

LEGISLATIVE COUNCIL

**Petroleum (Onshore) Amendment Bill 2013**

**First print**

**Proposed amendments**

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- No. 1 Page 3, Schedule 1 [1]. Insert after line 18:  
*rehabilitation* means the treatment or management of land, or of water, that may have been damaged or adversely affected by activities under a petroleum title such that it is returned to its original condition or to an improved condition, including (but not limited to) the following:  
(a) the levelling, regrassing, reforesting or contouring of any part of the land the subject of the title,  
(b) the filling in or sealing of excavation and drill holes.
- No. 2 Page 4, Schedule 1 [3]. Insert after line 3:  
(d) an access arrangement, or
- No. 3 Page 4, Schedule 1. Insert after line 8:  
**[4] Section 24 Suspension of non-environmental conditions of petroleum title**  
Insert after section 24 (1):  
(1A) However, a condition may not be suspended if it is a condition:  
(a) identified (in the title or in any notice of the imposition or variation of the condition given to the title holder) as a condition relating to environmental management, or  
(b) relating to the conservation or protection of flora, fauna, fish, fisheries or scenic attractions or otherwise to the conservation or protection of the environment, or  
(c) relating to the rehabilitation, levelling, regrassing, reforesting or contouring of any land concerned.
- No. 4 Page 4, Schedule 1 [4], lines 9–11. Omit all words on those lines.
- No. 5 Page 4, Schedule 1. Insert before line 12:

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**[5] Section 45F Access arrangement required for prospecting operations under low-impact prospecting titles**

Omit “, or that is determined for them by an arbitrator in accordance with that Part” from section 45F (2) (a).

**[6] Sections 69B, 69D (2), 69E (4) and 69F–69S**

Omit the sections and subsections.

**[7] Section 69C Prospecting to be carried out with consent and in accordance with access arrangement**

Omit section 69C (1). Insert instead:

- (1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land.
- (1A) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance with an access arrangement or arrangements applying to that area of land agreed (in writing) between the holder of the prospecting title and each landholder of that area of land.

**[8] Section 69C (2)**

Omit “or determined”.

No. 6 Page 4, Schedule 1. Insert after line 13:

**[6] Section 69D (4)**

Omit the subsection. Insert instead:

- (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 the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.

No. 7 Page 4, Schedule 1 [6], lines 17–33. Omit all words on those lines. Insert instead:

An access arrangement must specify that the holder of the prospecting title is required to pay for the reasonable legal costs of the landholder in connection with the arrangement.

No. 8 Page 5, Schedule 1 [6], line 2. Omit “The regulations may”. Insert instead “The Minister must ensure that, no later than 3 months after the commencement of this section, regulations are made that”.

No. 9 Page 5, Schedule 1. Insert after line 19:

**[7] Section 69T Variation of access arrangements**

Omit section 69T (2). Insert instead:

- (2) An access arrangement may also be varied by the agreement of the parties to the arrangement.

**[8] Section 69U Change in landholders**

Omit “or determined” wherever occurring in section 69U (2), (3), (4) and (6).

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**[9] Section 69U (5)**

Omit the subsection. Insert instead:

- (5) If the new landholder objects to the access arrangement within 28 days after being given a copy of the arrangement, the access arrangement ceases to apply to the new landholder unless the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Part.

- No. 10 Page 5, Schedule 1 [7], lines 20–23. Omit all words on those lines.
- No. 11 Page 10, Schedule 1 [9]. Insert after line 5:
- (d) to determine whether the Department has satisfactorily administered this Act, including by monitoring the implementation of this Act and enforcing the conditions of petroleum titles.
- No. 12 Page 10, Schedule 1 [9], line 7. Omit “The regulations may”. Insert instead “The Minister must ensure that, no later than 3 months after the commencement of this section, regulations are made that”.
- No. 13 Page 10, Schedule 1 [9], line 16. Omit “may”. Insert instead “must”.
- No. 14 Pages 13–14, Schedule 1 [9], line 9 on page 13 to line 23 on page 14. Omit all words on those lines.
- No. 15 Page 14, Schedule 1 [9]. Insert after line 23:

**83M Mandatory audit of Department’s performance**

The Minister must, at least once every 5 years, appoint an auditor to undertake an audit of whether the Department has satisfactorily administered this Act, monitored the implementation of this Act and enforced the conditions of petroleum titles.

