

Passed by both Houses



New South Wales

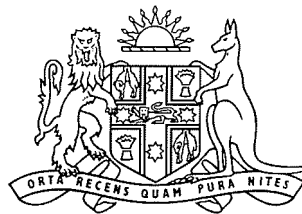
State Revenue and Other Legislation Amendment (Budget Measures) Bill 2012

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Explanatory notes	2
Schedule 1 Amendment of Duties Act 1997 No 123	3
Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21	12
Schedule 3 Amendments relating to increased traffic and parking fines	17
Schedule 4 Amendment of Fines Regulation 2010	20
Schedule 5 Amendment of mining legislation	21
Schedule 6 Amendment of petroleum (onshore) legislation	57
Schedule 7 Amendment of Electricity Supply Act 1995 No 94	89
Schedule 8 Repeal of Hawkesbury-Nepean River Act 2009 No 14	94

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

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

State Revenue and Other Legislation Amendment (Budget Measures) Bill 2012

Act No , 2012

An Act to make miscellaneous amendments to certain State revenue and other legislation in connection with the Budget for the year 2012–2013.

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, subject to subsection (2).
- (2) The amendments made by the Schedules to this Act commence on the day or days specified in those Schedules in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent to this Act.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules to this Act does not form part of this Act.

Schedule 1 Amendment of Duties Act 1997 No 123

1.1 Amendments relating to deferral of abolition of certain duties

- [1] **Sections 11 (note), 28 (6) and note, 34, 35, 36, 37, 65 (6) (note), 65 (7) (note), 66 (note), 124, 137A, 203A and 274 (2) (note)**
Omit “1 July 2012” wherever occurring. Insert instead “1 July 2013”.
- [2] **Section 26 Certain transactions concerning goods and other property**
Omit the note to the section.
- [3] **Section 66 Exemptions—marketable securities**
Omit section 66 (11) (but not the note at the end of the section).
- [4] **Section 273D Corporate consolidation transaction (as inserted by the State Revenue Legislation Amendment Act 2012)**
Insert “a dutiable transaction or” after “means” in section 273D (1).
- [5] **Section 273D (1) (b)**
Insert “a transfer or” before “an acquisition of securities”.
- [6] **Section 273D (1) (b) (i)**
Insert “transferred or” before “acquired”.
- [7] **Section 273D (2)**
Omit the subsection. Insert instead:

(2) A dutiable transaction or an acquisition of an interest in a landholder is not a corporate consolidation transaction if, immediately before the transaction or acquisition occurred, the head corporation held dutiable property or a vehicle or an interest in a corporation.
- [8] **Section 273D (3)**
Omit “An acquisition”.
Insert instead “A dutiable transaction or an acquisition”.
- [9] **Section 273D (3) (a)**
Insert “transferred to or” before “acquired”.
- Commencement**
Schedule 1.1 [1] and [2] commence or are taken to have commenced on 30 June 2012.

State Revenue and Other Legislation Amendment (Budget Measures)
Bill 2012

Schedule 1 Amendment of Duties Act 1997 No 123

All other items in Schedule 1.1 commence or are taken to have commenced on 1 July 2012.

Explanatory note

Items [1] and [2] defer, from 1 July 2012 to 1 July 2013, the abolition of the following duties:

- (a) duty on the transfer of marketable securities and commercial fishery shares,
- (b) duty on the transfer of business assets,
- (c) duty on the transfer of licences, permissions and entitlements,
- (d) duty on entitlements arising from capital reductions or rights alterations,
- (e) duty on an allotment of shares by direction,
- (f) mortgage duty.

The other items are consequential amendments.

1.2 Amendments relating to First Home—New Home

[1] Section 74 Eligible agreements or transfers

Omit “\$600,000” from section 74 (3) (a). Insert instead “\$650,000”.

[2] Section 78A Duty payable if application approved

Omit “\$500,000” from section 78A (1) (a). Insert instead “\$550,000”.

[3] Section 78A (1) (b)

Omit “\$300,000”. Insert instead “\$350,000”.

[4] Section 78A (2) (a)

Omit “22.49%”. Insert instead “24.74%”.

[5] Section 78A (2) (a)

Omit “\$112,450”. Insert instead “\$136,070”.

[6] Section 78A (2) (b)

Omit “10.49%”. Insert instead “15.74%”.

[7] Section 78A (2) (b)

Omit “\$31,470”. Insert instead “\$55,090”.

