



New South Wales

# **Petroleum (Onshore) Amendment Bill 1998**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Petroleum (Onshore) Act 1991* so as:

- (a) to strengthen the power to require an applicant for, or holder of, a petroleum title to give security for fulfilment of the person's obligations under the title, and
  - (b) to modify the process for renewal of any petroleum title and for the transfer of such a title, and
  - (c) to require any condition of a petroleum title dealing with the rehabilitation, levelling, regrassing, reforesting or contouring of the land the subject of the title to be approved by the Commissioner of the Soil Conservation Service, in consultation with the Director-General of National Parks and Wildlife, and
  - (d) to provide for the registration of interests in petroleum titles, and
  - (e) to provide for fees under the Act to be set by the Minister, with the concurrence of the Treasurer, and
  - (f) to make other minor changes.
-

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Petroleum (Onshore) Act 1991* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the Acts set out in Schedule 2.

## **Schedule 1      Amendment of Petroleum (Onshore) Act 1991**

### **Security for the fulfilment of certain obligations**

At present, section 16 of the Act empowers the Minister to require an applicant for a petroleum title to give security for the fulfilment of the applicant's obligations under the title. This can only be done before granting the approval.

**Schedule 1 [3]** repeals and re-enacts section 16. Under the new section, the Minister may require an applicant to give such security or may impose a condition requiring such security on an existing petroleum title. The Minister also has power to vary any such condition. The section requires a person who gives such security to maintain it for the duration of the title (subject to any variation by the Minister). Proposed section 16A deals with the forfeiture of any such security.

### **Renewal of title**

Section 19 of the Act deals with the renewal of a petroleum title.

**Schedule 1 [5]** amends that section so as to restate the period during which an existing licence may be renewed. An application for renewal of a special prospecting authority or exploration licence must be made within the second last month of the authority or licence. An application for renewal of any other petroleum title must be made during the 4 years before the last year of the term of the title (unless it only has a term of a year or less, in which case the application may be made in the second last month).

**Schedule 1 [4]** makes a consequential amendment.

**Schedule 1 [6]** makes it clear that when a person makes an application for renewal of a title, the Minister may approve or refuse the application.

### **Rehabilitation**

Section 76 of the Act deals with the rehabilitation of areas damaged by operations conducted under the Act. The section provides for the imposition of conditions relating to the rehabilitation, levelling, regrassing, reforestation or contouring of any part of the land that has been damaged or adversely affected by the operations.

**Schedule 1 [12]** inserts proposed section 76 (4) which requires the Minister to seek the approval of the Commissioner of the Soil Conservation Service to any such conditions. The Minister is also required to consult the Director-General of National Parks and Wildlife in respect of such conditions.

**Schedule 1 [9]** provides for the section to apply to petroleum titles rather than production leases. **Schedule 1 [10]** makes a consequential amendment.

**Schedule 1 [11]** corrects a cross-reference.

### **Transfers of title**

At present, section 96 of the Act deals with the making of applications for the transfer of a petroleum title and with the handling of such applications.

**Schedule 1 [15]** repeals and re-enacts that section. The replacement section 96 provides a more detailed procedure for the making of an application for the transfer of a petroleum title and for the handling of an application for such a transfer. Proposed section 96A provides for the registration of such a transfer. Proposed section 96B provides for the lodging of a caveat directing the Director-General not to register any transfer otherwise than in accordance with the provisions of the caveat.

### **Registration of interests**

At present, section 97 of the Act allows for the registration of dealings under the Act. An instrument affecting any petroleum title may be lodged with the Director-General of the Department of Mineral Resources for registration.

**Schedule 1 [16]** repeals and re-enacts that section. The new section provides for the registration of any legal and equitable interest in any petroleum title. The effect of registration is that the relevant interest has priority over any interest that is not registered or that is subsequently registered.



## **Compensation**

Part 11 of the Act imposes a liability on the holder of a petroleum title, or a person to whom an easement or right of way has been granted under the Act, to compensate every person who has any estate or interest in any land that is (or is likely to be) injured by the operations or conduct of the person who holds the petroleum title, easement or right of way.

Section 109 (1) of the Act sets out how that compensation is to be assessed, and includes in that assessment loss caused by damage to the surface of the land, by deprivation of the possession or use of the surface of the land and "all consequential damage".

