

# Petroleum (Onshore) Act 1991 No 84

[1991-84]



New South Wales

## Status Information

### Currency of version

Current version for 1 March 2023 to date (accessed 23 January 2025 at 9:30)

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 and Petroleum Legislation Amendment Act 2022 No 21* (amended by *Statute Law (Miscellaneous Provisions) Act (No 2) 2022 No 59* and *Statute Law (Miscellaneous Provisions) Act (No 2) 2024 No 82*), Sch 2[1], except to the extent it inserts the definition of **well-head**, [2]–[6] [8]–[13] [15]–[24] [26]–[40] [42]–[90] and [91], except to the extent it inserts Sch 1, Part 15, heading and cll 67, 69 and 72 (not commenced)

### Responsible Minister

- Minister for Natural Resources

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 21 November 2024

# 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.

### 2A Objects

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

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



### 3 Definitions

(1) In this Act—

**access arrangement** means an access arrangement under Part 4A or 4B.

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

**administrative levy** means an administrative levy payable under Part 7A.

**annual rental fee** means an annual rental fee payable under Part 7A.

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

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

**Chief Commissioner** means the Chief Commissioner of State Revenue.

**Commonwealth Native Title Act** means the [Native Title Act 1993](#) of the Commonwealth.

**Department** means the Department of Planning and Environment.

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

**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.

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

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

**environment protection legislation** has the same meaning as in the [Protection of the Environment Administration Act 1991](#).

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

**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.

**inspector** means an inspector within the meaning of the [Mining Act 1992](#).

**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 under the [Crown Land Management Act 2016](#) over the land, or
- (d) the holder of a continued incomplete tenure purchase under Schedule 1 to the [Crown Land Management Act 2016](#) in the land, or
- (e) the holder of a permissive occupancy granted over the land, or
- (f) (Repealed)
- (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 Land Management Act 2016](#), 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
- (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.

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

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

- (a) a Government Department, and
- (b) a statutory body representing the Crown, a State owned corporation within the meaning of the [State Owned Corporations Act 1989](#) and a subsidiary (within the meaning of that Act), and
- (c) a council, and
- (d) a member of staff or other person who exercises functions on behalf of a public authority.

**related body corporate** has the same meaning as in the [Corporations Act 2001](#) of

the Commonwealth.

**resources legislation** means this Act, the [Mining Act 1992](#) and the regulations and other instruments made under those Acts.

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

**Secretary** means the Secretary of the Department.

**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.

**well-head**, of petroleum, has the meaning specified by the regulations.

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

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (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—

- (a) in the case of a corporation—5,000 penalty units, and, in the case of a continuing offence, a further penalty of 500 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—1,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 100 penalty units for each day that the offence continues.

Maximum penalty for mining in contravention of this section—

- (a) in the case of a corporation—10,000 penalty units, or
  - (b) in the case of an individual—2,000 penalty units or imprisonment for 5 years, or both.
- (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

### Note—

Schedule 1B contains further provisions about the following—

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

## Division 1 Provisions relating to titles generally

### 8 Application for petroleum title

- (1) Any person may apply for a petroleum title.
- (2) The following applications may not be made except pursuant to an invitation under Schedule 1A (Competitive selection process for petroleum prospecting titles)—
  - (a) an application for an exploration licence or special prospecting authority,
  - (b) an application for an assessment lease made by an applicant other than the holder of an exploration licence over the land in respect of which the assessment lease is sought.

### 9 Areas over which petroleum titles may not be granted

- (1) The Minister must not grant a petroleum title over any of the following land (the ***excluded areas***)—
  - (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.
- (1A) Despite subsection (1) (c), the Minister may grant a petroleum title over an area included in another application for a petroleum title if that other application and the applicant's application are both made pursuant to an invitation under Schedule 1A (Competitive selection process for petroleum prospecting titles).
- (2) A notification under subsection (1) (a) may be varied or rescinded by a subsequent

notification.

(3)–(6) (Repealed)

## **10 (Repealed)**

## **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, facsimile or electronically to the Secretary, or may be made electronically as approved by the Secretary.

## **12 Fee for processing applications**

An application for a petroleum title must be accompanied by the lodgment fee prescribed by the regulations.

## **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**

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

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

- (1) An application for a petroleum title must be accompanied by evidence of—

- (a) the financial capability 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), (3) (Repealed)

## **16 Grant or refusal of petroleum titles**

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

### **Note—**

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

## **16A, 17 (Repealed)**

## **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).

**Note—**

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

- (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.

- (2AA) An application for renewal of an exploration licence—

- (a) may be made in respect of one or more parts (but not more than such number of parts as may be prescribed by the regulations) of the land comprised in the exploration licence when the application for renewal is made, and
- (b) if it relates to renewal in respect of part only of the land comprised in the licence—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land over which renewal of the licence is sought, and
- (c) may include a description of any special circumstances that the applicant claims (for the purposes of section 19B) exist that justify the area of land over which the licence is renewed exceeding 75% of the size of—
  - (i) the area over which the licence was originally granted (in the case of a first renewal of the licence), or
  - (ii) the area over which its last previous renewal was granted (in any other case).

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

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

- (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), (3A) (Repealed)

(4) A renewed title may, at the discretion of the Minister, be granted for a shorter term than that of the original title.

(4A) The area of land over which a petroleum title is renewed may differ from the area of land over which the renewal of the title is sought, but not so as to include any land that was not subject to the title immediately before the renewal.

(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.

(6) If an exploration licence or assessment lease is renewed as to part only of the land to which the application for renewal relates, the licence or lease ceases to have effect in relation to the remainder of the land on the date on which the renewal takes effect.

#### **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 Secretary.

(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.

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

(1) The area of land over which an exploration licence may be renewed is not to exceed 75% of the size of—

(a) the area over which the licence was originally granted, in the case of a first renewal of the licence, or

(b) the area over which its last previous renewal was granted, in any other case.

(2) However, the Minister may grant a renewal over more than 75% of the size of the area over which the licence was originally or last granted if—

(a) the applicant for renewal claims that special circumstances exist that justify doing so, and

(b) the Minister is satisfied that special circumstances exist that justify doing so.

(3) Without limiting the considerations available to the Minister in determining whether special circumstances exist for the purposes of this section, the Minister may take into account any partial cancellation of the exploration licence on the request of the holder

of the licence under section 22, and reduce the percentage of the area of land over which the renewal may not be granted.

- (4) The Minister may direct an applicant for renewal of an exploration licence, within the time specified in the direction, to nominate which part of the area of land is sought to be included in the renewed exploration licence, where the licence may not be renewed over the whole area of land.
- (5) The Minister may refuse to renew an exploration licence if such a direction is not complied with within the time specified in the direction (in addition to the other grounds for refusal in clause 5 of Schedule 1B).
- (6) The Minister is not bound to renew an exploration licence over the area nominated by the applicant in compliance with a direction under this section or otherwise.

## **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 (Repealed)**

## **21 Amendment of application**

- (1) The following applications and information or documents accompanying applications, may, with the consent of the Minister, be amended by the applicant at any time before the Minister decides the relevant application—
  - (a) an application for a petroleum title,
  - (b) an application for the renewal of a petroleum title,
  - (c) an application for approval of the transfer of a petroleum title,
  - (d) an application prescribed by the regulations,
  - (e) information or a document accompanying an application referred to in paragraphs (a)–(d), including a proposed work program required to accompany an application.
- (2) An application under this section must be made in a way approved by the Secretary.
- (3) The Minister must give written notice to the applicant confirming the amendment of an application, information or document and the date on which it was amended.
- (4) The amendment of an application, information or document does not entitle the applicant to a refund or reduction of an application fee.

## **22 Grounds of cancellation of petroleum titles**

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

### **22A Cancellations of petroleum titles**

- (1) Before cancelling a petroleum title, otherwise than at the request of the holder of the

title, the Minister is to cause a written notice to be served on the holder of the title that contains the following—

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

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

- (1) Any person who is aggrieved by the decision of the Minister to cancel a petroleum title held by the person may appeal to the Land and Environment Court against the decision.
- (2) Such an appeal is to be made—
  - (a) within 14 days after written notice of the cancellation is served on the holder of the petroleum title, or
  - (b) within such further period as the Land and Environment Court may allow.
- (3) In deciding whether or not to allow a further period for appeal, the Land and Environment Court is to have regard to—
  - (a) the circumstances that have prevented the appellant from making the appeal

- within the 14 days referred to in subsection (2) (a), and
- (b) the consequences to the appellant, and to persons other than the appellant, of a decision allowing a further period for appeal, and
  - (c) the consequences to the appellant, and to persons other than the appellant, of a decision refusing a further period for appeal, and
  - (d) the public interest.
- (4) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the Minister when the decision was made, may be admitted in the hearing.
  - (5) Subject to any order made by the Land and Environment Court, the lodging of an appeal does not operate to stay the decision appealed against.
  - (6) The decision of the Land and Environment Court on an appeal is final and is to be given effect to as if it were the decision of the Minister.
  - (7) This section does not apply to a cancellation that was requested by the holder of the petroleum title.

**23, 24 (Repealed)**

**24A Fit and proper person consideration in making certain decisions about petroleum titles**

- (1) Despite anything to the contrary in this Act, any of the following decisions under this Act may be made on the ground that, in the opinion of the Minister, a relevant person is not a fit and proper person (without limiting any other ground on which such a decision may be made)—
  - (a) a decision to refuse to grant or renew a petroleum title (a **relevant person** in such a case being an applicant for the grant or renewal of the petroleum title),
  - (b) a decision to refuse to transfer a petroleum title (a **relevant person** in such a case being the proposed transferee),
  - (c) a decision to cancel a petroleum title or to suspend operations under a petroleum title (in whole or in part), a **relevant person** in such a case being a holder of the petroleum title,
  - (d) a decision to restrict operations under a petroleum title by the imposition or variation of conditions of a petroleum title (a **relevant person** in such a case being a holder of the petroleum title).
- (2) For the purpose of determining whether a person is a fit and proper person, the Minister may take into consideration any or all of the following matters (but without

limiting the matters that can be taken into consideration for that purpose)—

- (a) whether the person or (in the case of a body corporate) a director of the body corporate or of a related body corporate has compliance or criminal conduct issues (as defined in this section),
- (b) in the case of a body corporate, whether a director of the body corporate or of a related body corporate is or has been a director of another body corporate that has compliance or criminal conduct issues (as defined in this section) but only if the person was a director of that other body corporate at the time of the conduct that resulted in the compliance or criminal conduct issues,
- (c) the person's record of compliance with relevant legislation (established to the satisfaction of the Minister),
- (d) in the case of a body corporate, the record of compliance with relevant legislation (established to the satisfaction of the Minister) of any director of the body corporate or a related body corporate,
- (e) whether, in the opinion of the Minister, the management of the activities or works that are or are to be authorised, required or regulated under the petroleum title are not or will not be in the hands of a technically competent person,
- (f) whether, in the opinion of the Minister, the person is not of good repute,
- (g) in the case of a body corporate, whether, in the opinion of the Minister, a director of the body corporate or a related body corporate is not of good repute,
- (h) whether, in the opinion of the Minister, the person is not of good character, with particular regard to honesty and integrity,
- (i) in the case of a body corporate, whether, in the opinion of the Minister, a director of the body corporate or a related body corporate is not of good character, with particular regard to honesty and integrity,
- (j) whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
- (k) in the case of an individual, whether he or she is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years,
- (l) in the case of a body corporate, whether the body corporate or a related body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years,

- (m) whether the person has demonstrated to the Minister the financial capacity to comply with the person's obligations under the petroleum title,
  - (n) whether the person is in partnership, in connection with activities that are subject to a petroleum title or proposed petroleum title, with a person whom the Minister considers is not a fit and proper person under this section,
  - (o) whether the person has an arrangement (formal or informal) in connection with activities that are subject to a petroleum title or proposed petroleum title with another person whom the Minister considers is not a fit and proper person under this section, if the Minister is satisfied that the arrangement gives that other person the capacity to determine the outcome of decisions about financial and operating policies concerning those activities,
  - (p) any other matters prescribed by the regulations.
- (3) A person or body corporate has **compliance or criminal conduct issues** if—
- (a) the Minister is satisfied that the person or body corporate has contravened any relevant legislation, whether or not the person or body corporate has been prosecuted for or convicted of an offence arising from the contravention, or
  - (b) in the previous 10 years, the person or body corporate has been convicted in New South Wales or elsewhere of a serious offence or an offence involving fraud or dishonesty, or
  - (c) the person or body corporate has held a petroleum title, or any other instrument issued or granted under relevant legislation, that has been suspended, cancelled or revoked.
- (4) The grant, renewal or transfer of a petroleum title can be refused on the ground that the Minister is of the opinion that the applicant is not a fit and proper person even if—
- (a) the petroleum title is necessary for the carrying out of State significant development that is authorised by a development consent, despite section 89K of the *Environmental Planning and Assessment Act 1979* (**the Planning Act**), or
  - (b) the petroleum title is necessary for the carrying out of approved State significant infrastructure under Part 5.1 of the Planning Act, despite section 115ZH of that Act, or
  - (c) the petroleum title is necessary for the carrying out of a transitional Part 3A project under Schedule 6A to the Planning Act, despite section 75V of that Act, or
  - (d) section 91A or 93 of the Planning Act would otherwise prevent that refusal.
- (5) To avoid doubt, section 22A (6) of this Act extends to the cancellation of a petroleum title under this section.



- (6) A relevant person who is aggrieved by a decision referred to in subsection (1) made on the ground that in the opinion of the Minister the person is not a fit and proper person may apply to the Land and Environment Court for a review of the Minister's opinion, and the following provisions apply to such a review—
- (a) the review is to be by way of redetermination of the question of whether the relevant person is a fit and proper person, and fresh material or material in addition to, or in substitution for, the material considered by the Minister in the determination of that question may be given on the review and taken into consideration by the Court,
  - (b) on a review the Court is to decide whether or not the relevant person is a fit and proper person,
  - (c) the decision of the Court on a review is final and is to be given effect to by the Minister,
  - (d) the Minister is to take whatever action may be necessary to give effect to the Court's decision including action to revoke and remake any decision referred to in subsection (1).
- (7) In this section—

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

**related body corporate** has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

**relevant legislation** means the following legislation—

- (a) this Act,
- (b) the [Mining Act 1992](#),
- (c) the environment protection legislation,
- (d) the [Environmental Planning and Assessment Act 1979](#),
- (e) the work health and safety legislation within the meaning of the [Mining Act 1992](#),
- (f) any other legislation prescribed by the regulations under this Act.

**serious offence** means—

- (a) an offence committed in New South Wales that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more, or an offence committed elsewhere than in New South Wales that if committed in New South Wales would be an offence so punishable, or

- (b) an offence committed under a law of the Commonwealth that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more.

