low-impact prospecting title either at the time the application for a prospecting title is made or at any later time before the grant of the prospecting title.
- (4) The regulations may make other provision for or with respect to the making and grant of applications for low-impact prospecting titles.

**45E Change of class of prospecting title—additional prospecting operations**

- (1) The holder of a low-impact prospecting title may apply to the Minister for a variation of the prospecting operations authorised by the title.
- (2) After considering the application, the Minister may vary the prospecting title or may refuse the application.
- (3) If the prospecting operations authorised by a prospecting title as so varied are not of a kind permitted by this Division, the title ceases to be a low-impact prospecting title.
- (4) The variation of a prospecting title takes effect on the date on which written notice of the variation is served on the holder of the title or such later date as may be specified in the notice.

**Note—**

The right to negotiate or other procedures may apply to the variation of the prospecting title under the Commonwealth Native Title Act if section 26A of that Act no longer applies because of the variation.

**45F Access arrangement required for prospecting operations under low-impact prospecting titles**

- (1) In this section, **relevant land** means land in relation to which there are registered native title bodies corporate or registered native title claimants.
- (2) A low-impact prospecting title is subject to the condition that the holder of the prospecting title is not authorised to carry out prospecting operations on any relevant land otherwise than in accordance with an access arrangement under Part 4A between the holder of the prospecting title and each registered native title body corporate or each registered native title claimant, being an access arrangement:
  - (a) that is agreed between them in accordance with that Part, or that is determined for them by an arbitrator in accordance with that Part, and
  - (b) that has involved consultation by the holder of the prospecting title that satisfies the requirements of section 26A of the Commonwealth Native Title Act.

- (3) This section does not apply in any case in which Part 4A is excluded because of section 69A (2) (which relates to prospecting title granted after compliance with the full native title right to negotiate procedure or an indigenous land use agreement).
- (4) This section does not limit the operation of Part 4A with respect to landholders who are not native title holders.

#### **45G Renewal of low-impact prospecting titles**

The requirements of this Division with respect to the grant of a low-impact prospecting title apply to the renewal of such a title, subject to any modifications prescribed by the regulations.

### **Part 4 Consent of other government authorities**

#### **Division 1 Titles other than production leases**

##### **46 (Repealed)**

##### **47 Application of epis**

- (1) If a person is authorised under this Act to carry out operations authorised under a petroleum title other than a production lease:
  - (a) nothing in, or done under, an environmental planning instrument operates so as to prevent the holder of the title carrying out any such operations on the land comprised in the title, and
  - (b) to the extent to which anything in, or done under, any such instrument would so operate, it is of no effect in relation to the holder.
- (2) A reference in this section to an environmental planning instrument does not include a reference to a State environmental planning policy made on or after the commencement of this subsection.

#### **Division 2 Objections by government agencies to granting of production leases**

##### **48 Application of this Division to Government bodies where development consent etc not required**

- (1) This Division does not apply to the grant of a production lease if a development consent (or approval under Part 3A of the [Environmental Planning and Assessment Act 1979](#)) is required before the land is used for the purpose of obtaining petroleum.
- (2) The Minister may, by order published in the Gazette, designate a corporation established by an Act as a statutory authority for the purposes of this Division. A corporation so designated is a **statutory authority** for the purposes of this Division.

#### **49 Notice of application for production lease to be sent to Government Departments**

If the Minister is of the opinion that a Government Department or statutory authority will be materially affected by the granting of a production lease, the Minister must cause to be served on that Department or authority a notice:

- (a) stating that an application for the lease has been lodged, and
- (b) containing a description or a plan of the area of land over which the lease is sought, and
- (c) stating that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister within the period specified in the notice.

#### **50 Notice to be sent to Director of Planning**

(1) The Minister, before granting a production lease, must cause to be served on the Director of Planning a notice:

- (a) stating that an application for the lease has been lodged, and
- (b) containing a description or a plan of the area of land over which the lease is sought, and
- (c) containing a detailed description of the works to be undertaken by or on behalf of the applicant for the lease if granted, including works and activities relating to:
  - (i) the preparation of the land for petroleum mining, and
  - (ii) the reinstatement of the land either during the carrying on of petroleum mining operations or after they have ceased, and
- (d) containing a copy of any environmental impact statement that is required by the *Environmental Planning and Assessment Act 1979* to be prepared in relation to the application, and
- (e) stating that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister within the period specified in the notice.

(2) If, before granting a production lease, the Minister becomes aware that the detailed description contained in a notice served under subsection (1) or a notice served under this subsection requires alteration for any reason, the Minister, before granting the lease, must cause to be served on the Director of Planning a notice of the alteration.

#### **51 Objection to grant of production lease**

A Government Department or statutory authority or the Director of Planning, if served

with a notice under this Division, may, within the period specified in the notice, by instrument in writing lodged with the Minister:

- (a) object to the granting of a production lease, or
- (b) propose that the conditions specified in the instrument be included in the lease, if granted.

## **52 Resolution of objections**

- (1) The Minister may take, or cause to be taken, such steps as the Minister thinks appropriate in connection with any objection or proposal made under this Division and if agreement is not then reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.
- (2) If any matter is referred to the Premier under this section the Premier may give whatever decision the Premier thinks appropriate.
- (3) (Repealed)

## **53 Grant of production lease after objection or proposal**

- (1) A production lease must include:
  - (a) a condition proposed, in accordance with this Division, to be included in it (unless the proposal for the inclusion of the condition is withdrawn, or rejected by the decision of the Premier) or, if the condition is modified, the condition as so modified, and
  - (b) any condition directed to be included in the lease by the decision of the Premier.
- (2) The failure to include a condition in a lease as required by this section does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.
- (3) The Minister must cause to be served on the registered holder of a lease amended under subsection (2) a notice in writing setting out the details of the amendment, and the amendment has effect from the date on which the notice is served.

## **54 Power to refuse grant of title not affected**

Nothing in this Division affects any discretion of the Minister to refuse an application for a production lease for any reason that is sufficient under this Act for such a refusal.

## **Division 3 Objections by local councils to granting of production**

## leases

### 54A Division applies only where development consent etc not required

This Division does not apply to the grant of a production lease if a development consent (or approval under Part 3A of the *Environmental Planning and Assessment Act 1979*) is required before the land is used for the purpose of obtaining petroleum.

### 55 Definitions

In this Division:

**council** has the same meaning as it has in the *Local Government Act 1993*.

**local government area** has the same meaning as area has in the *Local Government Act 1993*.

### 56 Notice of application to be sent to councils in certain cases

If the land to which an application for a production lease relates is not affected by an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979* that comprehensively specifies the purposes for which development is prohibited and the purposes for which development may be carried out, either with or without the consent of any person or body, the Minister must cause to be served on the council within whose local government area the land is situated a notice:

- (a) stating that an application for the lease has been lodged, and
- (b) containing a description or a plan of the area of land over which the lease is sought, and
- (c) stating that objection to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister within the period specified in the notice.

### 57 Objection by council

A council served with a notice under this Division may, within the period specified in the notice, by instrument in writing lodged with the Minister:

- (a) object to the granting of a production lease, or
- (b) propose that the conditions specified in the instrument be included in the lease, if granted.

### 58 Consideration of objection

In deciding whether or not to grant a production lease, the Minister is to take into account any objection or proposal made under this Division.



### **59 Granting of petroleum title after objection or proposal**

Petroleum mining operations under a production lease granted in respect of land after compliance with the provisions of this Division may be commenced within 5 years from the date on which the lease takes effect without the necessity for a development consent under the *Environmental Planning and Assessment Act 1979* if, within that 5-year period, the land comes to be affected by an environmental planning instrument which prohibits those operations or prohibits those operations without consent.

### **60 Consent still required for certain works**

This Division does not operate so as to exempt the holder of a production lease from obtaining any consent which the holder is required to obtain in connection with the erection of buildings, the opening of roads or the subdivision of land.

### **61 Power to refuse grant of title not affected**

Nothing in this Division affects any discretion of the Minister to refuse an application for a production lease for any reason that is sufficient under this Act for such a refusal.

## **Division 4 Development consents under the *Environmental Planning and Assessment Act 1979***

### **62 Definitions**

In this Division:

**consent authority** means an authority or body empowered to grant a development consent.

**development consent** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

### **63 (Repealed)**

### **64 Consent of landowner not necessary in application required by this Division**

Any requirement of or made under the *Environmental Planning and Assessment Act 1979* that an application for development consent to the use of land for the purpose of obtaining petroleum be accompanied by the consent of the owner of the land is of no effect.

### **65, 66 (Repealed)**

### **67 Development consent under *Environmental Planning and Assessment Act 1979***

(1) This section applies if development consent is required for the use of land for the purpose of obtaining petroleum.

- (2) The Minister must not grant a production lease over the land unless an appropriate development consent is in force in respect of the land.

**68 (Repealed)**

**69 Power to refuse grant of title not affected**

Nothing in this Division affects any discretion of the Minister to refuse an application for a production lease for any reason that is sufficient under this Act for such a refusal.