**Schedule 1 [17]** narrows that last category of damage. The relevant category of damage will be damage consequential on any of the matters listed in section 109 (1) (a)–(e) of the Act.

## **Fees**

At present, fees payable under the *Petroleum (Onshore) Act 1991* are prescribed by the regulations.

**Schedule 1 [22]** provides for the Minister, with the concurrence of the Treasurer, to determine lodgment fees and petroleum title fees, and other fees payable under the Act.

**Schedule 1 [21]** amends the regulation-making power accordingly.

**Schedule 1 [1], [2], [7], [13], [18], [19] and [20]** make consequential amendments.

## **Other amendments**

**Schedule 1 [8]** repeals and re-enacts section 70 (which deals with the exercise of rights conferred by a petroleum title on land in exempted areas). The replacement section is in similar terms to section 30 of the *Mining Act 1992*.

**Schedule 1 [14]** repeals and re-enacts section 95 which sets out the Director-General's obligation to keep a record of every petroleum title granted. The revised provision requires all such records to be made available for public inspection at no cost. The replacement section is in similar terms to section 159 of the *Mining Act 1992*.

**Schedule 1 [26]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.

**Schedule 1 [24]** provides for the making of savings and transitional regulations consequent on that enactment.

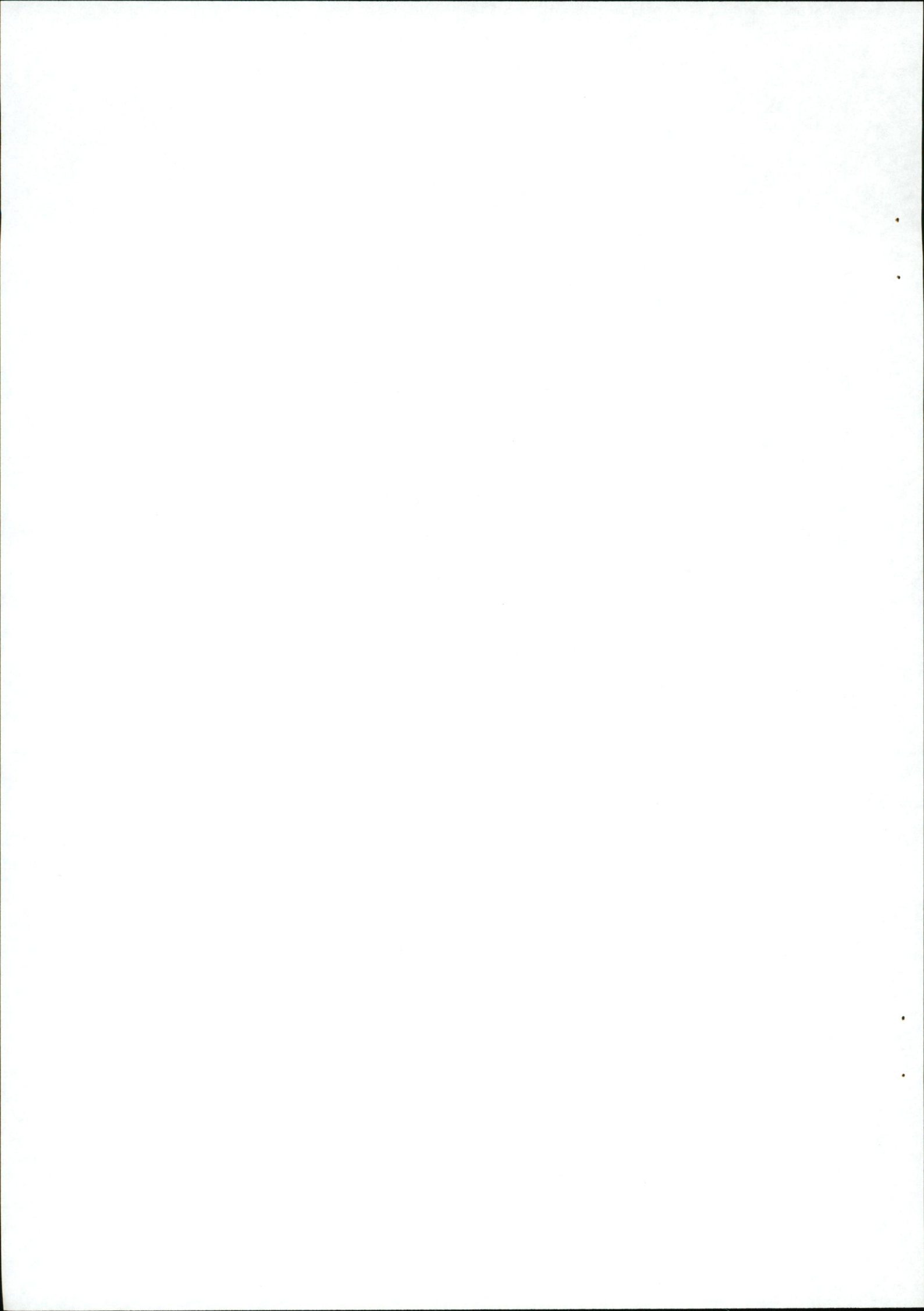
**Schedule 1 [23]** and **[25]** make consequential amendments.