## **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 Secretary on discovery of petroleum**

- (1) If petroleum is discovered in land comprised in a petroleum title, the Secretary may, from time to time, by instrument in writing served on the holder of the title, direct the holder to furnish to the Secretary, 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 Secretary in the instrument.
- (2) The Secretary 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 Secretary 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.

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

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

## **Division 2 Exploration licences**

### **28C Land over which exploration licence granted**

An exploration licence may be granted over all or part of the land over which a licence was sought.

### **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.

**Note—**

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

- (2) (Repealed)

**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)

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

- (1) An exploration licence is subject to a statutory condition that the holder must not carry out an assessable prospecting operation on land over which the licence is granted unless an activity approval has been obtained for the carrying out of the assessable prospecting operation in relation to that land and is in force.
- (2) The holder of an exploration licence may apply in writing to the Minister for approval to carry out an assessable prospecting operation in relation to any part of the land over which the licence is granted (an **activity approval**).
- (3) The Minister may require the holder of an exploration licence to provide such information as is required by the Minister, within the time specified by the Minister, before considering the application or at any time during consideration of the application.
- (4) After considering the application for the activity approval, the Minister—
  - (a) may grant the activity approval, or
  - (b) may refuse the application.
- (5) Without limiting the grounds for refusal, the application may be refused if the applicant fails to provide the information required by the Minister within the time required.
- (6) An activity approval may be granted subject to terms.
- (7) For the purposes of this Act, it is a statutory condition of an exploration licence that the holder must comply with any activity approval granted to the holder and in force.
- (8) Clauses 6 (2)–(4), 7 (2), 9 and 11 of Schedule 1B apply to and in respect of the imposition of terms on, and variation of terms of, an activity approval in the same way

as they apply to and in respect of the imposition of conditions on, and the variation of conditions of, a petroleum title.

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

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

## **Division 3 Assessment leases**

### **32A Land over which assessment lease granted**

An assessment lease may be granted over all or part of the land over which a lease was sought.

### **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.

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

(1) An assessment lease is subject to a statutory condition that the holder must not carry out an assessable prospecting operation on land over which the lease is granted unless an activity approval has been obtained for the carrying out of the assessable prospecting operation in relation to that land and is in force.

(2) The holder of an assessment lease may apply in writing to the Minister for approval to carry out an assessable prospecting operation in relation to any part of the land over which the lease is granted (an **activity approval**).

(3) The Minister may require the holder of an assessment lease to provide such

information as is required by the Minister, within the time specified by the Minister, before considering the application or at any time during consideration of the application.

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



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

- (12) The Minister is to cause written notice of the cancellation of an activity approval to be given to the holder of the activity approval.
- (13) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the activity approval, or on a later date specified in the notice.
- (14) Any person who is aggrieved by the decision of the Minister to cancel an activity approval held by the person may appeal to the Land and Environment Court against the decision. Section 22B applies to such an appeal as if it were an appeal against a decision to cancel a petroleum title.
- (15) The cancellation of an activity approval does not affect any liability incurred by the holder of the activity approval before the cancellation took effect.
- (16) Action may be taken under subsection (9) (b) whether or not any other action has been taken in respect of the activity approval under this Act.

### **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**

- (1) The holder of a production lease may, in accordance with the conditions of the lease—
  - (a) prospect in and on the land comprised in the lease for petroleum, and
  - (b) conduct petroleum mining operations in and on the land comprised in the lease, and
  - (c) 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.
- (2) While a production lease is in force, the holder of the lease and any person acting as agent or employee of the holder, or delivering goods or providing services to the holder, for the purpose of a requirement of or an activity authorised by the lease may—
  - (a) for that purpose enter and be on the land included in the lease, and
  - (b) do anything so authorised or required.
- (3) Despite subsections (1) and (2), a holder of a production lease may carry out activities on the land comprised in the lease only in accordance with an access arrangement applying to that land.

#### **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**

- (1) The area comprised in a production lease must be not more than 4 blocks.
- (2) The land over which a production lease is granted may differ in size or shape from, but may not include land other than, the land over which the production lease was sought.
- (3) Subsection (2)—
  - (a) extends to the grant of a single production lease for 2 or more applications made by the same applicant, and
  - (b) as extended, applies as if the land over which the production lease was sought was the land over which the 2 or more production leases were sought.

#### **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 or Part 5.1 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 Public Service agencies**

If the Minister is of the opinion that a Public Service agency or statutory authority will be materially affected by the granting of a production lease, the Minister must cause to be served on that agency 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 Secretary of Department of Planning and Environment**

(1) The Minister, before granting a production lease, must cause to be served on the Secretary of the Department of Planning and Environment 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 Secretary of the Department of Planning and Environment a notice of the alteration.

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

A Public Service agency or statutory authority or the Secretary of the Department of Planning and Environment, 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.
- (4) Despite clauses 9 and 10 of Schedule 1B, a condition included in a production lease in accordance with a direction of the Premier may only be varied with the concurrence of the Premier.

### **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 or Part 5.1 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) (Repealed)
  - (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 Secretary may, with the concurrence of the NSW Farmers Association and Australian Petroleum Production and Exploration Association Limited, publish templates for use for standard access arrangements. The use of any such template is not mandatory.

(2) An access arrangement must specify the compensation that is payable to each landholder of the land concerned as a consequence of the holder of the prospecting title carrying out prospecting operations on the land.

(2A) (Repealed)

(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 Secretary.

The Secretary is to make such an appointment within 48 hours after being requested to do so by the landholder or the holder of a prospecting title 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.

#### **69DA Access code**

(1) The regulations may prescribe a code (an **access code**) containing provisions relating to access to land by the holder of a prospecting title and the carrying out of activities on that land by the holder.

(2) The regulations may designate any or all of the provisions of an access code as mandatory provisions.

- (3) An access code may contain non-binding guidelines relating to negotiating and agreeing access arrangements.

**69DB Application of mandatory provisions of access codes**

- (1) An access arrangement is taken to include provisions in the same terms as the mandatory provisions of the access code.
- (2) A provision of an access arrangement has no effect to the extent that it contains obligations on the holder of the prospecting title that are less stringent than those in a mandatory provision.

**Note—**

See also section 69D (3) which deals with inconsistency between provisions of access arrangements and provisions of regulations.

**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.
- (2A) The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in negotiating the access arrangement.
- (2B) The maximum amount of reasonable costs payable by the holder of the prospecting title is the amount set out by the Minister by order published in the Gazette.
- (2C) In making the order, the Minister must have regard to the following—
- (a) time spent participating in negotiating the access arrangement,
  - (b) legal costs of negotiating the access arrangement,
  - (c) costs of engaging experts as part of the negotiation process.
- (2D) Nothing in this section prevents a holder of a prospecting title, at the holder's discretion, paying other amounts to a landholder.
- (2E) An order relating to costs may—
- (a) apply generally or be limited in its application by reference to specified exceptions

or factors, or

- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(2F) The regulations may make provision for or with respect to the payment of costs under this section, including, but not limited to, the following—

- (a) the timing or frequency of payments,
- (b) evidence of costs incurred to be provided to the holder of the prospecting title.

(2G) The holder of a prospecting title and the landholder of the land concerned must negotiate on an access arrangement in good faith.

(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 Secretary for the appointment of a member of the Arbitration Panel as an arbitrator.
- (2) At the same time as, or after, an application is made under this section, but before an arbitrator is appointed, the holder of the prospecting title concerned must pay the application fee prescribed by the regulations for the purposes of this section.
- (3) The Secretary is to appoint a member of the Arbitration Panel as an arbitrator.

**69H Arbitration process—mediation before arbitration hearing**

- (1) As soon as practicable after having been appointed, an arbitrator—
  - (a) must fix a time and place for conducting a mediation of 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 mediation, 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, vary the time or place fixed for conducting the mediation.
- (3) The arbitrator must, at the time and place fixed under this section, conduct a mediation of the question of access to the land concerned.

#### **69HA Mediation**

- (1) An arbitrator conducting a mediation under this Part—
- (a) must use his or her best endeavours to bring the parties to a settlement acceptable to all of them, and
- (b) may communicate with the parties collectively or separately, and
- (c) must treat information obtained by the arbitrator from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees.
- (2) The parties to a mediation must participate in the mediation in good faith.
- (3) A mediation terminates if—
- (a) the parties agree to terminate the mediation, or
- (b) any party terminates the mediation, by notice in writing, served on the other parties and the arbitrator, or
- (c) the arbitrator terminates the mediation, or
- (d) the parties agree on an access arrangement.
- (4) An arbitrator who has acted as mediator in a mediation that is terminated under subsection (3) (a)–(c)—
- (a) may refuse to conduct the subsequent arbitration, and
- (b) must not conduct the subsequent arbitration unless, at the time of or after the termination of the mediation, all the parties to the arbitration (including the arbitrator) consent in writing.
- (5) If—
- (a) an arbitrator has obtained confidential information from a party during a mediation, and
- (b) the mediation has been terminated under subsection (3) (a)–(c), and

(c) the parties have consented to the arbitrator conducting the subsequent arbitration,

the arbitrator must, as soon as reasonably practical after that consent has been given, disclose to all other parties to the arbitration so much of the information as the arbitrator considers material to the arbitration.

- (6) If the parties consent under subsection (4) (b), no objection may be taken to the conduct of the subsequent arbitration by the arbitrator solely on the ground that he or she has previously conducted a mediation in accordance with this section.
- (7) If the arbitrator refuses to conduct the subsequent arbitration under subsection (4) (a) or the parties do not consent under subsection (4) (b), the arbitrator's mandate is taken to have been terminated and a substitute arbitrator may be appointed—
- (a) by the parties, or
  - (b) by the Secretary, but only if the parties have been unable to agree on the appointment of an arbitrator by the end of 7 days after the termination of the mediation.
- (8) Before a substitute arbitrator is appointed under this section, the holder of the prospecting title concerned must pay the application fee prescribed by the regulations for the purposes of this section.
- (9) The substitute arbitrator is not required to conduct a mediation under this Part.

#### **69HB Arbitration hearing**

- (1) If the mediation is unsuccessful, the arbitrator must, as soon as practicable after its conclusion—
- (a) fix a time and place for conducting a hearing of the question of access to the land concerned, and
  - (b) cause notice 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, 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**

At any mediation of, or hearing into, the question of access to any land by the holder of a prospecting title, the holder and each landholder—

- (a) are entitled to appear and be heard, and
- (b) may be represented by an agent or by an Australian legal practitioner.

**69J (Repealed)**

**69K Conduct of arbitration**

- (1) The parties to an arbitration must participate in the arbitration in good faith.
- (1A) An arbitrator may terminate an arbitration at any time at the request of the parties.
- (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.

**69KA Approved arbitration procedures**

- (1) The Secretary may, by order published in the Gazette, approve arbitration procedures for the conduct of mediations and arbitrations under this Part (***approved arbitration procedures***).
- (2) The approved arbitration procedures may include guidance materials for the benefit of the parties and arbitrators.
- (3) The approved arbitration procedures may also include, but are not limited to, the following—
  - (a) objectives and principles for arbitration,
  - (b) responsibilities of parties and the arbitrator in the arbitration process,
  - (c) stages and timeframes for the arbitration framework,
  - (d) processes for dealing with significant improvements,
  - (e) confidentiality,
  - (f) suspension of mediation or arbitration proceedings in certain circumstances,
  - (g) production of evidence of costs incurred by landholders.
- (4) Unless the parties and the arbitrator agree otherwise, mediation and arbitration under this Part is to be conducted in accordance with the provisions of the approved arbitration procedures.
- (5) In the event of an inconsistency between a provision of the approved arbitration procedures and a provision of this Act or of the regulations, the provision of this Act or

of the regulations prevails.

- (6) If a matter is not provided for in this Act, the regulations or the approved arbitration procedures, the procedure at a mediation or a hearing is to be as determined by the arbitrator.
- (7) Approved arbitration procedures take effect on the day on which the procedures are published in the Gazette or, if a later day or days are specified for that purpose, on the later day or days so specified.
- (8) Sections 40 and 41 of the *Interpretation Act 1987* apply to the approved arbitration procedures under this section in the same way as they apply to statutory rules within the meaning of that Act.

**69KB Site inspection by arbitrator**

An arbitrator conducting a mediation or a hearing may enter the land concerned and inspect it at a reasonable time after giving reasonable notice to the landholder.

**69KC Costs of landholder participation in mediation and arbitration**

- (1) The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in participating in the mediation and arbitration.
- (2) The maximum amount of reasonable costs is the amount set out by the Minister by order published in the Gazette.
- (3) In making the order, the Minister must have regard to the following—
  - (a) time spent participating in the mediation and arbitration,
  - (b) legal costs in participating in the mediation and arbitration,
  - (c) costs of engaging experts as part of the mediation and arbitration process.
- (4) Nothing in this section prevents a holder of a prospecting title, at the holder's discretion, paying other amounts to a landholder.
- (5) An order relating to costs may—
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

**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.

**69NA Determination as to costs**

- (1) This section applies to an arbitrator in the following circumstances—
- (a) as soon as practicable after an interim determination is taken to be a final determination,
  - (b) on making a final determination under this Part,
  - (c) before terminating an arbitration at the request of the parties.
- (2) The arbitrator must determine the following—
- (a) if the parties have disputed a payment to cover the landholder's costs in negotiating the access arrangement, the amount of that payment (in accordance with section 69E), and
  - (b) the reasonable costs of the landholder in participating in the mediation and arbitration (in accordance with section 69KC).
- (3) When determining a payment to cover the reasonable costs of the landholder in participating in the mediation and arbitration, the arbitrator must—
- (a) consider whether or not the landholder has acted unreasonably in the negotiation, mediation or arbitration, and
  - (b) deduct an amount that in the opinion of the arbitrator represents the amount by which the unreasonable conduct increased the costs of the negotiation, mediation or arbitration.

**69O Costs of mediation and arbitration hearing**

- (1) (Repealed)
- (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 mediation or 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 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.
- (8) The holder of the prospecting title must pay the reasonable costs of the landholder of the land concerned in a review of a determination under this section.
- (9) The Land and Environment Court, in determining those reasonable costs, must consider whether or not the landholder has acted unreasonably in the negotiation, mediation, arbitration or review proceedings.

### **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.

#### **69SA Register of arbitrated access arrangements**

- (1) As soon as is practicable after an access arrangement is determined by an arbitrator, the holder of the prospecting title must provide the Secretary with a copy of the final access arrangement.