**Part 4A Access arrangements for prospecting titles**

**69A Application of Part**

- (1) This Part applies to the carrying out of prospecting operations under exploration licences, assessment leases and special prospecting authorities (referred to in this Part as **prospecting titles**).
- (2) However, this Part does not apply so as to require an access arrangement in respect of a landholder who is a native title holder within the meaning of the Commonwealth Native Title Act if the prospecting title concerned was granted after compliance with Subdivision P of Division 3 of Part 2 of that Act and the grant of the title was not an act that attracted the expedited procedure under and within the meaning of that Act. In addition, this Division does not apply if the prospecting title concerned was granted or renewed after compliance with a registered indigenous land use agreement under that Act and the agreement provides that an access arrangement is not required under this Division in respect of such a landholder.
- (3) This Part applies, in the case of a prospecting title that is a low-impact exploration licence or a low-impact special prospecting authority, as though a reference in this Part to a landholder included a reference to:
  - (a) any registered native title body corporate, and
  - (b) any registered native title claimant,in relation to the land over which the licence is granted.

**Note—**

Section 45F makes special provision with respect to access arrangements for low-impact prospecting titles.

**69B Arbitration Panel**

- (1) There is to be an Arbitration Panel.
- (2) The Arbitration Panel constituted under section 139 of the *Mining Act 1992* is to perform the functions of the Arbitration Panel under this Act.

**69C Prospecting to be carried out in accordance with access arrangement**

- (1) The holder of a prospecting title must not carry out prospecting operations on any land except in accordance with an access arrangement or arrangements applying to the land:
  - (a) agreed (in writing) between the holder of the prospecting title and each landholder of the land, or
  - (b) determined by an arbitrator in accordance with this Part.
- (2) Separate access arrangements may (but need not) be agreed or determined with different landholders of the same area of land, for different areas of the same landholding or with respect to the different matters to which access arrangements relate.
- (3) Separate access arrangements may be made to preserve the confidentiality of provisions of the arrangements, to deal with persons becoming landholders at different times or for any other reason.

**69D Matters for which access arrangement to provide**

- (1) An access arrangement may make provision for or with respect to the following matters:
  - (a) the periods during which the holder of the prospecting title is to be permitted access to the land,
  - (b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land,
  - (c) the kinds of prospecting operations that may be carried out in or on the land,
  - (d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land,
  - (e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land,
  - (f) the compensation to be paid to any landholder as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land,
  - (g) the manner of resolving any dispute arising in connection with the arrangement,
  - (h) the manner of varying the arrangement,
  - (i) the notification to the holder of the prospecting title of particulars of any person

who becomes an additional landholder.

- (1A) The Director-General may, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, publish templates for use for standard access arrangements. The use of any such template is not mandatory.
- (2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each landholder of the land concerned is entitled under Part 11.
- (2A) An access arrangement must (if the landholder so requests) specify that the holder of the prospecting title is required to pay the reasonable legal costs of the landholder in obtaining initial advice about the making of the arrangement. Those costs are not to exceed the maximum amount set by the Director-General, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, by order published in the Gazette.
- (3) In the event of an inconsistency between:
  - (a) a provision of an access arrangement, and
  - (b) a provision of this Act, of the regulations or of a condition of a prospecting title,the provision referred to in paragraph (b) prevails.
- (4) If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until:
  - (a) the holder ceases the contravention, or
  - (b) the contravention is remedied to the reasonable satisfaction of, or in the manner directed by, an arbitrator appointed by the Director-General.

The Director-General is to make such an appointment within 48 hours after being requested to do so by the landholder and the arbitrator is to deal with the matter within 5 business days of the appointment. If the arbitrator does not deal with the matter within that time, the landholder may deny the holder of the prospecting title access to the land until such time as the matter is determined by the arbitrator.

- (5) Subsection (4) does not affect any proceedings that may be brought against the holder of the prospecting title in respect of the contravention of the access arrangement.

#### **69E Holder of prospecting title to seek access arrangement**

- (1) The holder of a prospecting title may, by written notice served on each landholder of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.

- (2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:
  - (a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area, and
  - (b) a description of the prospecting methods intended to be used in that area.
- (3) The holder of a prospecting title and a landholder of the land concerned may agree in writing (either before or after the prospecting title is granted) on an access arrangement.
- (4) If some but not all of the landholders of any particular land have agreed to an access arrangement, a reference in sections 69F–69S to each landholder of the land or to a party to the hearing before an arbitrator does not include a reference to any of those landholders who has agreed to an access arrangement. However, the arbitrator may allow a landholder who has agreed to an access arrangement to become a party to the hearing of the matter in order to ensure consistency in the access arrangements over the same land, and may, for that purpose, replace the agreed access arrangement with the access arrangement determined by the arbitrator.
- (5) In this section, a reference to the holder of a prospecting title includes a reference to the proposed holder of a prospecting title.

**69EA Notice to mortgagees of access arrangements**

- (1) Within 14 days after an access arrangement is agreed between a landholder and the holder of a prospecting title, the holder is to serve notice of the making of the arrangement on each person (other than that landholder) who is identified in any register or record kept by the Registrar-General as a person having an interest as mortgagee in the land concerned.
- (2) Notice is not required to be served on a mortgagee under this section:
  - (a) if the mortgagee has been given a copy of the written notice referred to in section 69E to the landholder of the intention to obtain the access arrangement, or
  - (b) if the landholder with whom the access arrangement was made is not the mortgagor.
- (3) If notice is required to be served on a mortgagee under this section, the access arrangement does not come into force until the end of the period of 14 days after the notice is served, unless the holder of the prospecting title has reasonable cause to believe that the mortgagee is not a mortgagee in possession of the land concerned.
- (4) The requirement imposed by this section on the holder of a prospecting title is taken to be a condition of the prospecting title.

- (5) This section applies only to access arrangements made after the commencement of this section.

**Note—**

If the person is a mortgagee in possession of the land, an access arrangement with that person is also required under section 69C before prospecting operations may be carried out on the land.

**69F Appointment of arbitrator by agreement**

- (1) If, by the end of 28 days after the holder of a prospecting title serves notice in writing on each landholder of the title holder's intention to obtain an access arrangement, the title holder and each landholder have been unable to agree on such an arrangement, the title holder may, by further notice in writing served on each such landholder, request them to agree to the appointment of an arbitrator.
- (2) The holder of a prospecting title, and each landholder concerned, may agree to the appointment of any person as an arbitrator.

**69G Appointment of arbitrator in default of agreement**

- (1) If, by the end of 28 days after the holder of a prospecting title serves notice in accordance with section 69F, the title holder and each landholder concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Arbitration Panel as an arbitrator.
- (2) An application must be accompanied by the appropriate fee.
- (3) The Director-General, after consultation with the Heads of the Departments of Aboriginal Affairs and Agriculture, is to appoint a member of the Arbitration Panel as an arbitrator.

**69H Arbitration**

- (1) As soon as practicable after having been appointed, an arbitrator:
  - (a) must fix a time and place for conducting a hearing into the question of access to the land concerned, and
  - (b) must cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the holder of the prospecting title and to each landholder.
- (2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder concerned, vary the time or place fixed for conducting the hearing.
- (3) The arbitrator must, at the time and place fixed under this section, conduct a hearing

into the question of access to the land concerned.

#### **69I Right of appearance**

- (1) At any hearing into the question of access to any land by the holder of a prospecting title, the holder and each landholder are entitled to appear and be heard.
- (2) A party to a hearing may be represented:
  - (a) by an agent who is not an Australian legal practitioner, or
  - (b) with the agreement of the parties and the leave of the arbitrator, by an Australian legal practitioner.

#### **69J Conciliation**

- (1) An arbitrator is not to make a determination until the arbitrator has used his or her best endeavours to bring the parties to a settlement acceptable to all of them.
- (2) If the parties come to such a settlement, the arbitrator must make a determination that gives effect to the terms of the settlement.

#### **69K Procedure**

- (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing is to be as determined by the arbitrator.
- (2) An arbitrator must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

#### **69L Interim determination by arbitrator**

- (1) As soon as practicable after concluding a hearing, an arbitrator:
  - (a) must make an interim determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned, and
  - (b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must prepare a draft access arrangement in respect of that land.
- (2) As soon as practicable after making an interim determination, the arbitrator:
  - (a) must reduce the determination to writing, and
  - (b) must cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

### **69M Further arbitration**

- (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:
  - (a) for reconsideration of the question of access to the land concerned, or
  - (b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.
- (2) As soon as practicable after receiving such an application, the arbitrator:
  - (a) must fix a time and place for continuing the hearing into the question of access to the land concerned, and
  - (b) must cause notice of the time and place fixed for continuing the hearing to be given to the holder of the prospecting title and to each landholder.
- (3) The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder concerned, vary the time or place fixed for continuing the hearing.
- (4) The arbitrator must, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

### **69N Final determination by arbitrator**

- (1) If an application is not made to the arbitrator within the period of 14 days referred to in section 69M (1):
  - (a) the interim determination is taken to be the arbitrator's final determination, and
  - (b) any draft access arrangement is taken to be a final access arrangement.
- (2) If an application is made to the arbitrator within the period of 14 days referred to in section 69M (1), the arbitrator, as soon as practicable after concluding the continued hearing:
  - (a) must make a final determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned, and
  - (b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must determine a final access arrangement in respect of that land.
- (3) As soon as practicable after making a final determination, the arbitrator:
  - (a) must reduce the determination to writing, and
  - (b) must cause a copy of the determination, together with a copy of any final access



arrangement forming part of the determination, to be served on each of the parties to the hearing.