## **Schedule 2     Amendment of other Acts**

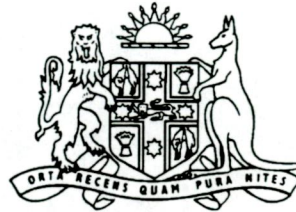
Section 27 of the *Forestry Act 1916* creates an offence of unlawfully taking timber, products or forest materials. Section 27 (1) provides that a person is not guilty of an offence under that section if the relevant conduct is done in pursuance of certain licences or authorities listed in that subsection.

**Schedule 2.1 [2]** adds petroleum titles granted under the *Petroleum (Onshore) Act 1991* to that list of licences.

Schedule 2 also updates references to the *Petroleum Act 1955* in various Acts. (The *Petroleum Act 1955* was repealed by the *Petroleum (Onshore) Act 1991*).



First print



New South Wales

# Petroleum (Onshore) Amendment Bill 1998

## Contents

---

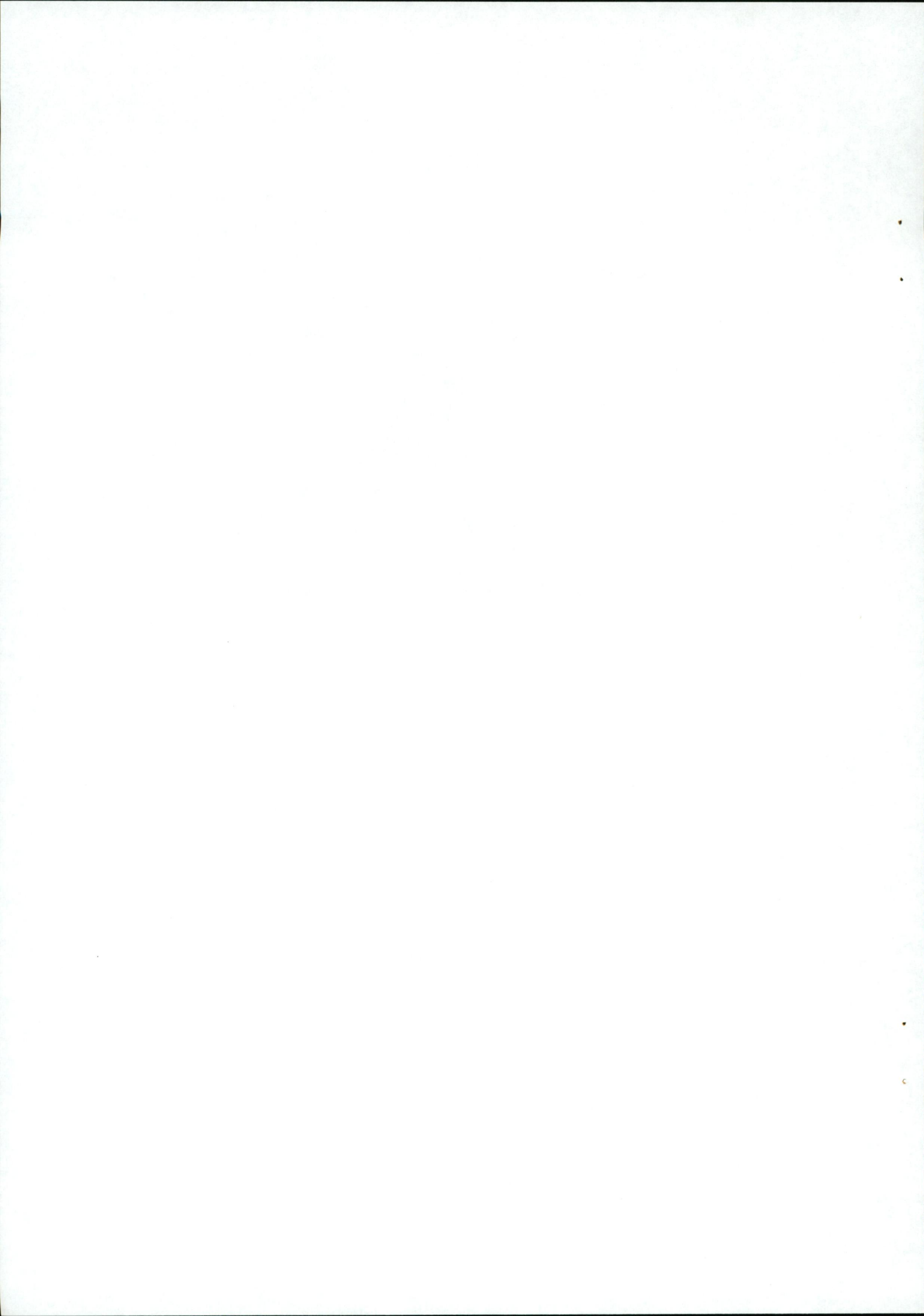
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Petroleum (Onshore) Act 1991 No 84	2
4 Amendment of other Acts	2