Maximum penalty—100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

- (2) The Secretary is to keep and maintain a register of all final access arrangements provided to him or her.
- (3) The Secretary is not required to include in the register—
  - (a) personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) about an individual, or
  - (b) any other information prescribed by the regulations, or
  - (c) any other information that the Secretary determines should be kept confidential.
- (4) The register is to be made available for public inspection on the Department's website.

#### **69T Variation of access arrangements**

- (1) An access arrangement may be varied—
  - (a) in accordance with the terms of the arrangement relating to its variation, or
  - (b) by the agreement of the parties to the arrangement, or
  - (c) by an arbitrator under this section (whether or not the access arrangement was determined by an arbitrator), or
  - (d) 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.
- (2) A party to an access arrangement may, by written notice served on all the other parties to the arrangement, request the parties to agree to the appointment of an arbitrator.
- (3) The parties to an access arrangement may agree to the appointment of any person as an arbitrator.

- (4) Sections 69G–69N and 69O–69S apply, with all necessary changes, in relation to an arbitration under this section, subject to the following modifications—
- (a) in the application of section 69G (1), the reference to a notice served in accordance with section 69F is taken to be a reference to a notice served in accordance with subsection (2),
  - (b) section 69G (2) does not apply and instead the following applies—
    - (2) Before an arbitrator is appointed under this section, the party requesting the appointment of an arbitrator must pay the application fee prescribed by the regulations for the purposes of this section.
  - (c) section 69KC does not apply and instead the following provision applies—

**69KC Costs**

Each party to the mediation and hearing conducted by the arbitrator is to bear his or her own costs in relation to the hearing.

- (d) any other modification prescribed by the regulations.
- (5) 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.

**69V Court may determine access arrangement if already considering significant improvements etc**

- (1) If—
- (a) a party applied to the Land and Environment Court for a determination of a matter under section 72 (4), and
  - (b) no access arrangement relates to the land concerned,
- either party to those Court proceedings may apply to the Court to have the Court determine an access arrangement under this Part in relation to the land.
- (2) An application under this section must not be lodged within 28 days after the holder of the prospecting title has served notice under section 69E of an intention to obtain an access arrangement in respect of the land concerned.
- (3) The Land and Environment Court may accept or reject the application.
- (4) Subject to any order of the Land and Environment Court, an application under this section operates to stay any other access arrangement mediation or arbitration in relation to the land until the decision of the Land and Environment Court on the application.
- (5) If the Land and Environment Court decides to accept the application—
- (a) the Land and Environment Court is, subject to the regulations, to determine an access arrangement under this Part in relation to the land, and

- (b) any other access arrangement mediation or arbitration in relation to the land is terminated.

#### **69W Removal of Arbitration Panel arbitrator**

- (1) The Secretary may, subject to the regulations, remove an arbitrator who has been appointed under section 69G or 69HA (7) (b) if, after an investigation by the Secretary following a complaint, the Secretary is satisfied—
  - (a) that—
    - (i) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, or
    - (ii) the arbitrator is incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so, or
    - (iii) the arbitrator has refused or failed properly to conduct the proceedings, and
  - (b) that substantial injustice has been caused or will be caused to one or more of the parties.
- (2) If an arbitrator has been removed under subsection (1), the arbitrator's mandate is taken to have been terminated and a substitute arbitrator is to be appointed—
  - (a) by the parties, or
  - (b) by the Secretary, but only if the parties have been unable to agree on the appointment of an arbitrator by the end of 7 days after the removal.
- (3) The regulations may make provision for or with respect to the removal of arbitrators under this section, including, but not limited to—
  - (a) the making of complaints to the Secretary, and
  - (b) investigations by the Secretary of complaints.

### **Part 4B Access arrangements for production leases**

#### **Note—**

Section 41 (3) provides that a holder of a production lease may conduct activities on the land comprised in the lease only in accordance with an access arrangement applying to that land.

#### **69X Part 4A extends to access arrangements for production leases**

- (1) Part 4A (other than sections 69A–69C and 69D (4) and (5)) extends to access arrangements for the purpose of conducting petroleum mining operations under a production lease as if references in that Part to—
  - (a) a prospecting title were references to a production lease, and

(b) prospecting operations were references to petroleum mining operations.

(2) The extension of Part 4A by this section is subject to any necessary changes and any other modification prescribed by the regulations.

## **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 significant improvement, 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) (Repealed)
- (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.
- (5) The holder of the petroleum title is to pay the costs of the owner of the dwelling-house, garden, vineyard or orchard or improvement (or occupant of the dwelling-house) in those proceedings in the Land and Environment Court.
- (6) In this section, **significant improvement** on land, in relation to a petroleum title or an access arrangement, means a work or structure that—
  - (a) is a substantial and valuable improvement to the land, and
  - (b) is reasonably necessary for the operation of the landholder's lawful business or use of the land, and

- (c) is fit for its purpose (immediately or with minimal repair), and
- (d) cannot reasonably co-exist with the exercise of rights under the petroleum title or the access arrangement without hindrance to the full and unencumbered operation or functionality of the work or structure, and
- (e) cannot reasonably be relocated or substituted without material detriment to the landholder,

and includes any work or structure prescribed by the regulations for the purposes of this definition, but does not include any work or structure excluded from this definition by the regulations.

- (7) This section does not apply to the holder of a petroleum title who carries out a seismic survey on a road within the meaning of the *Road Transport Act 2013*, but only if the holder has given written notice of at least 21 days (or such other period as is prescribed by the regulations) of the carrying out of the seismic survey to the owner of the dwelling-house, garden, vineyard, orchard or improvement concerned (and, in the case of a dwelling-house, the occupant).

### **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 Environmental, rehabilitation and other directions**

## 74 Interpretation

(1) In this Division—

**responsible person** means—

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

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

## 75 Directions

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

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

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

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

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



## 76 Prohibition notices

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

## 77 Direction to suspend operations

- (1) The Secretary may, by written notice (a **suspension notice**), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified, operations under a petroleum title or an activity approval relating to the operations if the Secretary considers that—
  - (a) circumstances exist that could constitute a ground for cancellation of the petroleum title under section 22 (1) (b)–(g), or
  - (b) circumstances exist that could constitute a ground for cancellation of the petroleum title under section 22 (1) (h), in relation to a contravention of a direction under section 75 only, or
  - (c) on any other ground specified in the regulations.
- (2) Before giving a suspension notice, the Secretary is to—
  - (a) cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the relevant petroleum title, and
  - (b) give the holder of the relevant petroleum title a reasonable opportunity to make representations with respect to the proposed suspension notice, and
  - (c) take any such representations into consideration.
- (3) The suspension notice takes effect on the date on which it is given to the holder of the relevant petroleum title or on a later date specified in the notice.

- (4) The suspension of a petroleum title does not affect any liability incurred by the holder of the relevant petroleum title before the suspension took effect.
- (5) The holder of the relevant petroleum title is not entitled to compensation merely because of the suspension of operations under the petroleum title or an activity approval in accordance with a suspension notice.
- (6) If a suspension notice under this section is issued to a person who is not the current holder of the relevant petroleum title, the Secretary must cause a copy of the notice to be served on any current holder within 5 days after the notice is issued.
- (7) A direction served on a person under this section may require the person to prepare, and submit to the Secretary or inspector, reports as to any of the following—
  - (a) the measures the person proposes to take for the purpose of complying with the direction,
  - (b) the progress made by the person in implementing any such measures.

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

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

#### **78A Breach of direction or notice**

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

Maximum penalty—

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

#### **78B Effect of direction**

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

- (a) the liability of any person to any penalty for an offence in relation to a petroleum title, or

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

**Note—**

For example, the issuing of a direction does not affect the power to cancel a petroleum title under Division 1 of Part 3.

**78C Fee**

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

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

- (1) If a person on whom a direction is served under this Division does not comply with the direction, the Minister may take any action necessary to give effect to the direction.
- (2) Any costs or expenses incurred by the Crown under this section are a debt due to the Crown by the person on whom the direction was served and are recoverable in a court of competent jurisdiction.
- (3) An authorised person may enter any land and do anything that in the person's opinion is necessary for or in connection with the taking of that action (including gaining access from that land to other land).
- (4) However, an authorised person must not enter land unless the person—
  - (a) has given the occupier of the land reasonable notice of the person's intention to do so, and
  - (b) enters the land at a reasonable time (except in the case of an emergency), and
  - (c) uses no more force than is reasonably necessary to effect entry, and
  - (d) before entering any premises on the land that are used only for residential purposes—has obtained the permission of the occupier of those premises.
- (5) A person who suffers damage caused by the taking of any action under this section is entitled to be paid reasonable compensation by the person who failed to comply with

the direction (as referred to in subsection (1)).

(6) Parts 11 and 12 apply (with such modifications as may be prescribed by the regulations) to that compensation as if it were compensation payable under Part 11.

(7) In this section—

**authorised person** means—

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

#### **78E Recovery of costs of rehabilitation**

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

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

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

### **Division 2**

**(Repealed)**

### **Division 3**

**79 (Repealed)**

### **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 Secretary certifies to be a deductible amount.

(4) Any balance remaining is to be paid to the Chief Commissioner 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.

## **Division 5 Audits**

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

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

- (a) enables a petroleum title to be subject to a condition requiring monitoring or reporting, or
- (b) relates to functions exercisable by persons for the purpose of auditing compliance with this Act, the regulations or conditions of petroleum titles.

### **83B Nature of audit**

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

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

### **83C Accreditation and regulation of auditors**

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

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

### **83D Conditions for mandatory audits**

- (1) A condition that requires one or more mandatory audits to be undertaken, to the satisfaction of the Secretary, for any one or more of the purposes referred to in section 83B (a **mandatory audit condition**) may be imposed on a petroleum title by the regulations or the Minister in accordance with Part 3 of Schedule 1B.
- (2) A mandatory audit condition must specify the purpose or purposes of the audit.
- (3) A mandatory audit condition may require any one or more of the following—
  - (a) appointment of an auditor to undertake the audit,

- (b) approval by the Secretary of the auditor before being appointed,
  - (c) preparation of particular written documentation during the course of the audit,
  - (d) preparation of an audit report,
  - (e) production to the Secretary of the audit report.
- (4) A mandatory audit condition may also—
- (a) specify the format and level of detail required for the audit, or
  - (b) require the auditor to submit the proposed format and level of detail to the Secretary for approval.
- (5) A mandatory audit condition may be varied by written notice served on the holder of the petroleum title and otherwise in accordance with Part 4 of Schedule 1B.
- (6) A condition imposed under this section takes effect on the date on which written notice of the condition is served on the holder of the petroleum title or on any later date specified in the notice.
- (7) This section does not affect the operation of the following provisions of the *Environmental Planning and Assessment Act 1979*—
- (a) section 89K (Approvals etc legislation that must be applied consistently),
  - (b) section 93 (Granting and modification of approval by approval body),
  - (c) section 115ZH (Approvals etc legislation that must be applied consistently).

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

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

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

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

- (1) A person who provides information to an auditor in connection with a mandatory

audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.

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

Maximum penalty—

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

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

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

### **83H Use of information**

- (1) Any information in an audit report or other documentation supplied to the Secretary in connection with a mandatory audit may be supplied by the Secretary to, and taken into consideration by, any person who has functions under this Act, the *Environmental Planning and Assessment Act 1979* or the environment protection legislation and may be used by that person for the purposes of those laws.
- (2) Without limiting subsection (1)—



- (a) the Secretary is authorised, despite any other Act or law, to provide a relevant agency with any such information, and
  - (b) any such information is admissible in evidence in any prosecution of the holder of a petroleum title for any offence (whether under this Act or otherwise).
- (3) In this section, **relevant agency** means the Department, or a public authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979* or such other legislation, if any, as may be prescribed by the regulations.

### 83I Nature of voluntary audit

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

### 83J Protected documents

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

### 83K Nature of protection

- (1) A protected document—
  - (a) is not admissible in evidence against any person in any proceedings connected with the administration or enforcement of this Act, the environment protection legislation or such other legislation, if any, as may be prescribed by the regulations, and
  - (b) must not be inspected, copied, seized or otherwise obtained by the Department, any authority prescribed by the regulations or any other person for any purpose connected with such administration or enforcement.
- (2) Neither the Department, a prescribed authority nor any other person may, for the

purpose referred to in subsection (1) (b), require a person to answer any question or provide any information about the existence of the document or about what it contains.

- (3) The onus of establishing that a document is a protected document lies on the person asserting that it is protected.
- (4) A court may inspect any document that is claimed to be a protected document for the purpose of determining whether it is or is not a protected document.
- (5) The regulations may prescribe procedures for making and determining claims that a document is a protected document.

### **83L Lifting of protection**

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

## **Part 7 Royalties**

### **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 Crown 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 prescribed by the regulations.
- (3) The rate of royalty may be prescribed—
  - (a) as a percentage of the value at the well-head of the petroleum, or
  - (b) by reference to such other matters as the regulations specify.

- (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.
- (4) The Chief Commissioner is to remit the interest or penalty tax on any royalty that ceases to be payable because of a decision of the Minister under this section.

### **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.

- (3) The Chief Commissioner is to remit the interest or penalty tax on any royalty that ceases to be payable because of a decision of the Minister under this section.

**88 (Repealed)**

**89 Ascertainment of value**

For the purposes of this Act, the value at the well-head of any petroleum is 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) if 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**

- (1) Royalty in respect of petroleum recovered during a royalty period is payable not later than the last day of the next succeeding royalty period.
- (1A) If a person who is liable to pay royalty fails to pay it as required by subsection (1), the person is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 12 months, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.
- (2) A failure to pay royalty payable under this Act by the end of that next succeeding royalty period is a tax default for the purposes of the [Taxation Administration Act 1996](#).

**Note—**

If a tax default occurs, interest and penalty tax may be charged under the [Taxation Administration Act 1996](#).

- (3) A tax default does not occur before the expiration of 7 days after the value of the relevant petroleum was determined under section 89.

### **91A Refunds and rebates of royalties**

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

### **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.
- (3) This section applies to royalty payable for a period commencing before 1 July 2014. The *Taxation Administration Act 1996* applies to royalty payable for a period commencing on or after 1 July 2014.

### **93 Royalty returns**

- (1) A person who is required to pay royalty under this Act is required to lodge with the Chief Commissioner a return relating to each royalty period.
- (2) The return is to be lodged with the Chief Commissioner no later than the last day of the next succeeding royalty period.
- (3) The Chief Commissioner is to give a copy to the Minister of each return lodged with the Chief Commissioner.
- (4) The Minister may give directions to the Chief Commissioner as to the information that is to be included in the form of return approved under the *Taxation Administration Act 1996*.

**Note—**

The *Taxation Administration Act 1996* requires a return to be in a form approved by the Chief Commissioner.