**69O Costs**

- (1) Each party to the hearing is to bear his or her own costs in relation to the hearing.
- (2) The arbitrator's costs in relation to the hearing are to be borne by the holder of the prospecting title.
- (3) Payment of the arbitrator's costs in relation to a hearing is, for the purpose of any security given by the holder of a prospecting title, taken to be an obligation under the title.

**69P Withdrawal from arbitration**

- (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.
- (2) This section does not limit the liability of the holder of a prospecting title to bear the arbitrator's costs in relation to the hearing.

**69Q Liability**

No proceedings lie against an arbitrator for or with respect to:

- (a) any determination made by the arbitrator, or
- (b) any publication made by the arbitrator, or
- (c) any other act, matter or thing done by the arbitrator,

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

**69R Review of determination**

- (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 69J (2)) may apply to the Land and Environment Court for a review of the determination.
- (2) An application:
  - (a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination, and
  - (b) must be filed in the Land and Environment Court:
    - (i) in the case of an interim determination that has become a final

determination—within 28 days after a copy of the interim determination was served on the applicant, or

(ii) in the case of a final determination—within 14 days after a copy of the final determination was served on the applicant.

(3) An application for review may not be made:

(a) during the period of 14 days within which an application may be made to an arbitrator, or

(b) if such an application is made, until the arbitrator has made a final determination with respect to the application.

(4) The applicant must cause a copy of the application to be served on each of the other parties to the determination to which the application relates.

(5) Subject to any order of the Land and Environment Court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of the Land and Environment Court on the review.

(6) In reviewing a determination under this section, the Land and Environment Court has the functions of an arbitrator under this Part in addition to its other functions.

(6A) A review of a determination is to be by way of rehearing, and fresh material or material in addition to, or in substitution for, the material considered on the making of the determination by the arbitrator may be given on the review and taken into consideration by the Land and Environment Court.

(7) The decision of the Land and Environment Court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

### **69S Effect of access arrangement**

An access arrangement determined by an arbitrator:

(a) takes effect:

(i) in the case of a draft access arrangement that is taken to be a final access arrangement—at the end of the period of 14 days after a copy of the draft access arrangement has been served on each of the parties, or

(ii) in the case of a final access arrangement prepared under section 69N—when a copy of the arrangement has been served on each of the parties,

or on such later date as may be specified in the arrangement, and

- (b) subject to section 69D (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

**69T Variation of access arrangements**

- (1) An access arrangement may be varied in accordance with the terms of the arrangement relating to its variation.
- (2) An access arrangement may also be varied:
  - (a) by the agreement of the parties to the arrangement, or
  - (b) with the consent of all the parties to the arrangement, by the arbitrator who determined the arrangement, or
  - (c) on application by any of the parties to the arrangement, by order of the Land and Environment Court if the arrangement was determined by a court or an arbitrator.
- (3) In this section, **vary** includes terminate.

**69U Change in landholders etc**

- (1) An access arrangement with 2 or more landholders does not terminate because one of those landholders ceases to be a landholder of the land concerned.
- (2) An access arrangement does not terminate because a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined.
- (3) An access arrangement does not run with the land, and accordingly a person does not (except as provided by this section) become a party to the access arrangement merely because the person becomes a landholder of any of the land after the access arrangement was agreed or determined.
- (4) If, after an access arrangement has been agreed or determined, a person becomes a landholder of any of the land to which the arrangement applies in addition to another landholder who continues to be a party to the arrangement, the provisions of the arrangement (other than those relating to the payment of compensation) apply to the new landholder as if the new landholder were a party to the arrangement, but only if the holder of the prospecting title concerned has given the new landholder a copy of the access arrangement.
- (5) If the new landholder objects to the arrangement within 28 days after being given a copy of the arrangement, the access arrangement ceases to apply to the new landholder when whichever of the following first happens:
  - (a) the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Part,

- (b) an arbitrator is appointed and determines an access arrangement in relation to the new landholder in accordance with this Part,
- (c) at the end of the period of 60 days after the new landholder objects, an access arrangement has not been so agreed or determined.

However, if an arbitrator is appointed or an application for review of the determination of the arbitrator is made, the arbitrator or Land and Environment Court (as the case requires) may continue the existing access arrangement (with or without variation) until the determination of the arbitration or review.

- (6) Nothing in this section prevents an access arrangement being agreed or determined in respect of a proposed new landholder.

## **Part 5 Restrictions on titles**

### **70 Exempted areas**

- (1) The holder of a petroleum title may not, except with the consent of the Minister, exercise any of the rights conferred by the title on land in an exempted area.
- (2) The Minister's consent may be given unconditionally or subject to conditions.
- (3) The Minister may not grant consent under this section in respect of lands within a state recreation area under the *National Parks and Wildlife Act 1974* without the concurrence in writing of the Minister for the time being administering that Act.
- (4) In this section:

**exempted area** means an area constituted by land:

- (a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes, or
- (b) held under a lease for water supply by virtue of a special lease or otherwise, or
- (c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any public purpose, or
- (d) prescribed by the regulations for the purposes of this definition.

### **71 Restrictions on rights of holders of leases over cultivated land**

- (1) The holder of a production lease must not carry out any mining operations or erect any works on the surface of any land which is under cultivation except with the consent of the landholder.

- (2) The Minister may, however, if the Minister considers that the circumstances warrant it, define an area of the surface of any parcel of cultivated land on which mining operations may be carried out or works may be erected, and may specify the nature of the operations to be carried out or the works to be erected.
- (2A) Before any such operations are commenced or works are erected, an assessment is to be made as to the amount to be paid as compensation for any loss of or damage to any crop on the land concerned.
- (2B) The assessment is to be made as agreed between the landholder and the holder of the production lease or, failing agreement, by the Land and Environment Court on the application of either or both of them.
- (3) Cultivation for the growth and spread of pasture grasses is not to be taken to be cultivation within the meaning of this section unless, in the opinion of the Minister, the circumstances so warrant.
- (4) In the case of dispute as to whether land is or is not under cultivation within the meaning of this section, the Minister's decision on the matter is final.

## **72 Restrictions on rights of holders of titles over other land**

- (1) The holder of a petroleum title must not carry on any prospecting or mining operations or erect any works on the surface of any land:
  - (a) on which, or within 200 metres of which, is situated a dwelling-house that is a principal place of residence of the person occupying it, or
  - (b) on which, or within 50 metres of which, is situated any garden, vineyard or orchard, or
  - (c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work, or other valuable work or structure) other than an improvement constructed or used for mining or prospecting operations,except with the written consent of the owner of the dwelling-house, garden, vineyard, orchard or improvement (and, in the case of the dwelling-house, the written consent of its occupant).
- (2) A consent under this section is irrevocable.
- (3) If need be, the Minister is to determine whether any improvement referred to in subsection (1) (c) is substantial or valuable, and may define an area adjoining any such improvement on the surface of which no prospecting or mining operations are to be carried out, or works erected, without the consent of the owner of the improvement.

- (4) If a dispute arises as to whether or not this section applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

**73 Disputes between holders of petroleum titles and other persons carrying on operations on the land**

- (1) This section applies where, in respect of any part of any land comprised in a petroleum title, any person is authorised to prospect or mine by virtue of:
- (a) any claim registered, or authority granted, under the *Mining Act 1992*, or
  - (b) (Repealed)
  - (c) the person's ownership of any minerals, or
  - (d) an agreement with the owner of any minerals, or
  - (e) the provisions of the *State Coal Mines Act 1912*,
- and a difference arises between the holder of the petroleum title and the person so authorised about the operations carried out or proposed to be carried out by either party.
- (2) In the circumstances referred to in subsection (1), any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (3), (4) (Repealed)

**Part 6 Protection of the environment**

**Division 1 Environment to be considered before grant of petroleum titles**

**74 Need to protect natural resources etc to be taken into account**

- (1) In deciding whether or not to grant a petroleum title, the Minister is to take into account the need to conserve and protect:
- (a) the flora, fauna, fish, fisheries and scenic attractions, and
  - (b) the features of Aboriginal, architectural, archaeological, historical or geological interest,
- in or on the land over which the petroleum title is sought.
- (2) The Minister may cause such studies (including environmental impact studies) to be carried out as the Minister considers necessary to enable a decision whether or not to grant a petroleum title to be made.

## **Division 2 Conditions for protecting the environment**

### **75 Inclusion of conditions for protecting the environment**

The conditions subject to which a petroleum title is granted or renewed may include conditions relating to the conservation and protection of:

- (a) the flora, fauna, fish, fisheries and scenic attractions, and
- (b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land subject to the petroleum title.

### **76 Rehabilitation etc of area damaged by operations**

- (1) The conditions subject to which a petroleum title is granted or renewed may include such conditions relating to:
  - (a) the rehabilitation, levelling, regrassing, reforestation or contouring of any part of the land the subject of the title that may have been damaged or adversely affected by operations, and
  - (b) the filling in or sealing of excavations and drill holes,as may be prescribed by the regulations or as the Minister may, in any particular case, determine.
- (2) The Minister may amend a petroleum title:
  - (a) that does not contain conditions of the kind that may be imposed under this Division, or
  - (b) that does contain such conditions, being conditions that the Minister considers are inadequate,so as to include conditions or further conditions of that kind or so as to alter any such conditions.
- (3) An amendment takes effect on the date on which notice of the amendment is served on the holder of the petroleum title or on such later date as may be specified in the notice.
- (4) Any conditions of the kind referred to in subsection (1) (a) are to be in a form approved by the Commissioner of the Soil Conservation Service and are to be imposed only after consultation with the Director-General of National Parks and Wildlife.
- (5) This section has effect despite anything to the contrary in section 93 of the *Environmental Planning and Assessment Act 1979*.