---

### Schedules

1 Amendment of Petroleum (Onshore) Act 1991	3
2 Amendment of other Acts	14

---







New South Wales

# Petroleum (Onshore) Amendment Bill 1998

No. , 1998

---

## **A Bill for**

An Act to amend the *Petroleum (Onshore) Act 1991* to make miscellaneous amendments with respect to the provision of security in respect of petroleum titles, the transfer of titles, the determination of fees, the keeping of records and the registration of interests in petroleum titles; and for other purposes.

---

---

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

**1 Name of Act**

This Act is the *Petroleum (Onshore) Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Petroleum (Onshore) Act 1991 No 84**

The *Petroleum (Onshore) Act 1991* is amended as set out in Schedule 1.

**4 Amendment of other Acts** 10

The Acts set out in Schedule 2 are amended as set out in that Schedule.

---

**Schedule 1 Amendment of Petroleum (Onshore)  
Act 1991**

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1): 5

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

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

*appropriate petroleum title fee* means a petroleum title fee determined under section 138A (b). 10

**[2] Section 12 Fee for processing applications**

Omit "fee prescribed by the regulations".  
Insert instead "appropriate lodgment fee".

**[3] Sections 16 and 16A**

15

Omit section 16. Insert instead:

**16 Security required to be given**

(1) On granting a petroleum title, the Minister may impose a condition requiring the holder of the title to give and maintain security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the holder's obligations under this Act in respect of the title and to maintain that security until those obligations are fulfilled or no longer apply. 20

(2) A condition requiring security to be given and maintained by the holder of a petroleum title may be expressed so as to require the security given and maintained in relation to some other petroleum title to be extended to the firstmentioned petroleum title. 25

Petroleum (Onshore) Amendment Bill 1998

Schedule 1      Amendment of Petroleum (Onshore) Act 1991

---

- (3) If the Minister proposes to grant a petroleum title to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice. 5
- (4) The Minister may at any time impose a condition of a kind referred to in subsection (1) on an existing petroleum title that is not subject to any such condition by causing a written notice to be served on the holder of the petroleum title. 10
- (5) The Minister may, by causing a written notice to be served on the holder, amend any 2 or more petroleum titles held by the same holder that contain a condition of a kind referred to in subsection (1) so as to require a single security to be given and maintained. 15
- (6) The Minister may, by causing a written notice to be served on the holder, vary a condition imposed under this section, so as to vary the amount and form of security that is required to be given and maintained. 20
- (7) A condition imposed or varied under this section takes effect on the date the written notice of the condition or variation is served on the holder concerned, or on such later date as may be specified in the notice.
- 16A Forfeiture of security** 25
- (1) All or such part of any security in relation to a petroleum title as the Minister may determine is to be forfeited to the Crown if the holder of the title fails to fulfil the obligations imposed under or arising out of this Act in relation to the title. 30
- (2) Forfeiture is effected by the service of a written notice on the holder of the relevant petroleum title.
- (3) Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the petroleum title. 35