### **94 Assessment and recovery of royalties**

- (1) Royalty payable under this Act is a tax for the purposes of the *Taxation Administration Act 1996*.

**Note—**

The *Taxation Administration Act 1996* applies to the assessment and recovery of royalty.

- (2) The royalty is payable to the Chief Commissioner in accordance with that Act.
- (3) The Minister is to provide the Chief Commissioner with any information necessary to enable the Chief Commissioner to exercise the Chief Commissioner's functions with respect to royalties under this Act and the *Taxation Administration Act 1996*.
- (4) A certificate that is signed by the Minister and that states that, on a specified date, the Minister made a determination, or did anything else, under any of the following provisions, is admissible in evidence in any proceedings and is evidence of the fact or facts so certified—
  - (a) section 86, 87, 88, 89 or 90, or
  - (b) any other provision of this Act relating to royalties that is prescribed by the regulations.
- (5) The Chief Commissioner may request a certificate under this section and a certificate is to be provided in accordance with that request.

**94AA Disclosure of royalty information**

- (1) The Minister, or a person engaged in the administration of this Act, may disclose royalty information obtained from a tax officer under this Act or the *Taxation Administration Act 1996* in connection with the administration or execution of this Act.
- (2) This section applies despite section 84 of the *Taxation Administration Act 1996* but subject to any restrictions in this Act.

**Note—**

See Part 13 of this Act.

- (3) In this section—

**royalty information** means information in a return lodged with the Chief Commissioner under this Act or any other information relating to the assessment or recovery of royalty.

**tax officer** has the same meaning as it has in the *Taxation Administration Act 1996*.

## **Part 7A Fees**

### **Division 1 Preliminary**

#### **94A Definitions**

- (1) In this Part—

**grant anniversary date**—see section 94B.

- (2) A reference in this Part to when a petroleum title is granted or renewed is taken, in relation to a grant or renewal of a petroleum title that takes effect after the date that it is granted or renewed, to be a reference to when the grant or renewal takes effect.

#### **94B Meaning of “grant anniversary date”**

- (1) In this Part, a **grant anniversary date** means an anniversary of the date on which a petroleum title is granted.
- (2) To avoid doubt, a reference in this Part to a grant anniversary date occurring during the term of a petroleum title includes any part of the term of a petroleum title occurring after the term for which the petroleum title as granted or renewed was due to expire but during which the petroleum title continues in force under section 20.

**Note—**

Section 20 provides that if an application for renewal of a petroleum title has not been withdrawn or finally disposed of before the date on which the term of the title expires, it continues in force until the application is withdrawn or otherwise finally disposed of.

## **Division 2 Fees payable for petroleum title**

### **94C Fees payable in respect of petroleum title**

- (1) The following fees are payable under this Part to the Secretary, on behalf of the Crown, for the privilege of being the holder of a petroleum title—
  - (a) a title fee,
  - (b) an annual rental fee,
  - (c) an administrative levy.
- (2) The fees are payable in addition to any royalty payable under Part 7 and any other fees payable under this Act.
- (3) The holder of a petroleum title must not fail to pay any annual rental fee or administrative levy payable under this Part for the petroleum title.

Maximum penalty—

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

### **94D Fees payable by holder of petroleum title**

- (1) A fee payable under this Part is payable by a person who is, or will be, a holder of the petroleum title at the time liability for the fee arises.

- (2) If there is more than one holder of a petroleum title, each of the holders is jointly and severally liable for payment of the fee.

### **Division 3 Title fee**

#### **94E Title fee**

- (1) A title fee is payable in respect of the grant, and on each renewal, of a petroleum title.
- (2) Liability arises on the date of the grant or renewal, as the case requires.

#### **94F Amount of title fee**

- (1) The amount of the title fee is the amount provided for by, or determined in accordance with, the regulations.
- (2) The Minister is to recommend to the Governor the making of a regulation that provides for a title fee only if the recommendation is made with the concurrence of the Treasurer.

#### **94G When fee is payable**

A title fee for which a person is liable must be paid within the period (of not less than 7 days) specified by the Secretary by notice in writing served on a person liable.

### **Division 4 Annual rental fee**

#### **94H Liability for annual rental fee**

- (1) Liability for an annual rental fee arises on the grant of a petroleum title and on each grant anniversary date that occurs during the term of the petroleum title.
- (2) An annual rental fee for which liability arises on the grant of a petroleum title must be paid, in advance, before the title is granted.
- (3) A petroleum title for which an annual rental fee is payable must not be granted until the first annual rental fee is paid.
- (4) An annual rental fee for which liability arises on a grant anniversary date must be paid within the period (of not less than 7 days) specified by the Secretary by notice in writing served on a person liable.

#### **94I Amount of annual rental fee**

- (1) The amount of the annual rental fee is the amount provided for by, or calculated in accordance with, the regulations.
- (2) The regulations may provide that no annual rental fee is payable in respect of any specified period.



## Division 5 Administrative levy

### 94J Definitions

In this Division—

**minimum deposit** has the same meaning as it has in Part 10A.

**security deposit condition** has the same meaning as it has in Part 10A.

### 94K Liability for administrative levy

- (1) The administrative levy payable under this Part for a petroleum title is an annual administrative levy.
- (2) Liability for an administrative levy arises on the grant of a petroleum title and on each grant anniversary date that occurs during the term of a petroleum title.
- (3) An administrative levy for which liability arises on the grant of a petroleum title must be paid, in advance, before the petroleum title is granted.
- (4) A petroleum title must not be granted until the first administrative levy is paid.
- (5) An administrative levy for which liability arises on a grant anniversary date must be paid within the period (of not less than 7 days) specified by the Secretary by notice in writing served on a person liable.

### 94L Amount of administrative levy

- (1) The amount of an administrative levy is one percent of the security deposit amount.
- (2) The **security deposit amount** is the amount of the security deposit required to be given and maintained under a security deposit condition that has effect in relation to the petroleum title for which the administrative levy is payable when liability for the levy arises.
- (3) If a single security deposit is required to be given and maintained in respect of more than one petroleum title, the amount of the administrative levy is—
  - (a) one percent of the relevant proportion of the security deposit amount, or
  - (b) one percent of the minimum deposit for the petroleum title at the date liability arises,whichever is the greater.
- (4) The **relevant proportion** is the proportion that one bears to the number of petroleum titles for which the security deposit is required to be given and maintained (disregarding any petroleum titles that have been cancelled or have otherwise ceased to have effect before liability arises).

- (5) A security deposit is required to be given and maintained under a security deposit condition even if the condition requires the security deposit to be given at a future date or within a period ending on a future date.
- (6) If no security deposit is required to be given and maintained in respect of a petroleum title on a date liability for an administrative levy arises, and there is a minimum deposit for the petroleum title at that date, the security deposit amount is taken to be that minimum deposit.
- (7) For the purpose of enabling payment of the first administrative levy in advance of liability arising, the Minister is to give notice to an applicant for the grant of a petroleum title of any security deposit condition that will be imposed on the grant.

#### **94M Minimum amount of administrative levy**

- (1) The minimum amount for an administrative levy is \$100 or, if another minimum amount is prescribed by the regulations, that other amount.
- (2) If, but for this section, an administrative levy would be less than the minimum amount, the levy payable is taken to be the minimum amount.

### **Division 6 General**

#### **94N Assessment of liability**

- (1) The Secretary is to assess the liability of a person for a fee payable under this Part.
- (2) The Secretary may reassess the liability of a person for a fee payable under this Part if—
  - (a) it appears that a previous assessment was incorrect, or
  - (b) a reassessment is otherwise authorised or required by this Act or the regulations.

#### **94O Recovery of fees**

A fee payable under this Part is a debt due by the holder of the petroleum title concerned to the Crown and is recoverable in a court of competent jurisdiction.

#### **94P (Repealed)**

#### **94Q Late payment fee**

- (1) If a fee payable under this Part is not paid within the time required under this Part, the Secretary may charge a late payment fee in respect of the fee, calculated at the rate of 15% of the overdue amount per annum compounded quarterly (or, where another rate is prescribed by the regulations, that other rate).
- (2) A late payment fee may be charged for any days in the period starting at the end of

the day the fee was required to be paid and ending on (and excluding) the day the fee is paid.

- (3) A late payment fee is taken to form part of, and is recoverable in the same way as, the fee in respect of which it is payable.

#### **94R Effect of cancellation or suspension**

- (1) The cancellation of a petroleum title does not affect any liability for a fee payable under this Part that arose on a date that occurred before that cancellation.
- (2) Subject to the regulations, a fee does not cease to be payable under this Part, or become refundable, because the Minister suspends operations under the petroleum title.

#### **94S Exemptions**

The regulations may make provision for exemptions from the requirement to pay a fee under this Part.

#### **94T Waiver or refund of fees**

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

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

#### **95 Records of titles**

- (1) The Secretary 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, and
  - (c) every other matter in relation to which the Secretary is required to keep a record by the regulations.
- (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 prescribed fee for approval of the transfer of title, 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 Secretary.
- (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.

### **Note—**

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

- (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 Secretary. 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 Secretary, and
  - (b) must be accompanied by the prescribed fee for registration of a transfer.
- (3) On receipt of the application, the Secretary 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 Secretary a caveat, accompanied by the prescribed fee for the lodgment of a caveat, directing the Secretary 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 Secretary 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 Secretary is served with an order of the Supreme Court prohibiting the Secretary from registering the transfer.

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

- (1) The Secretary 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 Secretary and must be accompanied by the prescribed fee for registration and by written evidence (including, but not limited to, documentary evidence) of the legal or equitable interest concerned.
- (4) The Secretary may, if satisfied that the applicant holds the interest concerned, register the interest or the document by which the interest is evidenced.
- (5) The Secretary 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 Secretary 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 Secretary and ceases to have effect when the notice is lodged.
- (11) The withdrawal of an application under this section is irrevocable.

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

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

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

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

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

- (1) Every holder of a petroleum title and any other person carrying on any operation in connection with any such title who is called on to do so must, at such times and in such manner as the Minister may require, furnish such statistics, returns and other information as may be required and must keep such records as may be necessary for the completion of any such statistics and returns.
- (2) Any information required under this section in respect of any particulars supplied in or omitted from a return must be furnished within such period as may be specified by the Minister.
- (3) Statistics, returns and other information obtained pursuant to this section, are to be treated as confidential, but the Minister may cause to be published or otherwise made available the results of such statistics, returns and other information with respect to the whole of New South Wales or any portion of the State and such details furnished on an individual return (other than details relating to working expenses) as the Minister may think fit.
- (4) A person who contravenes this section is guilty of an offence.  
Maximum penalty—200 penalty units.

### **97C Reports**

- (1) The holder of a petroleum title must prepare and lodge reports of all operations carried out under the petroleum title.

**Note—**

Clause 6 (2) (g) of Schedule 1B provides that reports may also be required by the conditions of a petroleum title.

- (2) The regulations may make provision for or with respect to the following—
  - (a) the content, form or lodgment of the reports,
  - (b) the exemption of any person, class of persons, petroleum titles or class of petroleum titles from a requirement of this section or the regulations under this section.
- (3) A person who fails, without reasonable excuse, to prepare or lodge a report in accordance with this section or the regulations is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
  - (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.
- (4) If there is an inconsistency between a condition of a petroleum title and a reporting requirement imposed under this section, the condition prevails to the extent of the inconsistency.

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

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

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

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

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

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

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

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

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

## **Part 9 Powers of entry and inspection**

### **Division 1 Preliminary**

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

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

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

#### **99 Effect on other functions**

Nothing in this Part—

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

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



## **100 Application of Division**

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

## **101 Requirement to provide information and records**

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

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

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

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

section 104A.

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

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

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

- (1) An inspector may, at any premises lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An inspector may do any or all of the following—
  - (a) examine and inspect any works, plant, vehicle, aircraft or other article,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the inspector considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the inspector considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) take extracts from, or a copy of, any records,
  - (h) seize anything that the inspector has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (j) do any other thing the inspector is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize—
  - (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.

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

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

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

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

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

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

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

A person may accompany an inspector and take all reasonable steps to assist the inspector in the exercise of his or her functions under this Part if the inspector is of the opinion that the person is capable of providing assistance to the inspector in the exercise of those functions.

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

- (1) This section applies for the purpose of enabling an inspector to exercise any of the powers of an inspector under this Part in connection with any premises.

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

#### **104D Care to be taken**

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

#### **104E Compensation**

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

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

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

#### **104G Recording of evidence**

- (1) An inspector may cause any questions and answers to questions given under this Part

to be recorded if the inspector has informed the person who is to be questioned that the record is to be made.

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

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

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

#### **104I Application of Division**

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

### **Division 4 Powers with respect to articles**

#### **104J Application of Division**

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

#### **104K Power to inspect and test**

- (1) An inspector may, for the purposes of this Part, inspect and test any article.
- (2) The inspector may, for the purposes of any such inspection or testing—
  - (a) enter the article, and
  - (b) enter, in accordance with this Act, the premises where the article is located, and
  - (c) operate the article, and
  - (d) take photographs or video films of the article, and

(e) inspect or test any substance being carried by the article or in any container on the article, and

(f) take a sample of any such substance for testing.

(3) In this section—

**article** includes any plant, motor or other vehicle, aircraft, vessel or other thing of any description.

## Division 5 Other entry powers

### 104L Survey

(1) Any person employed in the Department authorised by the Secretary for the purposes of this Part, or a registered surveyor so authorised, may at all reasonable times enter any land with such assistants as he or she may think necessary—

(a) for the purpose of carrying out any survey, or

(b) for the purpose of defining any road, or

(c) for the purpose of carrying out a geological or geophysical survey, or

(d) for any other purpose authorised by this Act or the regulations.

(2) In this section, **registered surveyor** means a registered land surveyor or registered mining surveyor within the meaning of the *Surveying and Spatial Information Act 2002*.

### 104M Sampling

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

### 104N Notice to landholder

(1) Before a person enters any land pursuant to this Division, the person must—

(a) if practicable, give reasonable notice to the landholder of the person's intention to do so, and

(b) if required by that landholder, produce evidence that the person is authorised by the Secretary for the purposes of this Part.

(2) Evidence referred to in subsection (1) (b) is to be in the form prescribed by the regulations.

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

## Division 6 General

### 1040 Offences

- (1) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under this Part is guilty of an offence.
- (2) A person who wilfully delays or obstructs an inspector in the exercise of the inspector's powers under this Part is guilty of an offence.
- (3) A person who impersonates an inspector is guilty of an offence.

Maximum penalty—

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

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

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if—
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible** Any record furnished by a person in compliance with a requirement

under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

- (5) **Further information** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground—
- (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.
- (6) **Section extends to requirement to state name and address** This section extends to a requirement under this Part to state a person's name and address.