## **Division 3 Directions to rehabilitate land**

### **77 Direction to comply with conditions of petroleum title**

- (1) The Minister may cause to be served on a person who is or has been the holder of a petroleum title a written notice directing the person to take specified steps, within a specified time, to give effect to any conditions included in the petroleum title under Division 2.
- (2) A person on whom such a direction has been served must not fail to comply with the direction.

Maximum penalty: 100 penalty units.

### **78 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 cause to be taken any of the steps specified in the notice in which the direction was given.
- (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.

### **79 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.

## **Division 4 Directions to remove petroleum plant**

### **80 Application of Division**

This Division applies to land that ceases to be subject to a petroleum title.

### **81 Definitions**

In this Division:

***petroleum plant*** means any building, plant, machinery, equipment, tools or other property that has been used for drilling, whether or not affixed to land.

***prescribed period***, in relation to land that has ceased to be subject to a petroleum title, means the period of 6 months from the date on which the land ceased to be subject to the



petroleum title or such longer period as the Minister may, in any particular case, allow.

## **82 Clearing away of petroleum plant**

(1) The holder of a petroleum title over land that ceases to be subject to the petroleum title:

(a) may, within the prescribed period, and

(b) must, if directed to do so by the Minister by notice in writing, within the period specified in the notice,

cause to be removed from the land any petroleum plant brought on to, or erected on, that land in the course of drilling operations carried out under the petroleum title.

(2) The Minister may give a direction under this section even though the prescribed period has not expired.

## **83 Sale of petroleum plant**

(1) If the petroleum plant is not duly removed under this Division, the Minister may direct that the petroleum plant be sold by public auction.

(2) Any petroleum plant remaining unsold after the public auction is held may be sold by private treaty.

(3) The following amounts are to be deducted from the proceeds of any such sale:

(a) the costs of the sale and of any matter incidental to or connected with the sale,

(b) the costs of removing from the land concerned any petroleum plant remaining unsold after the public auction,

(c) any amount owing in respect of compensation under Part 11,

(d) any other amount that the Director-General certifies to be a deductible amount.

(4) Any balance remaining is to be paid to the Chief Commissioner of Unclaimed Money as unclaimed money, and section 10 (2) and Part 4 of the [Unclaimed Money Act 1995](#) apply to the balance so paid as they would have applied had the balance been paid to the Chief Commissioner under section 10 of that Act.

(5) If the proceeds of sale are less than the amounts to be deducted, the proceeds are to be applied in meeting those amounts in such manner as the Minister directs.

## **Part 7 Royalties and fees**

### **84 Royalty periods**

In this Division, the **royalty periods** for a particular petroleum title are:

- (a) the period from and including the date of granting of the petroleum title to the end of the named month during which that date occurs, and
- (b) each named month of the year thereafter.

## **85 Royalty**

- (1) The holder of a petroleum title must pay to the Minister a royalty in respect of all petroleum recovered by the holder of the title in the area comprised in the title.
- (2) The royalty is payable at the rate for the time being prescribed by the regulations (being not more than 10 per cent of the value at the well-head of the petroleum) unless the holder of the title, in his or her application for the title, nominated a higher rate, in which case royalty is payable at that higher rate.
- (3) The rate to be prescribed by the regulations in respect of the petroleum recovered from the land comprised in a second or subsequent licence granted to the same licensee is the percentage that would be the prescribed rate if the licence so granted were the continuation in force of the previous licence.
- (4) This section does not apply to methane recovered in conjunction with coal mining operations.

## **86 Reduction of royalty in certain cases**

- (1) If:
  - (a) the Minister is satisfied that the rate of recovery of petroleum from a well has become so reduced that, having regard to the rate or rates of royalty applicable under this Act, further recovery of petroleum from that well would be uneconomic, or
  - (b) petroleum is being recovered by the holder of a title as a consequence of a requirement made under this Act, or
  - (c) other circumstances exist which, in the opinion of the Minister, justify a determination under this section,

the Minister may, by instrument in writing, determine that the royalty in respect of all or any of the petroleum recovered from that well on or after a date specified in the determination is to be at such rate (being a rate lower than the rate that would be otherwise applicable) as the Minister specifies.

- (2) The Minister may, by instrument in writing, revoke or vary a determination under this section and the revocation or variation applies to petroleum recovered on or after a date specified in the instrument.
- (3) Determinations of the Minister under this section have effect despite the regulations.

### **87 Royalty not payable in certain cases**

- (1) Royalty under this Act is not payable in respect of:
  - (a) petroleum that the Minister is satisfied was unavoidably lost before the quantity of that petroleum was ascertained, or
  - (b) petroleum that is used by the holder of the petroleum title for the purposes of operations authorised by the title, or
  - (c) petroleum that, with the approval of the Minister, is flared or vented in connection with operations for the recovery of petroleum.
- (2) If petroleum that has been recovered by the holder of a petroleum title is, with the approval of the Minister, returned to a natural reservoir, royalty is not payable in respect of that petroleum by reason of that recovery, but this subsection does not affect the liability of that or any other holder of a petroleum title to pay royalty in respect of petroleum that is recovered from that natural reservoir.

### **88 Ascertainment of well-head**

For the purposes of this Act, the well-head, in relation to any petroleum, is such equipment used for the recovery of the petroleum as is agreed between the holder of the petroleum title and the Minister or, in default of agreement within such period as the Minister allows, is such equipment used for the recovery of petroleum by that holder as is determined by the Minister as being that well-head.

### **89 Ascertainment of value**

For the purposes of this Act, the value at the well-head of any petroleum is the amount agreed between the holder of the title concerned and the Minister, or, in default of agreement within such period as the Minister allows, the amount determined by the Minister as being that value.

### **90 Ascertainment of quantity of petroleum recovered**

For the purposes of this Act, the quantity of petroleum recovered by the holder of a petroleum title during a royalty period is taken to be:

- (a) the quantity measured during that period by a measuring device approved by the Minister and installed at the well-head or at such other place as the Minister approves, or
- (b) where no such measuring device is so installed, or the Minister is not satisfied that the quantity of petroleum recovered by the holder of the petroleum title has been properly or accurately measured by such a measuring device—the quantity determined by the Minister as being the quantity recovered by the holder of the title during that period.

### **91 Payment of royalty**

Royalty in respect of petroleum recovered during a royalty period is payable not later than the last day of the next succeeding royalty period.

### **92 Penalty for late payment**

- (1) If an amount of royalty is not paid in due time, there is payable to the Minister by the holder of the petroleum title an additional amount calculated at the rate of one-third of one per cent per day on the amount of royalty from time to time remaining unpaid, to be computed from the time when the royalty became payable until it is paid.
- (2) An additional amount in respect of royalty is not payable under subsection (1) in respect of any period before the expiration of 7 days after the value of the petroleum was agreed or determined under this Part.

### **93 Title fees**

- (1) For the privilege of being permitted to carry on operations under a petroleum title, the appropriate petroleum title fee is payable to the Director-General on behalf of the Crown on the grant of the title.
- (2) The fee is payable by the person to whom the title is granted and is payable in addition to any royalty payable under this Part.

### **94 Recovery of royalties, fees and penalties**

Any royalty or amount payable under this Part is a debt due by the holder of the title concerned to the Crown and is recoverable in a court of competent jurisdiction.

## **Part 8 Registration of titles and dealings**

### **95 Records of titles**

- (1) The Director-General is to cause a record to be kept of:
  - (a) every application for a petroleum title that is duly made under this Act, and
  - (b) every title that is granted, renewed, transferred or cancelled under this Act.
- (2) Such a record must be kept in the form, and must contain the particulars, prescribed by the regulations.
- (3) The record must be kept available at the head office of the Department for inspection, free of charge, by members of the public during ordinary office hours.

### **96 Applications for transfer of title**

- (1) The holder of a petroleum title may apply for approval of the transfer of the title to some other person.

- (2) An application for approval of the transfer of a petroleum title:
  - (a) must be accompanied by the appropriate lodgment fee, and
  - (b) must be accompanied by the consent of the proposed transferee, and
  - (c) must be accompanied by the particulars prescribed by the regulations, and
  - (d) must be lodged with the Director-General.
- (3) After considering an application for approval of the transfer of a petroleum title, the Minister:
  - (a) may approve the transfer in accordance with the application, or
  - (b) may refuse the application.
- (4) In approving the transfer of a petroleum title, the Minister may direct that any of the conditions of the title be amended or that further conditions be included in the title.
- (5) An application for approval of the transfer of a petroleum title may be withdrawn by means of a written notice of withdrawal signed by the applicant and lodged with the Director-General. The application ceases to have effect when the notice of withdrawal is lodged.
- (6) The withdrawal of an application under this section is irrevocable.