- No. 16 Page 15, Schedule 1 [10], line 3. Omit “, if the Minister so directs,”.
- No. 17 Page 15, Schedule 1 [10], line 4. Omit “at such rate as the Minister determines”. Insert instead “at a rate that is 2% above the cash rate last published by the Reserve Bank of Australia before the royalty became payable”.
- No. 18 Page 19, Schedule 1 [11], line 17. Insert “directly” before “caused”.
- No. 19 Pages 23–24, Schedule 1 [11], line 24 on page 23 to line 22 on page 24. Omit all words on those lines.
- No. 20 Page 26, Schedule 1 [11], line 18. Omit “that has been granted by the Minister”.
- No. 21 Page 28, Schedule 1 [14]. Insert after line 26:
- (3) This Division also applies to environmental information obtained by the Minister or the Director-General otherwise in the administration of this Act.
- (4) Accordingly, in this Division, *environmental information* also includes detailed particulars of the following:
- (a) all applications for suspension of conditions of a petroleum title,
- (b) all notices of the suspension of conditions of a petroleum title,

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- (c) all land access arrangements where the landholder is the Crown and where mandatory provisions of a land access code have been excluded or varied,
  - (d) all directions given under section 28,
  - (e) all requests to modify work programs that accompanied applications for petroleum titles,
  - (f) all decisions on such requests.
- No. 22 Page 29, Schedule 1 [14], line 2. Omit “may”. Insert instead “must”.
- No. 23 Page 29, Schedule 1 [14], line 3. Omit “or”. Insert instead “and”.
- No. 24 Page 29, Schedule 1 [14], line 10. Omit “may”. Insert instead “must”.
- No. 25 Page 36, Schedule 1 [16], lines 7 and 8. Omit “or section 92”. Insert instead “, 92 or 127”.
- No. 26 Page 36, Schedule 1 [16], line 10. Insert “or 127” after “section 7”.
- No. 27 Page 36, Schedule 1 [16]. Insert after line 12:
- (1) Proceedings for an offence under section 125B or 136 (1) or (3) may be commenced within but not later than 3 months after the latest of the following dates:
    - (a) the date on which the offence is alleged to have been committed,
    - (b) the date on which evidence of the alleged offence first came to the attention of either an inspector or the Director-General.
- No. 28 Page 36, Schedule 1 [16], line 13. Insert “any other provision of” after “under”.
- No. 29 Page 36, Schedule 1 [16], line 21. Insert “or (2) (b)” after “subsection (1) (b)”.
- No. 30 Page 50, Schedule 1 [17], line 22. Omit all words on that line. Insert instead:  
Maximum penalty: 10,000 penalty units or imprisonment for 5 years, or both.
- (2) A person must not hold office in an official capacity for the purposes of this Act or exercise functions in that capacity if any of the following members of the immediate family of the person holds either directly or indirectly a beneficial interest in a petroleum title:
    - (a) a husband, wife or de facto partner of the person,
    - (b) a grandchild or grandparent of the person,
    - (c) a parent or child of the person,
    - (d) a sibling of the person.Maximum penalty: 10,000 penalty units or imprisonment for 5 years, or both.
- No. 31 Page 51, Schedule 1. Insert after line 13:
- [19] Section 136 Other offences**
- Insert after section 136 (3):
- (4) Subsection (3) (a) does not apply in respect of anything done by a landholder or any other person in relation to a person prospecting on the landholder’s land if there is no
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access arrangement in force for the carrying out of the prospecting operations on the land.

No. 32 Page 51, Schedule 1. Insert before line 14:

**[19] Section 138 Regulations**

Omit section 138 (1) (q).

No. 33 Page 51, Schedule 1 [19]. Insert after line 28:

**Application of amendments to existing access arrangements determined by arbitrator**

The amendments made by the *Petroleum (Onshore) Amendment Act 2013* to the provisions of this Act relating to access arrangements do not apply to prospecting operations in relation to which:

- (a) an access arrangement determined by an arbitrator was in force immediately before the commencement of that amending Act, or
- (b) an arbitrator had been appointed (by agreement or in default of an agreement) and had begun to conduct a hearing but in relation to which no final determination had been made by the arbitrator before the commencement of the 2013 amending Act.

No. 34 Page 53, Schedule 2. Insert after line 24:

**2.2 Criminal Procedure Act 1986 No 209**

**[1] Schedule 1 Indictable offences triable summarily**

Insert after clause 17 (2) of Table 2:

- (3) An offence under section 364 of the *Mining Act 1992*.

**[2] Schedule 1, Table 2**

Insert after clause 18 (1):

- (2) An offence under section 127 of the *Petroleum (Onshore) Act 1991*.

No. 35 Page 53, Schedule 2.3 [1], lines 30–33. Omit all words on those lines.

No. 36 Page 53, Schedule 2.3. Insert after line 33:

**[2] Section 32F Access arrangement required for prospecting operations under low-impact licences**

Omit “, or that is determined for them by an arbitrator in accordance with that Division” from section 32F (2) (a).

No. 37 Page 54, Schedule 2.3 [2], lines 1–4. Omit all words on those lines.

No. 38 Page 54, Schedule 2.3. Insert after line 4:

**[3] Sections 139, 141 (2), 142 (4), 143–156, 263 (4), 264 (4) and 276 (3)**

Omit the sections and subsections.