#### **104Q Revocation or variation**

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

### **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* (as in force immediately before its repeal), or
  - (a1) without the concurrence in writing of the Lands Administration Ministerial Corporation constituted by the *Crown Land Management Act 2016*, 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 10A Security deposit conditions

### 106A Definitions

- (1) In this Part—

**assessed deposit** has the meaning given by section 106E.

**group security deposit** means a single security deposit that, under a security deposit condition or conditions, is required to be given and maintained in respect of more than one petroleum title.

**minimum deposit** has the meaning given by section 106H.

**security deposit condition** means a condition of a petroleum title imposed under section 106B.

- (2) In this Part, a reference to obligations under this Act does not include a reference to any obligation to pay royalty under this Act, compensation under Part 11 or a fee payable under Part 7A.

### 106B 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 a security deposit (in such 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 (including obligations that may arise in the future) and to maintain that security deposit until those obligations are fulfilled.
- (2) A condition requiring a security deposit 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) 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.
- (4) 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 deposit to be given and maintained.
- (5) 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.
- (6) 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.
- (7) A condition may be imposed under this section in relation to any impact that is the result of work carried out under the relevant petroleum title, whether or not that impact is in relation to land over which the petroleum title is to be or was granted.

**106C Security may be required before application for title is granted**

- (1) If the Minister proposes to grant a petroleum title subject to a security deposit condition, the Minister may, by notice given to the applicant—
  - (a) advise the applicant of the proposed security deposit condition, and
  - (b) require the applicant to provide the security deposit required to be given and maintained under that condition before the title is granted.
- (2) If the Minister requires a security deposit to be provided before a petroleum title is granted, the title must not be granted unless the security deposit is provided.

**106D Amount of security deposit**

The amount of the security deposit that may be required by a security deposit condition is—

- (a) the assessed deposit for the petroleum title concerned as at the date the condition is imposed or varied, or
- (b) if there is no assessed deposit for the petroleum title—the minimum deposit for the petroleum title as at the date the condition is imposed or varied.

**106E Secretary may assess amount of security deposit**

- (1) The Secretary may assess the amount of the security deposit that may be required by a security deposit condition for a particular petroleum title or, in the case of a group

security deposit, for a particular group of petroleum titles.

- (2) The amount of the security deposit as assessed by the Secretary is the **assessed deposit** for the petroleum title or petroleum titles concerned.
- (3) The Secretary must make an assessment if the regulations require an assessment to be made.
- (4) The Secretary may make an assessment at any other time—
  - (a) at the request of the Minister, or
  - (b) on the Secretary's own initiative.
- (5) An assessment, and a decision to make or request an assessment, may be made without prior notice to, or consultation with, the holder of an affected petroleum title.
- (6) The Secretary is to make an assessment under this section having regard to the estimated cost of fulfilling any obligations under this Act in respect of the petroleum title or petroleum titles concerned, including obligations that may arise in the future.
- (7) An assessed deposit must not be less than the minimum deposit for the petroleum title or, in the case of a group security deposit, the sum of the minimum deposits for all affected petroleum titles.
- (8) After an assessment is made, the Secretary must give written notice of the assessment—
  - (a) to the holder of an affected petroleum title, and
  - (b) to the Minister.
- (9) The notice given to the holder of an affected petroleum title must—
  - (a) set out the reasons for the Secretary's assessment, and
  - (b) advise the holder of the holder's entitlement to apply for a review of the assessment under this Part.
- (10) The Secretary is to exercise his or her functions under this section having regard to any guidelines approved by the Minister.
- (11) An assessment by the Secretary under this section does not affect—
  - (a) the validity of any security deposit condition imposed or varied before the assessment was made, or
  - (b) liability for an administrative levy that arose before the assessment was made.
- (12) The Secretary may revise his or her assessment under this section. For that purpose,

the Secretary may amend, revoke or replace a previous assessment.

- (13) This section applies in respect of the revision of an assessment in the same way as it applies in respect of an assessment.
- (14) An assessment may be made in relation to a security deposit condition proposed to be imposed on the grant of a petroleum title and, for that purpose, a reference in this section, and in sections 106F and 106G, to a holder of a petroleum title is taken to include a reference to a person who, on grant, will be a holder of a petroleum title.

**106F Application for review of assessed deposit**

- (1) The holder of a petroleum title may apply for a review by the Minister of the Secretary's assessment of the amount of the security deposit that may be required for the petroleum title.
- (2) The application must—
- (a) be made in writing, and
  - (b) be made in a form approved by the Minister (if any form is approved), and
  - (c) contain particulars of the grounds for review of the assessment, and
  - (d) contain or be accompanied by such other information or documents as the Minister requires to review the assessment (which requirement may be specified on the Department's website), and
  - (e) be accompanied by any fee required by the regulations, and
  - (f) be lodged with the Secretary within 28 days after notice is given to the holder of the petroleum title of the assessment or within such other period as the regulations may prescribe.
- (3) The holder of a petroleum title is not entitled to apply for a review under this section if the assessment concerned has previously been reviewed under this section.
- (4) This section applies in respect of a revision of an assessment in the same way as it applies in respect of an assessment.

**106G Review of assessed deposit by Minister**

- (1) If an application for review of the Secretary's assessment of the amount of a security deposit that may be required for a petroleum title is duly made, the Minister is to review the Secretary's assessment.
- (2) In conducting a review, the Minister—
- (a) is to have regard to any submissions made by the holder of the petroleum title in

relation to the assessment the subject of the review, and

- (b) otherwise, has the same functions as the Secretary in relation to an assessment.
- (3) The review, if conducted by a delegate of the Minister, is not to be conducted by the Secretary or a person who, as the delegate of the Secretary, made the assessment the subject of the review.
- (4) Following the review, the Minister may—
  - (a) affirm the Secretary's assessment, or
  - (b) amend the Secretary's assessment, or
  - (c) set aside the Secretary's assessment and substitute a new assessment.
- (5) An assessment, or an amendment to an assessment, that is made by the Minister has the same effect as an assessment, or an amendment, made by the Secretary. However, the assessment or amendment is not reviewable under this section.
- (6) Any action taken by the Minister under this section does not affect—
  - (a) the validity of any security deposit condition imposed or varied before the action was taken, or
  - (b) liability for an administrative levy that arose before that action was taken.
- (7) However, if the Minister makes a new assessment, or amends an assessment, the Minister may—
  - (a) vary a security deposit condition in accordance with the assessment or amendment, and
  - (b) direct the Secretary to reassess any administrative levy payable for an affected petroleum title, and for which liability arose before the Minister's assessment or amendment, in a manner that the Minister considers fair and reasonable.

**Note—**

The amount of the security deposit required in respect of a petroleum title directly affects the administrative levy payable in respect of the petroleum title under Part 7A. In general terms, the levy is one percent of the amount of the security deposit.

**106H Minimum deposit**

- (1) The **minimum deposit** for a petroleum title is the amount prescribed by the regulations as the minimum deposit in relation to the type of petroleum title concerned.
- (2) A change to the minimum deposit for a petroleum title does not affect the validity of a

security deposit condition imposed or varied before the change takes effect.

### **106I Forfeiture of security**

- (1) All or such part of any security deposit 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 under this Act in relation to the title or, in the case of a group security deposit, any of the titles in respect of which the security is given.
- (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 deposit is to be applied for the purpose of fulfilling the obligations under this Act in relation to the petroleum title concerned.

## **Part 11 Compensation**

### **107A Definition**

In this Part—

**compensable loss** means loss caused, or likely to be caused, by—

- (a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations, or
- (b) deprivation of the possession or of the use of the surface of land or any part of the surface, or
- (c) severance of land from other land of the landholder, or
- (d) surface rights of way and easements, or
- (e) destruction or loss of, or injury to, disturbance of or interference with, stock, or
- (f) damage consequential on any matter referred to in paragraphs (a)-(e).

### **107 Compensation**

- (1) On the granting of a petroleum title, each person having any estate or interest in any land becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the person as a result of the exercise of the rights conferred by the title or by an access arrangement in respect of the title.

**Note—**

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

- (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.
- (3) Subsection (2) does not apply to compensation that is to be determined under an access arrangement that is required to be agreed or determined in accordance with Part 4A or 4B of this Act.

#### **109 Measure of compensation**

- (1) (Repealed)
- (2) 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 any court, person or body, 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, a court, person or body 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.

- (4) In making an assessment of compensation regard is to be had to the matters (if any) prescribed by the regulations.

### **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 compensable loss has been caused to the land to which the assessment relates or to other land,

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 Land and Environment Court proceedings**

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

- (1) The Land and Environment Court has jurisdiction to hear and determine proceedings relating to any of the following matters—
- (a) any demand concerning the ascertainment and adjustment of boundaries of land held under a petroleum title, or occupied by virtue of an easement or right of way

granted under this Act, where such boundaries are in dispute or doubtful—in which case the Court is to ascertain and determine such boundaries by such means as may be found convenient, and may make and give all such orders and directions as may be necessary for the purpose of carrying out or giving effect to its determination,

- (b) the right to the occupation of areas of land comprised in a petroleum title and the right to or ownership of petroleum and other materials obtained from them,
- (c) the right to the use of areas of land comprised in an easement or right of way granted under this Act,
- (d) any encroachments on, infringements of or damage to any land comprised in a petroleum title,
- (e) any encroachments on, infringements of or damage to an easement or right of way granted under this Act,
- (f) any demand for debt or damages or both arising out of or made in respect of any contract whatever relating to the search for or mining of petroleum,
- (g) the right to any petroleum in or to be taken out of any land comprised in a petroleum title or in respect of any matter concerning or arising out of any contract relating to any such petroleum,
- (h) any demand concerning or arising out of any partnership or joint venture for or in relation to the search for or mining of petroleum in any land comprised in or held under any petroleum title, easement or right of way granted under this Act, or any partnership or joint venture in any such land, or in any works, machinery or petroleum, or concerning or arising out of any contract for or in connection with any such search or mining, or for the dissolution wholly or in part of any such partnership or joint venture,
- (i) any demand concerning contributions to calls or to the expense of working or using any such land or works or any share or interest in any such contributions,
- (j) any demand concerning or arising out of any mortgage or assignment by way of security of or charge on any such land, works, machinery, petroleum or any share or interest in any such mortgage or assignment,
- (k) any demand concerning the cancellation and delivery up of instruments relating to—
  - (i) mortgages, charges or encumbrances of or on any such land, works, machinery or petroleum, or any share or interest in them, or
  - (ii) any assignment of such mortgages, charges and encumbrances, or

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

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

- (1) On application by any party to proceedings in the Land and Environment Court, the Court may order any other party to the proceedings—
  - (a) to deposit, pending its decision, any petroleum, money or chattels—
    - (i) the right to which will, in the opinion of the Court, be put in issue in the course of those proceedings, and
    - (ii) which may then be in, or at any time before the termination of the

proceedings may come into, the possession or control of that other party, or

(b) not to extract any petroleum the right to which will, in the opinion of the Court, be put in issue in the course of those proceedings.

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

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

(1) If an application is made to the Land and Environment Court by a person claiming to hold a legal or equitable interest in any land subject to a petroleum title, or in any property, the Court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person—

(a) from encroaching on, occupying, using or working the land or property, or

(b) from seeking or extracting any petroleum from the land, or

(c) from selling or disposing of or otherwise interfering with the property, or

(d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.

(2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.

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

(1) If an applicant for an injunction satisfies the Land and Environment Court that there are urgent reasons for granting the injunction, the Court may, in any case in which the Court might otherwise grant an injunction, grant an injunction to have effect for a period of not more than 2 months (including the day on which the injunction is made) without notice of the application having been served on any other party.

(2) The Land and Environment Court may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this section, but application for a further injunction may be made under section 112D, either during or after the period of the injunction granted under this section.

#### **112F Orders protecting adjacent petroleum titles**

(1) The holder of a petroleum title over land which is adjacent to—

(a) land that is the subject of an injunction, or

(b) land on which is located property that is the subject of an injunction,

may apply to the Land and Environment Court for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the petroleum title is held.

(2) The Land and Environment Court—

(a) may order, on such terms as the Court thinks fit, such working of that land or property as in the Court's opinion will be sufficient to prevent that damage or depreciation, and

(b) may make such further order as to the cost of that working as the Court considers just.

(3) An order may not be made under this section unless the applicant shows to the satisfaction of the Land and Environment Court that the petroleum title concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

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

(1) If any money or petroleum is claimed in the Land and Environment Court, the Court may order the payment of such money or the delivery of such petroleum as it may find to be due or deliverable by one party to another, where possible.

(2) If such a claim arises out of a petroleum mining partnership, adventure or interest, the Land and Environment Court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be necessary to ascertain what money or petroleum (if any) is so due by one party to the other, and may make such further order as it considers just.

(3) If the Land and Environment Court orders payment of money in respect of any debt, damages, costs or otherwise, the Court may make a further order—

(a) that any petroleum in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the Court) be delivered up to the party entitled to the payment, and

(b) that the petroleum to that extent be seized and delivered accordingly.

(4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the petroleum so delivered to the party entitled to payment.

**113 (Repealed)**

**Part 12A Administration**

### **113A Exclusion of personal liability**

An act or omission of—

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

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

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

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

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

- (1) A person must not, while holding office in an official capacity for the purposes of this Act and while exercising functions in that capacity, hold either directly or indirectly a beneficial interest in a petroleum title.

Maximum penalty—200 penalty units.

- (2) The following are persons who hold office in an **official capacity** for the purposes of this Act—
  - (a) the Minister,
  - (b) an inspector,
  - (c) a Public Service employee, who exercises functions under this Act or the *Mining*

*Act 1992,*

- (d) any other person who exercises any judicial or official functions under this Act or the *Mining Act 1992*.

## **Part 13 Release of information**

### **Division 1 Preliminary**

#### **113D Definitions**

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

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

#### **113E Release of certain data**

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

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

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

### **113F Release of samples**

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

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

The Minister may, at any time—

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

a summary of any work program that has been furnished to the Minister under this Act, including a work program that has been varied during the life of a petroleum title.

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

### **113H Release of assessments**

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

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

any information that has been furnished to the Minister under this Act, being information that relates to the subsoil, or to petroleum, in a block, and that, in the opinion of the Minister, is a conclusion drawn in whole or in part from, or an opinion based in whole or in part on, any such information.

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

- (1) Before the Minister makes available or publicly known any information under section 113H, the Minister must, if it is practicable to do so, serve a notice on each interested



person—

- (a) stating that the Minister proposes to make the information available or publicly known, and
- (b) inviting persons having a right to make an objection to give to the Minister, by such day as is specified in the notice (being a day not earlier than 45 days after the publication of the notice), a notice objecting to the whole or any part of the information being made available or publicly known, and
- (c) stating that, if a person does not make an objection in accordance with the invitation, the person will be taken to have consented to the information being made available or publicly known.