#### **96A Registration of transfers**

- (1) The transferor or transferee of a petroleum title, the transfer of which the Minister has approved, may apply for registration of the transfer.
- (2) An application for registration of a transfer:
  - (a) must be lodged with the Director-General, and
  - (b) must be accompanied by the appropriate lodgment fee.
- (3) On receipt of the application, the Director-General must register the transferee as the holder of the petroleum title unless registration of the transfer is prohibited by section 96B.
- (4) On registration of a transfer, the transferee becomes the holder of the petroleum title and the title becomes subject to the amended conditions or further conditions referred to in any relevant direction under section 96 (4).

#### **96B Caveats**

- (1) A person claiming a legal or equitable interest in a petroleum title may lodge with the Director-General a caveat, accompanied by the appropriate lodgment fee, directing

the Director-General not to register any transfer of the petroleum title otherwise than in accordance with the provisions of the caveat.

- (2) Unless sooner withdrawn, a caveat remains in force for the period of 3 months from the date on which it is lodged.
- (3) While a caveat remains in force, a transfer of the petroleum title may not be registered in contravention of the provisions of the caveat otherwise than pursuant to an order of the Supreme Court directing the Director-General to register the transfer.
- (4) At the expiration of the period for which a caveat is in force, a transfer of the petroleum title to which it relates is to be registered unless, before the expiration of that period, the Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer.

#### **97 Registration of certain interests**

- (1) The Director-General is to keep a register of legal and equitable interests in petroleum titles.
- (2) Any person claiming a legal or equitable interest in a petroleum title may apply for registration of the interest.
- (3) An application must be lodged with the Director-General and must be accompanied by the appropriate lodgment fee and by written evidence (including, but not limited to, documentary evidence) of the legal or equitable interest concerned.
- (4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the interest or the document by which the interest is evidenced.
- (5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest.
- (6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.
- (7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest.
- (8) For the purposes of any legal proceedings concerning a petroleum title:
  - (a) a registered interest has priority over an interest that is not registered, and
  - (b) an earlier registered interest has priority over a later registered interest.
- (9) The register must be kept available at the head office of the Department for inspection, free of charge, by members of the public during ordinary office hours.

(10) An application under this section may be withdrawn by means of a notice of withdrawal signed by the applicant and lodged with the Director-General and ceases to have effect when the notice is lodged.

(11) The withdrawal of an application under this section is irrevocable.

## **Part 9 Inspection and control**

### **98 Inspection of land, accounts etc**

(1) The Director-General and any inspector, geologist or other officer authorised by the Director-General for the purposes of this Part is to have access, at all reasonable hours, to:

- (a) land subject to a petroleum title, or the subject of an easement or right of way under this Act, and to all buildings, structures and equipment and works situated on the land, and
- (b) all books, accounts, documents and other records, whether in or on such land or any other land, relating to any such title or easement or right of way and the operations carried on under the title, easement or right of way.

(2) Such access is to be gained for the purpose of:

- (a) examining and inspecting the land concerned and any such books, accounts, documents and records, and
- (b) in the case of the books, accounts, documents and records, of making copies of them or taking extracts from them, and
- (c) ascertaining whether the requirements of the title and of this Act are being observed.

### **99 Survey**

(1) An officer of the Department authorised by the Director-General 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.

### 100 Sampling

A geologist, geophysicist or geochemist employed in the Department and authorised by the Director-General 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.

### 101 Notice to landholder

- (1) Before a person enters any land pursuant to this Part, 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 Director-General 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.

### 102 Compensation for damage

The Minister must pay compensation for any loss or damage caused by any person in the exercise under this Part of any power to enter premises, but not if the loss or damage is caused because the occupier obstructed, hindered or restricted the person in the exercise of that power.

### 103 Residential premises

A person may not exercise the powers conferred by this Part in relation to a part of any premises that is being used for residential purposes except:

- (a) with the permission of the occupier of that part of the premises, or
- (b) under the authority conferred by a search warrant.

### 104 Search warrant

- (1) In this section:

**authorised officer** has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).
- (2) The Director-General or an officer of the Department may apply to an authorised officer for a search warrant in respect of any premises if the person has reasonable grounds for believing that a provision of this Act or the regulations or a requirement of



a petroleum title has been or is being contravened in or on those premises.

- (3) An authorised officer to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a person named in the warrant:
  - (a) to enter the premises, and
  - (b) to search the premises for evidence of a contravention of this Act, the regulations or the requirements of a petroleum title.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

## **Part 10 Easements and rights of way**

### **105 Easements and rights of way over lands under petroleum title**

- (1) The Minister may on such terms as the Minister thinks just grant for joint or several use such easements or rights of way through, on or over the land comprised in a petroleum title as are necessary or appropriate to the development or working of that land or of any lands comprised in other petroleum titles.
- (2) The Minister may from time to time vary or revoke any grants under this section.

### **106 Rights of way over land**

- (1) The Minister may on such terms as the Minister thinks just grant for joint or several use temporary rights of way through, on or in any land for the construction of access roads to the land comprised in a petroleum title.
- (2) A right of way granted under this section subsists for the period specified in the instrument effecting the grant.
- (3) The Minister may from time to time vary or revoke any grants under this section.
- (4) The Minister may not grant consent under this section in respect of lands within a state recreation area under the *National Parks and Wildlife Act 1974*:
  - (a) without the concurrence in writing of the Water Administration Ministerial Corporation, where the lands concerned are within an irrigation area as defined in the *Crown Lands Act 1989*, or
  - (a1) without the concurrence in writing of the Lands Administration Ministerial Corporation constituted by section 13 of the *Crown Lands Act 1989*, or
  - (b) without the concurrence in writing of the Minister for the time being administering the *National Parks and Wildlife Act 1974*, in any other case.

## **Part 11 Compensation**

### **107 Compensation**

- (1) The holder of a petroleum title, or a person to whom an easement or right of way has been granted under this Act, is liable to compensate every person having any estate or interest in any land injuriously affected, or likely to be so affected, by reason of any operations conducted or other action taken in pursuance of this Act or the regulations or the title, easement or right of way concerned.
- (1A) A native title holder within the meaning of the Commonwealth Native Title Act is to be treated as having an estate or interest in land for the purposes of subsection (1).
- (2) The holder of a petroleum title is liable to compensate any other holder of a petroleum title whose operations under the title are detrimentally affected, or likely to be so affected, by the grant under this Act of an easement or right of way through, on or over the land comprised in the title held by that other holder or by the use of any such easement or right of way.
- (3) Compensation is not payable under this Act by the holder of a petroleum title, or a person to whom an easement or right of way has been granted under this Act, where the operations of the holder or person do not affect, and are not likely to affect, any portion of the surface of any land.
- (4) Any compensation agreed on or determined under Subdivision M or P of Division 3 of Part 2 of the Commonwealth Native Title Act for essentially the same act as an act in respect of which compensation is payable under this Part must be taken into account in the assessment of compensation for the act under this Part.

### **108 Parties to agree as to compensation**

- (1) The holder of a petroleum title may treat and agree with any person entitled to compensation under this Act as to the amount of the compensation.
- (2) If within a time prescribed by the regulations the parties are unable to agree on the amount of compensation to be paid, then, on the application of any party, the Land and Environment Court may assess the amount of compensation to be paid by the holder of the title concerned. The Court's decision is binding on the parties.

### **109 Measure of compensation**

- (1) If compensation is assessed under this Act by the Land and Environment Court, the assessment is to be of the loss caused or likely to be caused:
  - (a) by damage to the surface of land, and damage to the crops, trees, grasses or other vegetation on land, or damage to buildings and improvements on land, being damage which has been caused by or which may arise from prospecting or

petroleum mining operations, and

(b) by deprivation of the possession or of the use of the surface of land or any part of the surface, and

(c) by severance of land from other land of the landholder, and

(d) by surface rights of way and easements, and

(e) by destruction or loss of, or injury to, or disturbance of, or interference with, stock on land, and

(f) by damage consequential on any matter referred to in paragraphs (a)-(e).

(2) Without affecting the generality of subsection (1), where:

(a) the holder of a petroleum title is liable to compensate another holder of a petroleum title, and

(b) the compensation is assessed under this Act by the Land and Environment Court, the assessment is to be of the loss caused or likely to be caused by the operations of the other holder being detrimentally affected, or being likely to be so affected.

(3) In determining the amount of compensation, the Land and Environment Court must take into consideration the amount of compensation which any person entitled to it, or the predecessor in title of any such person, has already received for or in respect of the damage or loss for which compensation is being determined and must deduct the amount already so received from the amount to which the person would otherwise be entitled for such damage or loss.

#### **110 Manner of assessment**

(1) If compensation is assessed under this Act by the Land and Environment Court, the assessment is to be made in the manner prescribed by the regulations and after notice to the persons who appear to the Court to be interested in the assessment.

(2) In making any such assessment, the Land and Environment Court:

(a) may deal with the matter at any time and place fixed by the Court, and

(b) may make the assessment in the absence of any persons interested who appear to the Court to have been duly notified, and

(c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as the Court thinks fit.

(3) The amount so assessed is to be paid, by the person adjudged liable to pay it, into the Land and Environment Court within the time specified by the Court and is from time to

time, as may be thought necessary by the Court, to be paid out of court on the application of any person entitled to it.