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**[4] Section 140 Prospecting to be carried out with consent and in accordance with access arrangement**

Omit section 140 (1). Insert instead:

- (1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land.
- (1A) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance with an access arrangement or arrangements applying to that area of land agreed (in writing) between the holder of the prospecting title and each landholder of that area of land.

**[5] Section 140 (2)**

Omit “or determined”.

No. 39 Page 54, Schedule 2.3. Insert after line 6:

**[4] Section 141 (4)**

Omit the subsection. Insert instead:

- (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 the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.

No. 40 Page 54, Schedule 2.3 [4], lines 10–26. Omit all words on those lines. Insert instead:

An access arrangement must specify that the holder of the prospecting title is required to pay for the reasonable legal costs of the landholder in connection with the arrangement.

No. 41 Page 54, Schedule 2.3. Insert after line 26:

**[5] Section 157 Variation of access arrangements**

Omit section 157 (2). Insert instead:

- (2) An access arrangement may also be varied by the agreement of the parties to the arrangement.

**[6] Section 158 Change in landholders**

Omit “or determined” wherever occurring in section 158 (2), (3), (4) and (6).

**[7] Section 158 (5)**

Omit the subsection. Insert instead:

- (5) If the new landholder objects to the access arrangement within 28 days after being given a copy of the arrangement, the access arrangement ceases to apply to the new landholder unless the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Division.

No. 42 Page 54, Schedule 2.3 [5], lines 27–28. Omit all words on those lines.

No. 43 Page 56, Schedule 2.3. Insert after line 24:

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**[17] Section 291 Payment of royalty**

Omit “, if the Minister so directs, to be added to the amount due at such rate as the Minister determines” from section 291 (2).

Insert instead “to be added to the amount due at a rate that is 2% above the cash rate last published by the Reserve Bank of Australia before the royalty became payable”.

No. 44 Page 56, Schedule 2.3. Insert before line 25:

**[17] Section 293 Jurisdiction of Land and Environment Court**

Omit “an arbitrator’s determination under Division 2 of Part 8 or of” from section 293 (1) (u).

No. 45 Page 57, Schedule 2.3 [18], line 11. Omit all words on that line. Insert instead:

Maximum penalty: 10,000 penalty units or imprisonment for 5 years, or both.

(1A) A person must not hold office in an official capacity for the purposes of this Act or exercise functions in that capacity if any of the following members of the immediate family of the person holds either directly or indirectly a beneficial interest in an authority, a mineral claim or an opal prospecting licence:

- (a) a husband, wife or de facto partner of the person,
- (b) a grandchild or grandparent of the person,
- (c) a parent or child of the person,
- (d) a sibling of the person.

Maximum penalty: 10,000 penalty units or imprisonment for 5 years, or both.

No. 46 Page 60, Schedule 2.3. Insert after line 19:

**[28] Section 383B Consent of landholders and others**

Omit “or determined by an arbitrator as referred to in section 140 (1) (b)” from section 383B (1) (c).

No. 47 Page 61, Schedule 2.3 [29]. Insert after line 11:

**Application of amendments to existing access arrangements determined by arbitrator**

The amendments made by the *Petroleum (Onshore) Amendment Act 2013* to the provisions of this Act relating to access arrangements do not apply to prospecting operations in relation to which:

- (a) an access arrangement determined by an arbitrator was in force immediately before the commencement of that amending Act, or
- (b) an arbitrator had been appointed (by agreement or in default of an agreement) and had begun to conduct a hearing but in relation to which no final determination had been made by the arbitrator before the commencement of that amending Act.

No. 48 Page 61, Schedule 2.3. Insert after line 24:

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**[30] Schedule 7 Offences**

Insert “or 364” after “section 291” in Part 2.

No. 49 Page 61, Schedule 2.3. Insert after line 26:

**[31] Dictionary**

Omit the definitions of *Arbitration Panel*, *arbitrator* and *party*.

**Note.** Amendments Nos 50 and 51 to be moved only if Amendments Nos 1–49 are not successful.

No. 50 Page 5, Schedule 1. Insert after line 19:

**[7] Section 69F Appointment of arbitrator by agreement**

Omit “28 days” from section 69F (1).

Insert instead “90 days”.

**[8] Section 69G Appointment of arbitrator in default of agreement**

Omit “28 days” from section 69G (1).

Insert instead “90 days”.

**[9] Section 69I Right of appearance**

Omit “with the agreement of the parties and the leave of the arbitrator,” from section 69I (2) (b).

No. 51 Page 54, Schedule 2.3. Insert after line 26:

**[5] Section 143 Appointment of arbitrator by agreement**

Omit “28 days” from section 143 (1).

Insert instead “90 days”.

**[6] Section 144 Appointment of arbitrator in default of agreement**

Omit “28 days” from section 144 (1).

Insert instead “90 days”.

**[7] Section 146 Right of appearance**

Omit “with the agreement of the parties and the leave of the arbitrator,” from section 146 (2) (b).