(2) In this section—

***interested person*** means any of the following—

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

### **113J Objections**

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

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

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

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

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

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

**relevant agency** means—

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

**113M Disclosure of information**

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made—
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in accordance with Division 2 or 3, or
  - (c) in connection with the administration or execution of this Act, or
  - (d) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (e) with the concurrence of the Minister, or
  - (f) in accordance with a requirement imposed under the *Government Information (Public Access) Act 2009*, or

- (g) by an inspector or a member of staff of the Department who exercises functions under this Act or the *Mining Act 1992* to an officer or authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979*, work health and safety legislation (within the meaning of the *Mining Act 1992*) or any other legislation prescribed by the regulations, or
- (h) in accordance with the regulations.

Maximum penalty—100 penalty units.

- (2) A reference in this section to information obtained in connection with the administration or execution of this Act includes a reference to a return or other information relating to royalty under this Act that is obtained by the Minister, or a delegate of the Minister, from a tax officer (within the meaning of the *Taxation Administration Act 1996*).

### **113N Exchange of information**

- (1) The regulator may enter into an arrangement (***an information sharing arrangement***) with a relevant agency for the purposes of sharing or exchanging any information that is held by the regulator or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists the regulator or relevant agency—
  - (a) to determine applications made under the resources legislation or legislation made under the corresponding law of another jurisdiction, or
  - (b) to determine whether to cancel, revoke, suspend or vary a petroleum title, activity approval or other approval, or an exemption or declaration, that is granted, made or given under that legislation, or
  - (c) to facilitate the carrying out of inspections, probity checks or other enforcement action under that legislation.
- (3) Under an information sharing arrangement, the regulator and the relevant agency are, despite any other Act or law of the State, authorised—
  - (a) to request and receive information that is held by the other party to the arrangement, and
  - (b) to disclose that information to the other party.
- (4) In this section—

***regulator*** means the Minister or the Secretary.

***relevant agency*** means any of the following—

- (a) a government agency or holder of a statutory office with any functions similar to or related to those imposed on the regulator by or under the resources legislation,
- (b) any government agency of the Commonwealth or another State or Territory with functions similar to or related to those imposed on the regulator under any of the resources legislation,
- (c) any other person or body, or person or body of a class, prescribed by the regulations.

**114-125 (Repealed)**

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

**Division 1 Offences**

**125B Obstruction**

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

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

Maximum penalty—

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

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

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

Maximum penalty—100 penalty units.

**125D Providing false or misleading information**

- (1) A person must not provide any information, record or return in purported compliance with any requirement by or under this Act—

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

Maximum penalty—

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

- (2) A holder of a petroleum title must ensure that an agent, employee or any other person acting on behalf of the holder does not provide any information, record or return in purported compliance with any requirement by or under this Act in connection with the holder's petroleum title in contravention of subsection (1).

Maximum penalty—

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

- (3) It is a defence to a prosecution of the holder of a petroleum title for an offence against subsection (2) if the holder establishes that the holder took all reasonable steps to prevent the contravention of the subsection.

- (4) A holder of a petroleum title may be proceeded against and convicted under subsection (2) whether or not the agent, employee or other person has been proceeded against or been convicted for the offence against subsection (1).

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

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

Maximum penalty—

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

**Note—**

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

- (2) In imposing a penalty under this section, the court is to take into consideration the following (so far as they are relevant)—

- (a) the extent of the harm caused or likely to be caused to the environment by the commission of the offence,
- (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
- (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence,
- (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
- (e) any other matters the court considers relevant.

### **125F Defences**

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

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

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

A person who—

- (a) causes or permits the commission of an offence against this Act or the regulations, or
- (b) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or
- (c) attempts to commit an offence against this Act or the regulations, or
- (d) conspires to commit an offence against this Act or the regulations,

is guilty of that offence and liable to the penalty prescribed by this Act or the regulations in relation to that offence.

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

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

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

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section—

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

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

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

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

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it



is an executive liability offence referred to in section 125H.

- (2) A person commits an offence against this section if—
- (a) a corporation commits a corporate offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person—
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

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

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

### **125J Continuing offences**

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—
  - (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of the

amount specified for that offence, and

(b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of the amount specified for that offence.

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

## **Division 2 Proceedings for offences**

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

- (1) Proceedings for an offence against this Act or the regulations are, except as provided by this section, to be dealt with summarily by—
  - (a) the Land and Environment Court, or
  - (b) the Local Court.
- (2) If proceedings for an offence against this Act or the regulations are brought in the Local Court—
  - (a) the maximum period of imprisonment that the Court may impose is 12 months, and
  - (b) the maximum monetary penalty that the Court may impose is 2,000 penalty units.
- (3) Proceedings against an individual for an offence of mining in contravention of section 7 or 91 may be taken on indictment.

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

- (1) Proceedings for an offence under this Act or the regulations may be commenced—
  - (a) in the case of an offence under section 7, 78A, 83F, 91, 104O, 125B or 125E—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
  - (b) in any other case—within but not later than 12 months after that date.

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

**evidence** of an offence means evidence of any act or omission constituting the offence.

### **125N Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

- (6) In this section, **authorised officer** means a person employed in the Department who exercises functions under this Act or the [Mining Act 1992](#) authorised in writing by the Secretary as an authorised officer for the purposes of this section.

### **Division 3 Restraining orders**

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

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

**the defendant** means the person referred to in subsection (1) (a) or (b).

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

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

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

- (1) A person bringing proceedings (as referred to in section 125O) may apply for a restraining order in relation to property of the defendant.
- (2) An application under this section may be made to the Land and Environment Court.
- (3) On an application under this section—
- (a) the court may, if it thinks fit, require the person making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and
  - (b) a person to whom the court requires notice be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

#### **125R Making of restraining order**

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

- (a) the defendant has committed the relevant offence, and

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

### **125S Undertakings**

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

### **125T Ancillary orders**

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

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

- (1) If—
  - (a) a court has made a restraining order in respect of particular property or all of the

property of the defendant, and

(b) the court orders the payment of an amount referred to in section 125ZD or 125ZE, there is created by force of this section, on the making of the order referred to in paragraph (b), a charge on all the property to which the restraining order applies to secure the payment to a public authority or person (which extends, for the purposes of this Division, to the Crown) of the amount referred to in section 125ZD or 125ZE.

(2) Such a charge ceases to have effect in respect of the property—

(a) on payment by the defendant to the public authority or person of the amount concerned, or

(b) on the sale or other disposition of the property with the consent of the court, or

(c) on the sale of the property to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,

whichever occurs first.

(3) Such a charge is subject to every charge or encumbrance to which the property was subject immediately before the order referred to in subsection (1) (b) was made and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.

(4) Such a charge is not affected by any change of ownership of the property, except as provided by subsection (2).

(5) If—

(a) such a charge is created on property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the property after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.

(6) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

### **125V Registration of restraining orders**

(1) If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept

under those provisions.

- (2) If the particulars of a restraining order are so recorded, a person who afterwards deals with the property is, for the purposes of section 125U (2), taken to have notice of the charge created by this Act on the making of the order.
- (3) If a restraining order applies to land under the provisions of the *Real Property Act 1900*, a caveat may be lodged under that Act in relation to the order.

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

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

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

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

#### **125Y Contravention of restraining orders**

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence.

Maximum penalty—A fine equivalent to the value of the property (as determined by the court) or imprisonment for 12 months, or both.

- (2) If—
  - (a) a restraining order is made against property, and
  - (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and
  - (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,

the person who applied for the restraining order may apply to the court that made the restraining order for an order that the disposition or dealing with the property be set aside.

- (3) If an application is made under subsection (2), the court may make an order—
- (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
  - (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

### **125Z Court may revoke restraining order**

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

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

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

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

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

### **125ZB Operation of Division**

- (1) This Division applies where a court finds an offence against this Act or the regulations proved.



- (2) Without limiting the generality of subsection (1), a court finds an offence proved if—
- (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).

- (3) In this Division—

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

### **125ZC Orders generally**

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

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

- (1) The court may, if it appears to the court that—
- (a) the Crown or a public authority has incurred costs and expenses in connection with—
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) the Crown or another person or a public authority has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the Crown, public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

- (2) However, a court is not to make an order for payment to a person under subsection (1) to the extent that the payment would represent the value of petroleum owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in connection with the offence.

- (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (4) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (5) The Local Court is not to make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.

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

- (1) If, after the court finds the offence proved—
  - (a) the Crown or a public authority has incurred costs and expenses in connection with—
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including the Crown and a public authority) has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the Crown, public authority or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt in a court of competent jurisdiction.
- (3) However, a person may not recover an amount that would represent the value of petroleum owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in connection with the offence.

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

- (1) The court may, if it appears to the court that the Crown or a public authority has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Crown or the authority the costs and expenses so incurred in such amount as is fixed by the order.

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

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

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

**the court** does not include the Local Court.

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

- (1) The court may do any one or more of the following—
  - (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,
  - (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its

consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),

- (c) order the offender to carry out a specified project for the rehabilitation of the area comprised in a current or former petroleum title,
- (d) order the offender to carry out an audit of activities carried on by the offender,
- (e) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,
- (f) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (g) order the offender to pay any royalty that is due and payable by the offender under this Act,
- (h) if the Secretary is a party to proceedings, order the offender to provide to the Secretary and maintain a security deposit, in a form and amount, and on such terms (if any), specified by the court, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment.

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

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

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

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

- (1) The Land and Environment Court or a Local Court may make an order under this section if the court is satisfied, on the balance of probabilities, that a person has prospected for or mined for petroleum otherwise than in accordance with a petroleum title.
- (2) The court may order a person to pay to a government agency or person costs and expenses incurred, or compensation for loss or damage suffered, as the case may be, in such amount as is fixed by the order, if it appears to the court that—
  - (a) a government agency has incurred costs and expenses in connection with—
    - (i) the prevention, control, mitigation or management of any environmental impact caused by the prospecting or mining, or
    - (ii) rehabilitating land or water damaged or affected by the prospecting or mining, or
  - (b) a person (including a government agency) has, by reason of the prospecting or mining, suffered loss of or damage to property or has incurred costs and expenses in preventing, controlling, mitigating or managing any such loss or damage, or attempting to do so.
- (3) However, the court is not to make an order for payment to a person under the section to the extent that the payment would represent the value of petroleum owned by that person that the person who carried out the suspected unlawful prospecting or mining had obtained by prospecting or mining carried out with the consent of that person and in connection with the suspected contravention.
- (4) An order made by the Local Court under this section is enforceable as if it were an order made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).
- (5) An order made by the Land and Environment Court under this section is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (6) The Local Court may not make an order under this section for the payment of an amount that exceeds the jurisdictional limit of the Local Court under the [Civil Procedure Act 2005](#).
- (7) The court may make an order under this section whether or not the person against whom the order is made—
  - (a) has been convicted of an offence under this Act in relation to the prospecting or

mining, or

- (b) has been issued with a penalty notice under this Act in relation to the prospecting or mining, and whether or not the amount of penalty prescribed for the offence has been paid under any such penalty notice, or
- (c) has had any other action taken against the person in respect of an offence under this Act in relation to the prospecting or mining.

(8) This section does not prevent the taking of proceedings for an offence of prospecting or mining for petroleum except in accordance with a petroleum title.

## **Division 6 Enforceable undertakings**

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

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

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

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

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

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

### **125ZM Compliance with enforceable undertaking**

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

Maximum penalty—

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

**125ZN Contravention of enforceable undertaking**

- (1) The Secretary may apply to the Land and Environment Court for an order if a person contravenes an enforceable undertaking.
- (2) If the Court is satisfied that the person who made the enforceable undertaking has contravened the undertaking, the Court may make one or both of the following orders—
  - (a) an order directing the person to comply with the undertaking,
  - (b) an order discharging the undertaking.
- (2A) The Court may make an order under this section whether or not proceedings have been instituted for an offence against section 125ZM for the contravention of the enforceable undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State—
  - (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Secretary in monitoring compliance with the enforceable undertaking in the future.

**Note—**

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

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

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

- (a) notice of the withdrawal of an enforceable undertaking,
- (b) notice and a copy of the variation of an enforceable undertaking.

**125ZP Proceeding for alleged contravention**

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if the person has made an enforceable undertaking in relation to that contravention and the enforceable undertaking is in effect.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an enforceable undertaking in relation to that contravention and has completely discharged the enforceable undertaking.
- (3) The Secretary may accept an enforceable undertaking in relation to a contravention or alleged contravention before proceedings in relation to that contravention have been finalised.
- (4) If the Secretary accepts an enforceable undertaking before the proceedings are finalised, the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.

**Division 7 Evidentiary provisions**

**125ZQ Certificate evidence of certain matters**

- (1) A document signed by the Secretary, or by an officer designated by the Secretary for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The following matters are specified for the purposes of subsection (1)—
  - (a) that an instrument, a copy of which is set out in or annexed to the document, being an instrument purporting—
    - (i) to be issued, made or given for the purposes of this Act, and
    - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,  
  
was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, the holder of a specified petroleum title or a petroleum title of a specified kind,
  - (c) that specified land was or was not, at a specified time or during a specified period,



- the subject of a specified petroleum title or a petroleum title of a specified kind,
- (d) that a petroleum title was or was not, at a specified time or during a specified period, subject to specified conditions,
  - (e) that a petroleum title was, at a specified time, cancelled or suspended for a specified period or was cancelled or suspended subject to specified conditions,
  - (f) that a condition was, at a specified time, revoked or varied in a specified manner or that a new condition was, at a specified time, imposed on a petroleum title or on the suspension of a petroleum title,
  - (g) that a person was or was not, at a specified time or during a specified period, an inspector,
  - (h) that a person was or was not, at a specified time or during a specified period, a member of staff of the Department or a council,
  - (i) that information required to be furnished pursuant to this Act or the regulations was or was not received,
  - (j) that a document is a copy of part of, or an extract from, a register kept under this Act,
  - (k) that a specified amount is payable under this Act or the regulations by a specified person and has not been paid,
  - (l) that petroleum of a specified value was recovered by a specified person or from specified land, at a specified time or during a specified period,
  - (m) that a specified legal or equitable interest (being a legal or equitable interest of a kind referred to in section 97) was or was not registered under this Act,
  - (n) that the Crown or a public authority has incurred costs or expenses of a specified amount under section 78D,
  - (o) that the Crown or a public authority has incurred costs or expenses of a specified amount in connection with the investigation of a specified offence under this Act,
  - (p) that a specified function under this Act was delegated to a specified person under section 113B during a specified period.
- (3) For the purposes of the certification of a matter referred to in subsection (2) (h), the person who appointed the inspector or royalty officer concerned is taken to be an officer designated by the Secretary (as referred to in subsection (1)).
- (4) In the absence of information that would enable the accurate determination of an amount payable, as referred to in subsection (2) (k), or the value of petroleum, as

referred to in subsection (2) (l), the following provisions have effect—

- (a) the amount or value certified may be an estimate of that amount or value (based on the information available to the person making the certification),
- (b) the estimate is presumed to be accurate and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate determination, but can be challenged by the provision of information that enables a more accurate estimate to be made,
- (c) if the estimate is successfully challenged and as a result a more accurate estimate is substituted, no proceedings are open to challenge merely because of the less accurate estimate and proceedings may continue to be heard and be determined on the basis of the substituted estimate.