- 
- [4] Section 19 Renewal of title**  
Insert "or (2A)" after "(2)" in section 19 (1).
- [5] Section 19 (2) and (2A)**  
Omit section 19 (2). Insert instead:
- (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. 5
  - (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. 10
- [6] Section 19 (2B)** 15  
Insert before section 19 (3):
- (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. 20
- [7] Section 69G Appointment of arbitrator in default of agreement**  
Omit "fee prescribed by the regulations" from section 69G (2).  
Insert instead "appropriate fee".
- [8] Section 70**  
Omit the section. Insert instead: 25
- 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. 30

- (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. 5
- (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 10
  - (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 15
  - (d) prescribed by the regulations for the purposes of this definition. 20
- [9] **Section 76 Rehabilitation etc of area damaged by operations**  
Omit "production lease" wherever occurring.  
Insert instead "petroleum title".
- [10] **Section 76 (1) (a)**  
Omit "lease". Insert instead "title". 25
- [11] **Section 76 (2) (a)**  
Omit "section". Insert instead "Division".
- [12] **Section 76 (4)**  
Insert after section 76 (3):
- (4) Any conditions of the kind referred to in subsection (1) (a) are to be in a form approved by the Commissioner of the Soil Conservation Service and are to be imposed only after consultation with the Director-General of National Parks and Wildlife. 30

---

**[13] Section 93 Title fees**

Omit "a fee in an amount prescribed by the regulations" from section 93 (1).

Insert instead "the appropriate petroleum title fee".

**[14] Section 95**

5

Omit the section. Insert instead:

**95 Records of titles**

(1) The Director-General is to cause a record to be kept of:

(a) every application for a petroleum title that is duly made under this Act, and

10

(b) every title that is granted, renewed, transferred or cancelled under this Act.

(2) Such a record must be kept in the form, and must contain the particulars, prescribed by the regulations.

(3) The record must be kept available at the head office of the Department for inspection, free of charge, by members of the public during ordinary office hours.

15

**[15] Sections 96, 96A and 96B**

Omit section 96. Insert instead:

**96 Applications for transfer of title**

20

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

(2) An application for approval of the transfer of a petroleum title:

(a) must be accompanied by the appropriate lodgment fee, and

25

(b) must be accompanied by the consent of the proposed transferee, and

(c) must be accompanied by the particulars prescribed by the regulations, and

30

(d) must be lodged with the Director-General.



- (3) After considering an application for approval of the transfer of a petroleum title, the Minister:
  - (a) may approve the transfer in accordance with the application, or
  - (b) may refuse the application. 5
- (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.

**96A Registration of transfers** 10

- (1) The transferor or transferee of a petroleum title, the transfer of which the Minister has approved, may apply for registration of the transfer.
- (2) An application for registration of a transfer:
  - (a) must be lodged with the Director-General, and 15
  - (b) must be accompanied by the appropriate lodgment fee.
- (3) On receipt of the application, the Director-General must register the transferee as the holder of the petroleum title unless registration of the transfer is prohibited by section 96B. 20
- (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). 25

**96B Caveats**

- (1) A person claiming a legal or equitable interest in a petroleum title may lodge with the Director-General a caveat, accompanied by the appropriate lodgment fee, directing the Director-General not to register any transfer of the petroleum title otherwise than in accordance with the provisions of the caveat. 30