- (4) If the amount so assessed is not paid into court within the time specified by the Land and Environment Court, the petroleum title of the holder, or the easement or right of way granted to the person, liable to make the payment may be cancelled or revoked, as the case may be.
- (5) If, after 6 months and before 12 months from the determination of a petroleum title, or the revocation of an easement or right of way, under this section, the whole or any part of an amount so paid into court:
  - (a) has not been paid out under this section, and
  - (b) has not been ordered to be paid out,any person who has paid the amount into court may apply to the Land and Environment Court for the payment out to him or her of that amount or part.
- (6) The Land and Environment Court may order the amount or part to be paid accordingly.
- (7) After the expiration of the 12-month period the Land and Environment Court may cause the amount or part to be paid into the Treasury and carried to the Consolidated Fund.

### **111 Additional assessment**

If, after an assessment has been made in accordance with this Part, it is proved to the satisfaction of the Land and Environment Court:

- (a) that the whole of the amount paid into court pursuant to this Part has been duly paid out, and
- (b) that since the date of the payment out, or the last payment out, as the case may be, further loss has been caused to the land to which the assessment relates, or to other land, being loss arising from any one or more of the causes mentioned in section 109 (1),

the Court must, subject to the terms of any relevant valid agreement between the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the petroleum title, or by the person to whom the easement or right of way has been granted, as the case may be, within the time and to the persons specified in the order.

### **112 Appeals from assessments**

An appeal may be brought against an assessment made by the Land and Environment Court under this Act in the same manner as an appeal against an assessment of the Court

made under the [Mining Act 1992](#), and the provisions of that Act, with any necessary modifications, apply accordingly.

#### **112A Native title compensation payable by holders of petroleum titles**

- (1) This section applies to the grant, renewal or variation of petroleum titles under this Act after the commencement of this section.
- (2) If compensation is payable under section 24MD of the Commonwealth Native Title Act in respect of an act to which this section applies that is attributable to the State, the holder of the title concerned at the time of the grant, renewal or variation is declared, in accordance with section 24MD (4) (b) (i) of that Act, to be liable to pay the compensation.

### **Part 12 Administration**

#### **113 Officers**

- (1) All registrars, surveyors and other officers appointed under the [Mining Act 1992](#), and all inspectors appointed under the [Mine Health and Safety Act 2004](#), and all inspectors appointed under the [Coal Mine Health and Safety Act 2002](#), are by this section constituted registrars, mining surveyors and such other officers, and inspectors of mines, and inspectors, respectively, under and for the purposes of the administration of this Act. They have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on them by or under this or any other Act.
- (1A) Other inspectors, having such powers, authorities, duties and functions as may be conferred or imposed on them by or under this or any other Act, may be employed under Part 2 of the [Public Sector Management Act 1988](#) or engaged under contract.
- (2) Such other officers as may be necessary for the purposes of this Act may be employed under Part 2 of the [Public Sector Management Act 1988](#).

#### **114 (Repealed)**

#### **115 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.

#### **116 (Repealed)**

### **Part 13 Release of information**

#### **117 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.

**118 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 appropriate fee, 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.

**119 Release of samples**

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 appropriate fee, 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.

**120 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 appropriate fee, 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.

**121 Invitation of objections to release of assessments**

Before the Minister or another Minister makes available or publicly known any information under section 120, the Minister or the other Minister, as the case may be, must:



- (a) cause to be published in the Gazette a notice:
  - (i) stating that the Minister proposes to make the information available or publicly known, and
  - (ii) 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
  - (iii) 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, and
- (b) if it is practicable to do so, cause a copy of the notice so published in the Gazette to be served on the person who furnished the document containing the information.

#### **122 Objector to state ground**

A notice of objection must set out the reasons for making the objection.

#### **123 Who may object**

A person has no right to make an objection to information being made available or publicly known under section 120 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.

#### **124 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 120 while an objection is undetermined.

#### **125 Information to be otherwise confidential**

Except as provided by the preceding provisions of this Part or for the purposes of the administration of this Act and the regulations, the Minister must not:

- (a) make publicly known, or make available to any person any information contained in a report, return or other document referred to in any of those provisions, or
- (b) make publicly known any particulars of, or permit any person to inspect, any core, cutting or sample furnished to the Minister under this Act.

## **Part 14 Miscellaneous**

### **126 Delegation of functions by Minister**

The Minister may delegate any of the Minister's powers, authorities, duties and functions under this Act (except this power of delegation) to the holder of any office.

### **126A Delegation of functions by Director-General**

The Director-General may delegate any of the Director-General's powers, authorities, duties and functions under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

### **127 Minister or officer not to be interested in petroleum title**

- (1) The Minister may not, nor may any registrar, inspector or other officer charged with any judicial or official duties under this Act, hold either directly or indirectly, during his or her tenure of office, any beneficial interest in any petroleum title (other than a special prospecting authority).
- (2) A person to whom subsection (1) applies who, while holding an interest in contravention of that subsection, acts in his or her office is guilty of an offence.

Maximum penalty: 200 penalty units.

### **128 Work practices**

- (1) The holder of a petroleum title must carry out all petroleum exploration operations and operations for the recovery of petroleum in the title area in accordance with the provisions of the *Occupational Health and Safety Act 2000*.
- (2) This section operates as a condition of every petroleum title.

### **129 Notice to be given of cause of danger**

- (1) If an inspector finds any matter, thing or practice connected with the operations conducted on any land subject to a petroleum title, or with the use of any easement or right of way under this Act, to be so dangerous or defective as in the inspector's opinion to threaten or tend to injure the health or body of any person, the inspector may:
  - (a) give notice of that finding in writing to the registered holder of the title or the manager of the operations or to the person to whom the easement or right of way was granted, and
  - (b) state in the notice the particulars in which the inspector considers those

operations to be dangerous or defective and require them to be remedied within a period specified in the notice, and

- (c) if the inspector thinks it necessary, direct that the registered holder of the title, the manager of the operations or the person to whom the easement or right of way was granted cause the operations or any part of the operations to cease, or cause persons on the land to be withdrawn, either indefinitely or for such period as is specified in the notice by the inspector.

(2) A copy of the notice is to be sent immediately by the inspector to the Minister.

### **130 Saving of powers to dispose of land**

- (1) Nothing in this Act or the regulations or in any petroleum title, or in any easement or right of way under this Act, abrogates or limits any power conferred on the Governor or any Minister of the Crown or any other person by any other Act to reserve, dedicate, grant, sell, lease or otherwise deal with or dispose of any land.
- (2) Any such reservation, dedication, grant, sale, lease or other dealing or disposition is, however, subject to any rights that have been conferred by or under this Act or any petroleum title, or by any easement or right of way under this Act, and that are in existence at the time of the reservation, dedication, grant, sale, lease or other dealing or disposition.

### **131 Records to be furnished**

- (1) Every holder of a petroleum title must not later than on the first anniversary of the grant of the title, and at or before each such anniversary in each subsequent year, furnish to the Minister a record in the prescribed form of the operations conducted and expenditures incurred during the 12 months to which the record relates on the land comprised in the title, together with a plan drawn to the prescribed scale showing:
  - (a) the situation of all wells on that land, and
  - (b) all development and other works and improvements executed by the holder in connection with the holder's prospecting operations or mining operations, and
  - (c) full particulars of any ancillary rights acquired for the exercise of the rights or for the performance of the obligations arising out of the grant of such title, and
  - (d) such other matters and things as the regulations may require.
- (2) 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.

### **132 Samples of strata, petroleum and water**

- (1) Every holder of a petroleum title must:
  - (a) so far as is reasonably practicable, collect, label and preserve for reference, in accordance with the conditions of the title, all cores and characteristic samples of the strata encountered in any well on the land comprised in the title and samples of any petroleum or water discovered in any well on such land, and
  - (b) as soon as is reasonably practicable:
    - (i) cause to be made to the satisfaction of the Minister petrological, palaeontological and other scientific examinations of all cores and samples and scientific examinations of petroleum and water samples, and
    - (ii) furnish to the Minister detailed reports of all examinations so made, and
  - (c) on the determination of the title, furnish to the Minister such data as the Minister may require in relation to the examination of any cores and samples.
- (2) Cores and samples preserved by any such holder are at all times to be available for examination by a geologist of the Department or an inspector or other officer authorised in that behalf by the Minister, and may be taken for the purposes of analysis or other examination.

### **133 Furnishing of statistics, returns etc**

- (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 so to do 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 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 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.

### **134 Service of documents**

- (1) Service of a document authorised or required to be served on any person for the purposes of this Act may be effected:
  - (a) on a natural person, by delivering it to the person personally or by leaving it at, or sending it by pre-paid post to, the person's last known residential or business address, or
  - (b) on a body corporate, by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate,or in any other way in which service could have been effected in the absence of this section.
- (2) If a landholder on whom a document is authorised or required to be served is absent from the State or cannot, after diligent inquiry, be found or identified, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land.
- (3) If a person has more than one place of business, service may be effected at any of those places.
- (4) Service of a document on a person may be effected by service, in any manner permitted by this section, on the person's agent duly appointed and notified in accordance with the regulations made under this Act.
- (5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a document exchange, but the burden of establishing that a document so despatched was actually received, and of establishing its time of receipt, lies on the person seeking to establish it.