## **Division 8 General**

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

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

## **Part 14 Miscellaneous**

### **126, 126A (Repealed)**

### **126B Petroleum titles and low-impact prospecting titles not personal property under [Personal Property Securities Act 2009 \(Cth\)](#)**

Each of the following is declared not to be personal property for the purposes of the [Personal Property Securities Act 2009](#) of the Commonwealth—

- (a) a petroleum title,
- (b) a low-impact prospecting title granted under Division 6 of Part 3.

**Note—**

The *Personal Property Securities Act 2009* of the Commonwealth does not apply in relation to a right, licence or authority granted by or under a law of a State that is declared by the law not to be personal property for the purposes of that Act.

**127-129 (Repealed)**

**129A Extraterritorial application**

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

**129B Waiver of minor procedural matters**

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

**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.

**131-133 (Repealed)**

### **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.

#### **135-136A (Repealed)**

#### **136B Gas and other petroleum activities—enforcement by EPA**

Schedule 2A to the *Protection of the Environment Operations Act 1997* (Enforcement of gas and other petroleum legislation) applies to this Act, and the operation of this Act is subject to that Schedule.

#### **137, 137A (Repealed)**

#### **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
- (g1) providing for the remission or waiver of any fees payable under this Act or the regulations, 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 adopt or provide for the adoption of any document (including, for example, a code of practice or set of standards published by any person or body) and for the application of the provisions of that document, as in force for the time being, for any of the purposes of this Act or the regulations.
- (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 (Repealed)**

**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 113B (1).

**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
    - (a1) by or under any other Act in connection with any activity under a petroleum title 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.



- (1A) For the avoidance of doubt, subsection (1) does not apply to the extent that the action, liability, claim or demand arose from anything done by the landholder—
- (a) with the intention to cause harm, or
  - (b) recklessly.
- (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 1A Competitive selection process for petroleum prospecting titles**

(Section 8)

### **1 Definition**

In this Schedule, **petroleum prospecting title** means an exploration licence, assessment lease or special prospecting authority under this Act.

### **2 Invitations for competitive selection applications**

- (1) The Minister may by notice published in the Gazette invite applications (**competitive selection applications**) for the grant of a petroleum prospecting title for a specified area of land on the basis of competitive selection for the grant of the title.
- (2) An invitation for competitive selection applications can stipulate information that is to accompany the application in addition to information required to accompany the application under Division 1 of Part 3 of this Act.
- (3) An invitation for competitive selection applications can relate to more than one area of land.
- (4) The Minister may by notice published in the Gazette vary or withdraw an invitation for competitive selection applications, and the regulations may make provision for or with respect to the consequences of the variation or withdrawal of an invitation.

### **3 Competitive selection process**

- (1) The Minister is to determine the process for competitive selection for the grant of a petroleum prospecting title.
- (2) The process for competitive selection can be different for different areas of land.
- (3) An invitation for competitive selection applications is to include such information as to the process for competitive selection as the Minister considers appropriate.

#### **4 Matters to be taken into account in competitive selection process**

- (1) Without limiting any other provision of this Act, the Minister must take into account in the competitive selection process—
  - (a) any matter that the Minister is required under this Act to take into account in considering an application for the grant of an exploration licence, assessment lease or special prospecting authority, and
  - (b) any matter prescribed by the regulations.
- (2) The Minister may determine any other matters that are to be considered in the competitive selection process and the weight or emphasis to be given to those matters.

#### **5 Consideration for grant of petroleum prospecting title**

- (1) An invitation for competitive selection applications can include a requirement for applications to include an undertaking that the applicant will pay an amount specified in the application or an amount determined through a competitive selection process as consideration offered for the grant of the petroleum prospecting title.
- (2) The process for competitive selection can include the public release of information as to the consideration offered by applicants for the grant of a petroleum prospecting title.
- (3) The amount of consideration undertaken to be paid by an applicant for the grant of a petroleum prospecting title is a factor that can be a relevant consideration in the competitive selection process.
- (4) The grant of a petroleum prospecting title can be delayed until the amount of any consideration payable for the grant of the title is paid or arrangements for payment or security for payment that are satisfactory to the Minister have been entered into.
- (5) Any amount paid as consideration for the grant of a petroleum prospecting title is not refundable in the event of the title being cancelled.

#### **6 Determination of applications**

- (1) After a competitive selection application has been considered in accordance with this Schedule, the application is to be dealt with and determined in accordance with the provisions of this Act as they relate to an application for an exploration licence, assessment lease or special prospecting authority (as appropriate). Accordingly, a power of the Minister under this Act to refuse an application for an exploration licence, assessment lease or special prospecting authority applies to a competitive selection application.

**Note—**

A competitive selection process does not guarantee that a petroleum prospecting title will be issued (because all competing applications may be refused).

- (2) If a competitive selection application fails to meet the requirements of the invitation in relation to which it is made, the application can be refused at any time during the competitive selection process without waiting for the process to be finalised.

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

### **Part 1 Preliminary**

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

This Schedule applies to and in respect of the following—

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

### **Part 2 Considering applications**

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

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

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

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

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

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

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

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

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

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

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

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

- (1) A petroleum title is subject to—
  - (a) any condition imposed by the Minister under this Schedule (including any variation of such a condition), and
  - (b) any condition imposed by or under section 45C (2), 83D or 106B, and
  - (c) any condition prescribed by the regulations.
- (2) Without limiting the generality of subclause (1), conditions imposed by the Minister or prescribed by the regulations may include conditions relating to the following—
  - (a) the development and conduct of petroleum operations,
  - (b) environmental management, protection and rehabilitation, including requiring the holder of the title—
    - (i) to carry out activities or not to carry out activities in order to protect, prevent, control or mitigate harm to the environment, and
    - (ii) to rehabilitate land or water that is or may be affected by activities under the petroleum title,
  - (c) compliance with codes of practice or sets of standards published by any person or body,
  - (d) ensuring the safety of the public in relation to prospecting and mining operations,

- (e) the administration of petroleum titles,
  - (f) community relations,
  - (g) requiring the holder to provide the Minister with reports detailing any non-compliance with the conditions of the petroleum title, or any requirements of this Act or the regulations relating to activities under the petroleum title, and any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects of that non-compliance.
- (3) Any obligation imposed on the holder of a petroleum title in relation to environmental management, protection and rehabilitation—
- (a) continues to have effect despite the cancellation of the petroleum title or it ceasing to have effect, and
  - (b) can be imposed despite anything to the contrary in section 93 of the *Environmental Planning and Assessment Act 1979*.
- (4) Unless an exemption from conditions imposed by the regulations applies, in the event of an inconsistency between conditions imposed by the Minister and those imposed by the regulations, the conditions imposed by the regulations prevail to the extent of any inconsistency.

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

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

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

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

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

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

- (1) The Minister may vary a petroleum title (including the conditions of a petroleum title).
- (2) A variation of a petroleum title may include—
  - (a) the attaching of a condition to a petroleum title (whether or not any conditions have already been attached), or
  - (b) the substitution of a condition, or
  - (c) the omission of a condition, or
  - (d) the amendment of a condition, or
  - (e) the variation of the instrument by which a petroleum title is granted, including so as to—
    - (i) update the instrument, or
    - (ii) correct a minor error or misdescription, or
    - (iii) consolidate variations made to the petroleum title.

- (3) A petroleum title may be varied on application by the holder of the petroleum title or on the initiative of the Minister.
- (4) Except in the case of the renewal or transfer of a petroleum title, the Minister is not to vary a prescribed condition subsequent to the grant of the petroleum title unless the Minister—
  - (a) has given the holder of the petroleum title notice of the draft variation, and
  - (b) has, at the time notice is given to the holder of the petroleum title under paragraph (a), invited the making of submissions to the Minister about the proposed variation and specified a deadline for the making of those submissions that is at least 28 days after the notice is given, and
  - (c) has either received such submissions and has taken them into consideration or has not received any such submission after the deadline has elapsed.
- (5) A petroleum title may be varied at any time during its currency, including on its being transferred to another person.
- (6) A petroleum title is varied by notice in writing given to the holder of the petroleum title.
- (7) The variation of a condition by the Minister takes effect as follows—
  - (a) if the condition is varied on the renewal of a petroleum title—when the renewal takes effect,
  - (b) if the condition is varied when a full or partial transfer of a petroleum title is approved under this Act—when the transfer is registered under this Act,
  - (c) if a prescribed condition is varied other than at the renewal of a petroleum title or when a full or partial transfer of a petroleum title is approved under this Act—28 days after written notice of the variation of the condition is served on the holder of the petroleum title or at a later time specified in the notice,
  - (d) in any other case—when written notice of the variation of the condition is served on the holder of the petroleum title or at a later time specified in the notice.
- (7A) The variation of a petroleum title (other than a variation of a condition of a petroleum title) by the Minister takes effect when written notice of the variation is served on the holder of the petroleum title or at a later time specified in the notice.
- (8) This clause does not apply to a condition that is prescribed by the regulations.
- (9) In this clause—

**prescribed condition** means a condition that is not—



- (a) imposed on the application of the holder of the petroleum title, or
- (b) imposed under section 83D or 106B.

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

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

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

- (1) The Minister may (whether on the application of the holder of the petroleum title or on the initiative of the Minister) suspend any of the conditions of a petroleum title for such period, or until the happening of such event, as the Minister may determine.
- (2) The suspension of conditions of a petroleum title may be granted unconditionally or subject to such conditions as the Minister may consider appropriate.
- (3) The suspension of the conditions of a petroleum title takes effect on the date on which written notice of the suspension is served on the holder of the petroleum title or on such later date as may be specified in the notice.
- (4) An application for suspension of the conditions of a petroleum title may be withdrawn by means of a notice of withdrawal signed by the applicant and lodged with the Minister.

- (5) The application ceases to have effect when the notice is lodged.
- (6) The withdrawal of an application under this clause is irrevocable.
- (7) The Minister may vary the suspension of the conditions of a petroleum title (including the conditions to which the suspension is subject).
- (8) A variation includes the attaching of a condition to the suspension, the substitution of a condition, the omission of a condition or the amendment of a condition.
- (9) A suspension of the conditions of a petroleum title is varied by notice in writing given to the holder of the petroleum title.
- (10) The suspension of any condition of a petroleum title under this clause does not prevent any action being taken under this Act in respect of the petroleum title (including variation under clause 9).
- (11) This clause does not apply to a condition that is prescribed by the regulations.

## 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

any Act that amends 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.
- (4) Any provision of the regulations made under this clause has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### **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.

### **Part 7 Provisions consequent on enactment of [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2012](#)**

#### **25 Definition**

In this Part—

**amending Act** means the [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2012](#).

#### **26 Validation**

Any regulation made under this Act on or after the commencement of section 138A of the Act, and before the repeal of that section by the amending Act, to the extent that it purported to prescribe the amount of a fee payable under this Act is taken to have been, and to have always been, validly made.

#### **27 Environmental management conditions and directions**

- (1) A condition of a petroleum title of a kind referred to in Division 2 of Part 6 of this Act (before the substitution of that Division by the amending Act), and in force immediately before that substitution, continues to have effect and is taken, on that substitution, to be a condition imposed under section 75 (as substituted by the amending Act).
- (2) Accordingly the condition may be varied or revoked as provided for by that section.



## **28 Security deposit conditions**

- (1) A security deposit condition imposed or varied under section 16 and in force before the repeal of that section is taken, on that repeal, to have been imposed or varied under Part 10A (as inserted by the amending Act) and to comply with that Part.
- (2) Anything done with respect to a security deposit condition under section 16 or 16A that continued to have effect immediately before the repeal of those sections, is taken on that repeal to have been done under Part 10A and to continue to have effect under that Part.
- (3) Section 106D (Amount of security deposit), as inserted by the amending Act, applies in respect of the imposition or variation of a security deposit condition on or after the commencement of that section.
- (4) That section does not affect the validity of any requirement of a condition imposed before the commencement of that section.

## **29 Payment of annual rental fee and administrative levy by existing title holder**

- (1) The requirements of Part 7A with respect to payment of an annual rental fee or administrative levy extend to a petroleum title granted before 1 July 2012 that is in force on 1 July 2012 (an **existing title**).
- (2) Accordingly, for an existing title—
  - (a) liability for an annual rental fee arises on each grant anniversary date that occurs on or after 1 July 2012, and
  - (b) liability for an administrative levy arises on each grant anniversary date that occurs on or after 1 July 2012.

## **30 Payment in advance of annual rental fee and administrative levy**

- (1) The Minister may waive the requirement under Part 7A that an annual rental fee or administrative levy for which liability will arise on the grant of a petroleum title be paid in advance before the title is granted.
- (2) Accordingly, the Minister may grant the title concerned even though the annual rental fee or administrative levy has not been paid.
- (3) If the Minister waives the requirement for payment in advance, the fee or levy concerned must be paid within the period (of not less than 7 days) specified by the Director-General by notice in writing served on a person liable.
- (4) This clause applies only in respect of liability arising before 1 October 2012 (or such later date as may be prescribed by the regulations).

## **Part 9 Provisions consequent on enactment of Mining and Petroleum Legislation Amendment Act 2014**

### **38 Operation of fit and proper person test**

- (1) Section 24A (as enacted by the *Mining and Petroleum Legislation Amendment Act 2014*) applies to any decision made after the commencement of that section, including—
  - (a) a decision with respect to an application or other matter that was pending on that commencement, and
  - (b) a decision based on conduct that occurred, or on a matter that arose, before that commencement.
- (2) Section 24A (4) (as enacted by the *Mining and Petroleum Legislation Amendment Act 2014*) extends to permit the Minister to refuse the grant, renewal or transfer of a petroleum title even if the development consent that would otherwise have prevented refusal was granted before the date of assent to the *Mining and Petroleum Legislation Amendment Act 2014*.