- 
- (2) Unless sooner withdrawn, a caveat remains in force for the period of 3 months from the date on which it is lodged.
- (3) While a caveat remains in force, a transfer of the petroleum title may not be registered in contravention of the provisions of the caveat otherwise than pursuant to an order of the Supreme Court directing the Director-General to register the transfer. 5
- (4) At the expiration of the period for which a caveat is in force, a transfer of the petroleum title to which it relates is to be registered unless, before the expiration of that period, the Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer. 10
- [16] Section 97** 15
- Omit the section. Insert instead:
- 97 Registration of certain interests**
- (1) The Director-General is to keep a register of legal and equitable interests in petroleum titles.
- (2) Any person claiming a legal or equitable interest in a petroleum title may apply for registration of the interest. 20
- (3) An application must be lodged with the Director-General and must be accompanied by the appropriate lodgment fee and by written evidence (including, but not limited to, documentary evidence) of the legal or equitable interest concerned. 25
- (4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the interest or the document by which the interest is evidenced.
- (5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest. 30

Petroleum (Onshore) Amendment Bill 1998

Schedule 1 Amendment of Petroleum (Onshore) Act 1991

---

- (6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.
- (7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest. 5
- (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 10
- (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. 15
- (10) An application under this section may be withdrawn by means of a notice of withdrawal signed by the applicant and lodged with the Director-General and ceases to have effect when the notice is lodged.
- (11) The withdrawal of an application under this section is irrevocable. 20

**[17] Section 109 Measure of compensation**

Omit section 109 (1) (f). Insert instead:

- (f) by damage consequential on any matter referred to in paragraphs (a)–(e). 25

**[18] Section 118 Release of certain data**

Omit “a fee prescribed by the regulations” from section 118 (b). Insert instead “the appropriate fee”.

**[19] Section 119 Release of samples**

Omit “a fee prescribed by the regulations” from section 119 (b). 30  
Insert instead “the appropriate fee”.

---

**[20] Section 120 Release of assessments**

Omit "a fee prescribed by the regulations" from section 120 (b).  
Insert instead "the appropriate fee".

**[21] Section 138 Regulations**

Omit section 138 (1) (g). Insert instead:

5

- (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

10

**[22] Section 138A**

Insert after section 138:

15

**138A Minister to determine certain fees**

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

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

20

**[23] Schedule 1 Savings and transitional provisions**

25

Insert after the heading to the Schedule:

**Part 1 General**



**[24] Schedule 1, clause 2 (1)**

Omit clause 2 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

5

this Act

*Petroleum (Onshore) Amendment Act 1998*

**[25] Schedule 1, clause 2 (2)**

Omit "this Act". Insert instead "the Act concerned".

**[26] Schedule 1, Part 2**

10

Insert after clause 7:

**Part 2 Provisions consequent on enactment of  
Petroleum (Onshore) Amendment Act 1998**

**8 Definition**

In this Part:

15

*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:

20

- (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,

25

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.

5

**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.

10

**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.

15

**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.

20

**14 Registration of interests**

25

- (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.

30

## Schedule 2 Amendment of other Acts

(Section 4)

### 2.1 Forestry Act 1916 No 55

#### [1] Section 21 Land subject to mining law

Omit "*Petroleum Act 1955*".

5

Insert instead "*Petroleum (Onshore) Act 1991*".

#### [2] Section 27 Penalty for unlawfully taking timber, products or forest materials

Insert at the end of section 27 (3) (a) (v):

, or

10

(vi) in pursuance of and in accordance with the provisions of the *Petroleum (Onshore) Act 1991* or any petroleum title under that Act,

### 2.2 National Parks and Wildlife Act 1974 No 80

#### [1] Section 39 Existing interests

15

Omit "*Petroleum Act 1955*" from section 39 (4).

Insert instead "*Petroleum (Onshore) Act 1991*".

#### [2] Section 41 Mining

Omit "*Petroleum Act 1955*" from section 41 (2).

Insert instead "*Petroleum (Onshore) Act 1991*".

20

#### [3] Section 47H Existing interests

Omit "*Petroleum Act 1955*" from section 47H (4).

Insert instead "*Petroleum (Onshore) Act 1991*".

**[4] Section 47J Provisions relating to mining**

Omit "*Petroleum Act 1955*" wherever occurring in section 47J (1), (2) and (4).

Insert instead "*Petroleum (Onshore) Act 1991*".

**2.3 Stamp Duties Act 1920 No 47**

5

**Section 3 Definitions**

Omit "*Petroleum Act 1955*" from the definition of *Mining company* in section 3 (1).

Insert instead "*Petroleum (Onshore) Act 1991*".