### **134A Service of documents on native title holders**

- (1) If a document is authorised or required under this Act to be served on a landholder who is a native title holder, service of the document is taken to be effected in accordance with section 134 if the document is served on a registered native title body corporate in relation to the land concerned.
- (2) If no approved determination of native title (within the meaning of the Commonwealth Native Title Act) exists in relation to the land concerned, a document authorised or required under this Act to be served on a landholder cannot, for the purposes of serving it on a landholder who is a native title holder who cannot be identified, be served in the manner prescribed by section 134 (2).

- (3) Such a document may, however, be served on a landholder referred to in subsection (2) by serving it, in a manner authorised by section 134 (1) and (3)–(5), on:
  - (a) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
  - (b) any registered native title claimants in relation to the land concerned.
- (4) In this section, **registered native title body corporate** and **registered native title claimant** have the same meanings as in the Commonwealth Native Title Act.

#### **134B Consents of landholders**

- (1) This section applies in relation to:
  - (a) the requirements of sections 71 and 72 that certain operations cannot be carried out or works erected except with the consent of a landholder or other person, and
  - (b) the provision in section 69E for the making of an agreement by the holder of a prospecting title with each landholder of the land concerned as to an access arrangement.
- (2) If a landholder or other person whose consent must be obtained for the purposes of section 71 or 72 or whose agreement may be obtained for the purposes of section 69E cannot, after diligent inquiry, be found or identified:
  - (a) the operations may be carried out or the works erected without the consent of the landholder or other person, or
  - (b) the agreement as to the access arrangement may be made with those landholders (if any) of the land concerned who have been found or identified without the agreement of a landholder who has not been found or identified.
- (3) For the purposes of subsection (2), a landholder who is a native title holder is taken to have been unable, after diligent inquiry, to be identified if:
  - (a) where the purpose for which the landholder's consent or agreement is required to be obtained is an act to which Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act applies:
    - (i) notice of an intention to carry out that purpose is given by the Government party under section 29 of that Act, and
    - (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned, or
  - (b) where the purpose for which the landholder's consent or agreement is required to be obtained is not such an act:

- (i) notice of an intention to carry out that purpose is served, in a manner authorised by section 134 (1) and (3)–(5), on any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
- (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

(4) In this section:

**Government party, registered native title body corporate** and **registered native title claimant** have the same meaning as in the Commonwealth Native Title Act.

**prescribed period** means:

- (a) in relation to a notice referred to in subsection (3) (a)—the period of 4 months referred to in section 30 of the Commonwealth Native Title Act, or
- (b) in relation to a notice referred to in subsection (3) (b)—the period of 4 months commencing on service of the notice.

### **135 False returns**

- (1) Any person who inserts any false particulars in any statistics, returns or records directed or required by or under this Act to be furnished or made or supplies any false information when directed or required under this Act to supply any information is guilty of an offence.

Maximum penalty: 200 penalty units.

- (2) If any person is convicted in proceedings for an offence against this section and it appears from the proceedings that such false particulars or information were or was supplied wilfully to evade the payment of royalty, the person is liable to an additional penalty of a sum equal to twice the amount of royalty payable.

### **136 Other offences**

- (1) A person who assaults, hinders or obstructs:

- (a) any person duly authorised by any mining appeal court in lawfully entering on any land or in performing any other act authorised by or under this Act, or
- (b) any officer, inspector, geologist or other person in the performance of any act or duty or in the exercise of his or her powers under this Act or the regulations,

is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) A person who contravenes:

- (a) any conditions subject to which any exemption, suspension or consent is granted under this Act or the regulations, or
- (b) any directions or requirements which may be given to or made of the person by notice or otherwise under this Act or the regulations,

is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) A landholder of any land or any other person who:

- (a) obstructs any person prospecting or mining for petroleum in the doing of any act which the person is by or under this Act authorised to do on any such land, or
- (b) interferes with, removes, destroys or defaces any notice required by this Act or the regulations to be placed on any land,

is guilty of an offence.

Maximum penalty: 100 penalty units.

### **136A Contravention of conditions of title**

(1) The holder of any petroleum title must not, without reasonable excuse, contravene or fail to comply with any conditions of the title.

Maximum penalty:

- (a) if the condition of the title is identified in the title as a condition related to environmental management:
  - (i) 1,000 penalty units, in the case of an offence dealt with on indictment, or
  - (ii) 200 penalty units, in the case of an offence dealt with summarily, or
- (b) in any other case—200 penalty units.

(2) If the conditions of a petroleum title held by more than one person are contravened, each holder who knowingly authorised or permitted the contravention is guilty of an offence under this section.

### **137 Proceedings for offences**

(1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court, except as provided by this section.

(2) If an appropriate election is made in accordance with Chapter 5 of the *Criminal Procedure Act 1986*, any of the following offences may be dealt with on indictment:



- (a) an offence of mining in contravention of section 7,
  - (b) an offence, under section 136A, of contravening a condition of a petroleum title that is identified in the title as a condition related to environmental management.
- (3) (Repealed)

**137A Penalty notices for offences under section 136A**

- (1) The Minister may serve a penalty notice on the holder of a petroleum title if it appears to the Minister that the person has committed an offence under section 136A.
- (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 may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe the amount of penalty for an offence under section 136A if dealt with under this section, and
  - (b) prescribe different amounts of penalty for different offences or classes of offences under that section.
- (7) The amount of penalty prescribed under this section for an offence may not exceed 100 penalty units.
- (8) This section does not limit the operation of any provision made by or under this or any other Act relating to proceedings that may be taken in respect of offences.

**138 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to prescribing any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, for or with respect to:
  - (a) determining the dimensions, boundaries, form, position and extent of any land comprised or to be comprised in any petroleum title, their subsequent adjustment

- where necessary and the time when such a determination takes effect, and
- (b) determining requirements to be complied with by persons who want to acquire petroleum titles, and
  - (c) providing for the registration and the mode of applying for and effecting the registration of petroleum titles, of the transfer or assignment of such titles or of any interest in them and of any instrument affecting the land comprised in a petroleum title or any part of any such land, and
  - (d) prescribing conditions or covenants subject to which any petroleum title is to be held, and the conditions on which exemption from the performance of any such covenants or conditions may be applied for, granted, and obtained, and, generally, for prescribing the manner in which and with what incidents, rights and obligations such titles are to be held, occupied, used, worked and enjoyed, and
  - (e) the prevention of nuisances in or about the land comprised in any petroleum title and for cleansing and keeping clean the same, and
  - (f) prescribing returns to be furnished by holders of petroleum titles of work done and petroleum obtained or any other products produced by any such holders, and
  - (g) prescribing additional matters for which fees are payable under this Act, including applications, surveys, exemptions from performance of conditions or covenants and for registration of transfers, assignments, subleases, tributes, option contracts, devolution of title or any other thing required or permitted by this Act or the regulations to be registered, and
  - (h) the treatment of water underground or at the surface and the prevention of waste or loss of water or petroleum or pollution of deposits of water or petroleum, and
  - (i) prescribing the drilling machinery, materials and casing which are to be used in operations under or pursuant to this Act, and
  - (j) regulating the separation, storage, transportation and utilisation of any of the products obtained pursuant to petroleum titles, and
  - (k) providing for the cessation in the prescribed circumstances of operations on land comprised in petroleum titles, and the precautions to be undertaken in regard to any operations on any such land, and
  - (l) regulating the spacing of oil wells, and
  - (m) ensuring that precautions are taken against flooding and providing methods to be adopted on abandonment of wells, and
  - (n) providing that drilling and other exploration operations are carried out with due diligence and by safe and satisfactory methods, and

- (o) the recovery, purification and utilisation of helium or carbon dioxide and the course of action to be taken on the discovery of helium or carbon dioxide, and
  - (p) prescribing the technical and other reports to be furnished by the holders of petroleum titles, and
  - (q) regulating arbitrator's costs under this Act and the procedure of any arbitration conducted under this Act.
- (2) The regulations may provide for the adoption of any set of standards published by any person or body, and for the application of those standards, as in force for the time being, for any of the purposes of the regulations.
  - (3) The regulations may provide for the exemption of any person or class of persons from any requirement of this Act or the regulations.
  - (4) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

#### **138A Minister to determine certain fees**

The Minister may, from time to time, with the concurrence of the Treasurer, determine:

- (a) the lodgment fees payable for the purposes of this Act and the regulations, and
- (b) the petroleum title fees payable for the purposes of section 93, and
- (c) any other fee payable for the purposes of this Act or the regulations.

#### **138B References to certain officers in petroleum titles**

- (1) The regulations may provide that a reference in any petroleum title to the holder of a specified office within the Department is, for the purposes of the performance of any specified function in connection with the title, to be read as a reference to the Minister, and the petroleum title is to be construed accordingly.
- (2) Nothing in this section affects the Minister's power of delegation under section 126.

#### **139 Repeals**

The *Petroleum Act 1955*, and any regulations in force under that Act, are repealed.

#### **140 Savings and transitional provisions**

Schedule 1 has effect.

#### **141 General immunity of landholders**

- (1) The landholder of land within which any person (other than the landholder) is authorised to exercise any power or right:

(a) by or under this Act, or

(b) by any petroleum title under this Act,

is not subject to any action, liability, claim or demand arising as a consequence of that person's acts or omissions in the exercise, or purported exercise, of any such power or right.

(2) This section extends to anything done or omitted to be done before the commencement of this section.