### **39 Grounds for cancellation or suspension of petroleum title**

- An amendment made to section 22 by the *Mining and Petroleum Legislation Amendment Act 2014* applies to any decision made after the commencement of the amendment, including—
- (a) a decision with respect to a matter that was pending on that commencement, and
  - (b) a decision based on conduct that occurred, or on a matter that arose, before that commencement.

## **Part 10 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2014**

### **40 Assessment and recovery of royalties under Taxation Administration Act 1996**

- (1) An amendment made to this Act by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014* applies only to royalty under this Act that is payable in respect of a royalty period that commences on or after the commencement of the amendment.
- (2) This Act, as in force before such an amendment, continues to apply to royalty under this Act that is payable in respect of a royalty period that commenced before the commencement of the amendment.

#### 41 Requirements to pay royalty to the Minister

- (1) A requirement imposed by or under this Act to pay royalty under this Act to the Minister is taken, from the relevant commencement date, to be a requirement to pay royalty under this Act to the Crown.
- (2) A reference in any document to royalty payable to the Minister under this Act is taken, from the relevant commencement date, to be a reference to royalty payable to the Crown under this Act.
- (3) In this clause, the **relevant commencement date** means the date of commencement of section 93, as inserted by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*.

### Part 11 Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Act 2015

#### 42 Definition

In this Part, **2015 amending Act** means the *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Act 2015*.

#### 43 Grant of exploration licence for designated area

- (1) A designated area application is not affected by the amendments made by the 2015 amending Act and accordingly is to be dealt with as if the 2015 amending Act had not been enacted.
- (2) An application is a **designated area application** if—
  - (a) it is an application for an exploration licence made (and not withdrawn or otherwise finally disposed of) under this Act before the commencement of the amendment made by the 2015 amending Act that substitutes section 8, and
  - (b) on the commencement of that amendment, a designation is in force under section 9 (1) (a) in respect of the area over which the exploration licence is sought.

### Part 12 Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015

#### 44 Definition

In this Part—

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

#### **45 Pending applications**

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

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

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

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

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

#### **48 Existing conditions**

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

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

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

#### **49A Operation of requirements for activity approvals**

For the avoidance of doubt, compliance with sections 31A and 36A is required in respect of any assessable prospecting operation (within the meaning of those sections) carried out after the commencement of the sections, even if it began before the commencement of the sections.

#### **50 Existing "activity approval" conditions in exploration licences**

(1) Any condition to which an exploration licence was subject immediately before the commencement of section 31A, as inserted by the 2015 amending Act, that requires approval to carry out operations and that is identified in the licence using 1 of the following phrases is void—

- (a) Category 1 prospecting operations,
- (b) Category 2 prospecting operations,

- (c) Category 3 prospecting operations,
  - (d) assessable prospecting operations.
- (2) However, an approval granted pursuant to a condition referred to in subclause (1) that was in force immediately before the commencement of this clause is taken to be an activity approval granted under section 31A and can be varied or voluntarily cancelled accordingly.
- (2A) Each of the conditions of such an approval is taken to be a term of that activity approval and can be varied accordingly.
- (3) An application for approval to carry out prospecting operations made in compliance with a condition referred to in subclause (1), being an application that had not been dealt with before the commencement of section 31A (as inserted by the 2015 amending Act), is to be dealt with in accordance with section 31A, as if it had been made under that section.
- (4)-(7) (Repealed)

#### **50A Existing “activity approval” conditions in assessment leases**

- (1) If an assessment lease was, immediately before 1 March 2016, subject to a condition that requires approval of a petroleum operations plan to carry out an activity, each of the following is taken to be an activity approval under section 36A and can be varied accordingly—
- (a) any approval granted pursuant to such a condition, including any variation of that approval, that was in force immediately before 1 March 2016 (an **existing POP approval**),
  - (b) the petroleum operations plan that was approved by the existing POP approval, including any variation of that plan that was in force immediately before 1 March 2016,
  - (c) any approval required under, or referred to in, the petroleum operations plan for an activity or operation that is an assessable prospecting operation, being an approval that was in force immediately before 1 March 2016 and was not granted under the *Environmental Planning and Assessment Act 1979* or the *Protection of the Environment Operations Act 1997* (an **existing associated approval**).
- (2) The activity approval is taken to include the following terms, which can be varied accordingly—
- (a) each condition to which the existing POP approval was subject (including any approved variation that was in force immediately before 1 March 2016),
  - (b) each provision of the relevant petroleum operations plan (including any approved

variation that was in force immediately before 1 March 2016),

(c) each condition of any existing associated approval.

- (3) An application for approval of a petroleum operations plan made in compliance with a condition of an assessment lease that requires such approval to carry out an activity, or an application for an approval required under such a petroleum operations plan, being an application that had not been dealt with before 1 March 2016, is to be dealt with in accordance with section 36A as if the application had been made under that section.

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

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

### **52 Existing inspectors**

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

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

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

### **54 (Repealed)**

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

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

expired immediately before that commencement.

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

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

### **Part 13 Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015**

#### **57 Definition**

In this Part, **2015 amending Act** means the *Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015*.

#### **58 Application of amendments relating to general arbitration procedures to existing access arrangements and proposed access arrangements**

- (1) This clause applies to a proposed access arrangement for which notice had been given under section 69E before the commencement of this clause, but which was not agreed or determined before that commencement.
- (2) Sections 69D (1) (f) and (2), 69G (2), 69H, 69I, 69J, 69K (1) and 69R (1) as in force immediately before their amendment, substitution or repeal by the 2015 amending Act continue to apply to access arrangements and proposed access arrangements to which this clause applies.
- (3) Sections 69HA, 69HB, 69KB and 69SA do not apply to access arrangements and proposed access arrangements to which this clause applies.

#### **59 Application of amendments relating to costs to existing access arrangements and proposed access arrangements**

- (1) This clause applies to a proposed access arrangement for which notice had been given under section 69E before the commencement of this clause, but which has not been agreed or determined before that commencement.
- (2) Sections 69D (2A) and 69O (1) as in force immediately before their repeal by the 2015 amending Act continue to apply to access arrangements and proposed access arrangements to which this clause applies.
- (3) Sections 69E (2A)–(2D), 69KC, 69NA and 69V do not apply to access arrangements and proposed access arrangements to which this clause applies.

#### **60 Application of amendments relating to costs in Land and Environment Court**

Section 69R (8) and (9), as inserted by the 2015 amending Act, do not apply to

proceedings in the Land and Environment Court commenced, but not finally determined, before the commencement of this clause.

#### **61 Application of amendments relating to production leases**

Section 41 (3) and Part 4B, as inserted by the 2015 amending Act, do not apply in relation to a production lease granted before the commencement of this clause.

#### **62 Application of amendments relating to determination of compensation**

The amendments to the Act made by Schedule 2 [27]–[34] to the 2015 amending Act do not apply to the following—

- (a) an arbitration commenced, but not completed, before the commencement of this clause,
- (b) proceedings in the Land and Environment Court commenced, but not determined, before the commencement of this clause.

#### **63 Application of amendments relating to the definition of “significant improvement”**

The insertion of the definition of **significant improvement** into section 72, and the other amendments made to that section, by the 2015 amending Act do not apply in relation to the following—

- (a) any proceedings in the Land and Environment Court under that section that were commenced, but not finally determined, before the commencement of this clause,
- (b) any proceedings in that Court in relation to a dispute concerning an access arrangement, or the variation of an access arrangement, for which notice had been given under section 69E before the commencement of this clause—
  - (i) that had not commenced before the commencement of this clause, or
  - (ii) that had commenced, but had not been finally determined, before the commencement of this clause.

### **Part 14 Provisions consequent on enactment of Mining and Petroleum Legislation Amendment Act 2017**

#### **64 Publication of existing enforceable undertakings and relevant withdrawals and variations**

The Secretary must publish, and make public, the following—

- (a) a copy of an enforceable undertaking accepted by the Secretary before the commencement of this clause,
- (b) notice of the withdrawal of an enforceable undertaking made before the



commencement of this clause,

- (c) notice and a copy of the variation of an enforceable undertaking made before the commencement of this clause.

#### **65 Proceedings relating to enforceable undertakings**

The provisions of Division 6 of Part 13A (as amended by the *Mining and Petroleum Legislation Amendment Act 2017*) extend to contraventions of enforceable undertakings that occurred before the commencement of those amendments (except where proceedings for a contravention have commenced before that commencement).

#### **66 Pending applications relating to transfer of petroleum title**

Clause 4 of Schedule 1B (as amended by the *Mining and Petroleum Legislation Amendment Act 2017*) extends to an application to approve a transfer of a petroleum title that has been made but not finally determined on the commencement of that amendment.

### **Part 15 Provisions consequent on enactment of *Mining and Petroleum Legislation Amendment Act 2022***

#### **67 Definition**

In this Part—

**2022 amending Act** means the *Mining and Petroleum Legislation Amendment Act 2022*.

#### **69 Definition of “well-head”**

- (1) The amendments made by the 2022 amending Act, Schedule 2[1] and [41] do not apply in relation to a royalty payable in relation to a royalty period that began before the amendments commenced.
- (2) Section 88, as in force immediately before its repeal by the 2022 amending Act, Schedule 2[41], continues to apply in relation to a royalty payable in relation to a royalty period that began before the repeal of the section.

#### **72 Amendment of applications—s 21**

Section 21, as inserted by the 2022 amending Act, extends to applications made, but not finally determined, before the section commenced.

### **Schedule 2 Expunged petroleum title applications**

#### **1 Application**

This Schedule has effect despite any other provision of this Act.

## 2 Definitions

In this Schedule—

**expunged application** means an application for a petroleum title that is expunged by operation of this Schedule.

**introduction date** means the date of introduction into Parliament of the Bill for the *Petroleum (Onshore) Amendment (NSW Gas Plan) Act 2014*.

## 3 Applications for petroleum titles expunged

- (1) Each application for a petroleum title under this Act that is specified in the Table to this clause is expunged by operation of this clause with effect on and from the introduction date.
- (2) An expunged application is void and of no effect and is not to be dealt with any further under this Act.

### Table

Column 1	Column 2	Column 3
Application Identifier	Application Number	Application Date
PELA	130	16 December 2009
PELA	135	31 March 2011
PELA	137	12 March 2012
PELA	144	28 November 2012
PELA	146	22 February 2013
PELA	147	22 February 2013
PELA	148	27 February 2013
PELA	150	11 November 2013
PELA	151	11 November 2013
PELA	152	11 November 2013
PSPAPP	48	15 December 2009
PSPAPP	54	21 November 2011
PSPAPP	56	22 February 2012
PSPAPP	57	22 February 2012
PSPAPP	62	21 June 2013

#### 4 Refund of application fees for expunged applications

Any lodgment fee payable under section 12 in respect of an expunged application ceases to be payable and if already paid is to be refunded to the person by whom it was paid.

#### 5 Compensation not payable

(1) Compensation is not payable by or on behalf of the State—

- (a) because of the enactment or operation of this Schedule, the *Petroleum (Onshore) Amendment (NSW Gas Plan) Act 2014* or any Act that amends this Schedule, or
- (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or
- (c) because of any conduct relating to any such enactment or operation.

(2) This clause extends to conduct and any other matter occurring before the commencement of this clause.

(3) In this clause—

**compensation** includes damages or any other form of compensation.

**conduct** includes any statement, or any act or omission—

- (a) whether unconscionable, negligent, false, misleading, deceptive or otherwise, and
- (b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise.

**statement** includes a representation of any kind, whether made orally or in writing.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

#### 6 Applicants of expunged applications to be given first opportunity to make new applications

(1) The Minister must not grant a petroleum title in respect of any area for which an expunged application was made unless—

- (a) the Minister has first invited the applicant for the expunged application to make an application pursuant to an invitation under Schedule 1A in relation to the petroleum title concerned (a **competitive selection application**), and
- (b) the applicant has—

- (i) informed the Minister that the applicant does not wish to make a competitive selection application, or
- (ii) not made a competitive selection application within 28 days of being invited to do so, or
- (iii) had the applicant's competitive selection application refused.

(2) (Repealed)

## **Schedule 3 Cancellation of titles relating to national parks**

### **1 Cancellation of certain exploration licences**

An exploration licence, or part of an exploration licence, that is comprised of land within a national park (within the meaning of the *National Parks and Wildlife Act 1974*) as at the commencement of this Schedule is cancelled by this Schedule, either wholly or in part, as the case requires.

### **2 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State—
  - (a) because of the enactment or operation of this Schedule or any Act that amends this Schedule, or
  - (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or
  - (c) because of any conduct relating to any such enactment or operation.
- (2) This clause extends to conduct and any other matter occurring before the commencement of this clause.

(3) In this clause—

**compensation** includes damages or any other form of compensation.

**conduct** includes any statement, or any act or omission—

- (a) whether unconscionable, negligent, false, misleading, deceptive or otherwise, and
- (b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise.

**statement** includes a representation of any kind, whether made orally or in writing.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

### 3 State not liable for certain conduct

- (1) The State is not liable, and is taken never to have been liable, whether vicariously or otherwise, for any conduct (**relevant conduct**) before an exploration licence's cancellation under this Schedule in relation to an exploration licence or prospecting on land (whether occurring before or after the grant of the licence).
- (2) In addition, the State is not liable, and is taken never to have been liable, whether under any contract, policy or other arrangement for self-insurance or otherwise, to indemnify any person against any personal liability of the person for relevant conduct.
- (3) This clause extends to all types of civil liability, whether at law or in equity, and whether arising in tort or contract, or under an enactment or otherwise.
- (4) An employee (or former employee) of the State acting honestly and in good faith in the performance or purported performance of his or her functions as an employee of the State has the same protections and immunities as the State under this clause.
- (5) This clause applies despite the [Law Reform \(Vicarious Liability\) Act 1983](#) and the [Civil Liability Act 2002](#).
- (6) In this clause—

**employee of the State** means a person employed under the [Government Sector Employment Act 2013](#).

**the State** means the Crown in right of New South Wales and includes a statutory body representing the Crown.

### 4 Continuing obligation to provide reports

The obligation of the holder of an exploration licence to provide a report under this Act continues despite the cancellation of the licence under this Schedule.

### 5 Access arrangements

- (1) The cancellation of an exploration licence by this Schedule does not affect any liabilities of a holder or former holder of the licence under an access arrangement.
- (2) The cancellation of an exploration licence by this Schedule operates, for the purposes of any access arrangement relating to the licence—
  - (a) as an occasion of the holder of the licence ceasing to hold an authority over the exploration area, and
  - (b) as a cancellation of the licence for the purpose of any provision of the access arrangement that deals with the cancellation of an authority.
- (3) The regulations may make provision for or with respect to the termination of any

access arrangements relating to an exploration licence cancelled under this Schedule.