(3) In this section, **landholder** includes a secondary landholder.

## Schedule 1 Savings and transitional provisions

(Section 140)

### Part 1 General

#### 1 Definition

In this Schedule:

**the former Act** means the *Petroleum Act 1955*.

#### 2 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on:

(a) the publication by the Surveyor-General of a notice under section 4 (2) of the *Survey (Geocentric Datum of Australia) Act 1999*, or

(b) the enactment of the following Acts:

this Act

*Petroleum (Onshore) Amendment Act 1998*

*Native Title (New South Wales) Amendment Act 1998*

*Survey (Geocentric Datum of Australia) Act 1999*

*Mining and Petroleum Legislation Amendment Act 2000*

*Courts and Crimes Legislation Further Amendment Act 2008*, but only in relation to the amendments made to this Act

*Mining and Petroleum Legislation Amendment (Land Access) Act 2010*, but only in relation to amendments made to this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of publication of the notice under section 4 (2) of the *Survey (Geocentric Datum of Australia) Act 1999* or the date of assent to the Act concerned (as the case may be), or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **3 Licences and leases under the former Act**

A petroleum exploration licence or petroleum mining lease that was in force under the former Act immediately before its repeal is taken to be an exploration licence or production lease (respectively) under this Act and to continue (subject to this Act) in force for the remainder of its term subject to the same conditions as were attached to it immediately before the repeal of the former Act.

### **4 Applications for licences and leases**

- (1) An application made before the date of repeal of the former Act for a petroleum exploration licence or a petroleum mining lease, being an application that had not been determined before that date, is taken to be an application for an exploration licence or production lease (respectively) under this Act.
- (2) Any such application is to be determined and otherwise dealt with in accordance with the provisions of the former Act.

### **5 Suspended conditions**

A suspension, effective under section 42 of the former Act immediately before its repeal, of the conditions of a licence or lease continues in effect despite the repeal of the former Act for the remainder of the period of suspension.

### **6 Reserved lands**

A proclamation under section 9 (4) of the former Act remains in force and has effect as a notification under section 9 (1) (a) of this Act.

### **7 Other matters**

Any direction, exemption, consent or agreement in force under the former Act

immediately before the repeal of the former Act continues in force despite the repeal of the former Act and may be varied, revoked or discharged in the same manner and to the same extent as under that Act.

## **Part 2 Provisions consequent on enactment of [Petroleum \(Onshore\) Amendment Act 1998](#)**

### **8 Definition**

In this Part:

**amending Act** means the [Petroleum \(Onshore\) Amendment Act 1998](#).

### **9 Securities**

A security given by a holder of a petroleum title under section 16 (as in force immediately before the repeal and re-enactment of section 16 by Schedule 1 [3] to the amending Act) is taken:

- (a) to have been given under section 16 as re-enacted, and
- (b) to have been given for the fulfilment of the holder's obligations under this Act in respect of the title,

and this Act (as amended) applies accordingly.

### **10 Renewals**

Section 19 (2) as in force immediately before the date of commencement of Schedule 1 [5] to the amending Act applies to the renewal of any petroleum title in force immediately before that date.

### **11 Conditions on certain production leases**

The amendments made to section 76 by Schedule 1 [9]-[12] to the amending Act do not affect the validity of any condition imposed on a production lease under section 76 as in force immediately before the commencement of those amendments.

### **12 Records**

Nothing in section 95, as re-enacted by the amending Act, requires the Director-General to keep a record of an application made, or a petroleum title granted, before the commencement of Schedule 1 [14] to the amending Act.

### **13 Application for transfer of title**

An application under section 96 for approval of the transfer of a petroleum title that was made to the Minister before the commencement of Schedule 1 [15] to the amending Act, but was not finally determined before that commencement, may be dealt with as if

section 96 had not been repealed and re-enacted by the amending Act.

#### **14 Registration of interests**

- (1) Nothing in section 97, as re-enacted by the amending Act, requires the Director-General to maintain the register of instruments required to be maintained under section 97 before its repeal and re-enactment by Schedule 1 [16] to the amending Act.
- (2) Section 97, as re-enacted, extends to the registration of interests in petroleum titles existing immediately before the commencement of Schedule 1 [16] to the amending Act.

### **Part 3 Provisions consequent on enactment of [Native Title \(New South Wales\) Amendment Act 1998](#)**

#### **15 Conversion of existing prospecting titles to low-impact prospecting titles**

- (1) The holder of an exploration licence or special prospecting authority in force immediately before the commencement of Division 6 of Part 3 of this Act may apply to the Minister for its conversion to a low-impact exploration licence or low-impact special prospecting authority under that Division. Exploration licences and special prospecting authorities are referred to in this clause as **prospecting titles**.
- (2) The Minister may approve the application only if satisfied that the notification and other requirements of that Division for the grant of a low-impact prospecting title have been complied with. For the purpose of converting the title, the Minister is to amend the title and its conditions by notice served on the holder of the title.
- (3) On the service of the notice, the title becomes a low-impact exploration licence or low-impact special prospecting authority (as the case requires) and is subject to the provisions of that Division.
- (4) An application under this clause may be made with respect to a part only of the land over which the prospecting title was granted. In that case, the Minister may, subject to the regulations, convert the title as to that part of the land and continue the existing title as to the remainder of the land.

#### **16 Saving with respect to existing exploration licences and special prospecting authorities**

The amendments made to this Act by the [Native Title \(New South Wales\) Amendment Act 1998](#) do not invalidate or affect any exploration licence or special prospecting authority in force at the time the amendments are made.

### **Part 4 Provisions consequent on enactment of [Survey \(Geocentric](#)**

## Datum of Australia) Act 1999

### 17 Definition

In this Part, the **amending Act** means the *Survey (Geocentric Datum of Australia) Act 1999*.

### 18 Boundaries of exploration licences

- (1) On the commencement of this clause, an exploration licence that is in force applies to an area of land (in so far as a graticular section or unit referred to in section 4 is used to specify the area) determined in accordance with section 5 as repealed and re-enacted by the amending Act.
- (2) To the extent that, by the operation of subclause (1), the area to which an exploration licence in force on the commencement of this clause applies would be taken to include:
  - (a) land outside New South Wales, or
  - (b) any land over which, according to the provisions of Part 3 or of any other Act or law, the grant of an exploration licence is prohibited,the land is excluded from the area.
- (3) On application made in writing, within 90 days after the commencement of this clause, by the holder of an exploration licence applying to an area from which any land has been excluded by the operation of subclause (1), the Minister, on being satisfied that, before the commencement of this clause, significant evidence of valuable petroleum deposits existed in relation to the excluded land, may by order amend the licence so as to restore the whole or a specified part of the land excluded.
- (4) An order may be made under subclause (3) even though the land restored would, but for the order, have been subject to another exploration licence.
- (5) A person dissatisfied with the decision of the Minister on an application under this clause may appeal to a Warden's Court. In determining the appeal, the Court has all the functions of the Minister under this clause.
- (6) No compensation is payable to any person for loss or damage arising from the operation of this clause.

### 19 Applications for exploration licences

On the commencement of this clause, a pending application for an exploration licence applies to an area of land (in so far as a graticular section or unit referred to in section 4 is used to specify the area) determined in accordance with section 5 as repealed and re-enacted by the amending Act.



## 20 Applications for production leases

On the commencement of this clause, a pending application for a production lease applies to an area of land (in so far as a graticular section or unit referred to in section 4 is used to specify the area) determined in accordance with section 5 as repealed and re-enacted by the amending Act.

## Part 5 Provisions consequent on enactment of **Mining and Petroleum Legislation Amendment Act 2000**

### 21 Conditions of petroleum titles

The Minister may, by instrument in writing served on the holder of a petroleum title in force at the commencement of this clause, vary the conditions of the title so as to identify those conditions of the title that are related to environmental management.

## Part 6 Provisions consequent on enactment of **Mining and Petroleum Legislation Amendment (Land Access) Act 2010**

### 22 Definition

In this Part, **the amending Act** means the *Mining and Petroleum Legislation Amendment (Land Access) Act 2010*.

### 23 Existing land access arrangement

- (1) A land access arrangement purporting to have been agreed or determined under Part 4A of this Act before the commencement of the amending Act that would have been a valid arrangement if agreed or determined after that commencement is taken to be (and always to have been) a valid arrangement under that Part.
- (2) Any action purportedly taken before the commencement of the amending Act in relation to a proposed access arrangement under that Part that would have been validly taken after that commencement is taken to have been (and always to have been) validly taken under that Part.
- (3) Any amendment made by the amending Act that requires the agreement for an access arrangement to be in writing does not affect the operation of any access arrangement, in force immediately before the commencement of that amendment, that was agreed to orally.
- (4) This clause does not affect any order of a court made before the commencement of the amending Act.

### 24 Existing petroleum titles

- (1) A petroleum title purporting to have been granted under this Act before the commencement of the amending Act that would have been a valid petroleum title if

granted after that commencement is taken to be (and always to have been) a valid petroleum title under this Act.

- (2) Any action purportedly taken before the commencement of the amending Act in relation to a proposed petroleum title under this Act that would have been validly taken after that commencement is taken to have been (and always to have been) validly taken under this Act.
- (3) This clause does not affect any order of a court made before the commencement of the amending Act.