[8] Schedule 1 Savings, transitional and other provisions

Insert after Part 37:

**Part 38 Provisions consequent on enactment of
State Revenue and Other Legislation
Amendment (Budget Measures) Act 2012**

105 First Home—New Home

- (1) The amendments made to Division 1 of Part 8 of Chapter 2 by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012* apply to the following:
 - (a) agreements for sale or transfer entered into on or after 1 July 2012,
 - (b) transfers that occur on or after 1 July 2012, other than transfers made in conformity with an agreement for sale or transfer entered into before 1 July 2012.
- (2) Division 1 of Part 8 of Chapter 2, as in force before those amendments, continues to apply to the following:
 - (a) agreements for sale or transfer entered into before 1 July 2012,
 - (b) transfers occurring before 1 July 2012,
 - (c) transfers occurring on or after 1 July 2012 that are made in conformity with an agreement referred to in paragraph (a).

Commencement

Schedule 1.2 commences or is taken to have commenced on 1 July 2012.

Explanatory note

The First Home—New Home scheme is a scheme that assists first home owners to acquire a new home by providing for a duty concession or exemption.

Item [1] increases the cap (or limit) on the value of a transaction that is eligible for a duty exemption or concession under the First Home—New Home scheme. The cap is increased from \$600,000 to \$650,000, for a purchase of land that has a private dwelling built on it. The cap applicable to a purchase of vacant land is unchanged.

Items [2] and [3] increase the level at which the duty exemption/concession under the scheme starts to phase out from \$500,000 to \$550,000 (in the case of a purchase of land with a private dwelling on it) and from \$300,000 to \$350,000 (in the case of a purchase of vacant land). Items [4]–[7] are consequential amendments.

Item [8] preserves the existing arrangements in relation to agreements entered into, and transfers that occur, before 1 July 2012.

1.3 Amendments relating to New Home Grant Scheme

Chapter 2, Part 8, Division 1A

Insert after Division 1:

Division 1A New Home Grant Scheme

81 Object of scheme

The scheme established by this Division is intended to provide assistance in the purchase or construction of a new home, if assistance is not available under the First Home—New Home scheme in Division 1 or the *First Home Owner Grant Act 2000*.

82 Grant payable under scheme

- (1) A grant is payable, as provided for by this Division, in relation to an eligible agreement or transfer that is approved under the scheme.
- (2) The amount of the new home grant is \$5,000.

83 Types of agreements or transfers that are eligible

- (1) The following types of agreement or transfer are eligible under the scheme:
 - (a) a new home purchase,
 - (b) an off the plan purchase,
 - (c) a vacant land purchase.
- (2) A ***new home purchase*** is an agreement for the sale or transfer, or a transfer, of land in New South Wales that is the site of a new home that is complete and ready for occupation.
- (3) An ***off the plan purchase*** is an agreement for the sale or transfer of land in New South Wales that is intended to be used as the site of a new home, which is to be built before completion of the agreement.
- (4) A ***vacant land purchase*** is an agreement for the sale or transfer, or a transfer, of vacant land in New South Wales that is intended to be used as the site of a new home and which is not an off the plan purchase.
- (5) The agreement or transfer must be for the whole of the land or, if the land is a parcel of land on which 2 or more homes are built, or are being built, for that part of the land that is an exclusive occupancy.

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- (6) Land is an exclusive occupancy only if the Chief Commissioner is satisfied that the person acquiring the land will be entitled to occupy a home that is built, or being built, on the land as a place of residence to the exclusion of other persons who occupy or are to occupy the other home or homes built or being built on the parcel of land.
 - (7) In relation to a new home purchase or an off the plan purchase only, a reference in this Division to a new home includes a reference to a substantially renovated home.
 - (8) A **substantially renovated home** is a renovated home:
 - (a) that is new residential premises within the meaning of section 40–75 (1) (b) of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, and
 - (b) that, as renovated, has not been previously occupied or sold as a place of residence.

84 Relevant dates for eligibility

- (1) An agreement for the sale or transfer of land is eligible for consideration under the scheme only if it is entered into on or after 1 July 2012.
- (2) An agreement for the sale or transfer of dutiable property is not eligible if:
 - (a) it replaces an agreement made before 1 July 2012, and
 - (b) the replaced agreement was an agreement for the sale or transfer of substantially the same dutiable property.
- (3) A transfer of land is eligible for consideration under the scheme only if it occurs on or after 1 July 2012.
- (4) A transfer of land occurring on or after 1 July 2012 is not eligible if it is made pursuant to an agreement for sale or transfer entered into before 1 July 2012.

85 Restrictions on eligibility

- (1) An agreement or transfer is not eligible if:
 - (a) the agreement or transfer is eligible for a duty exemption or concession under Division 1, or
 - (b) the purchaser or transferee, or any one of them, is eligible for, or is at any time paid, a grant under the *First Home Owner Grant Act 2000* in respect of the purchase of, or the construction of, a home on the land, or

- (c) the payment of a new home grant has previously been approved in respect of an agreement for the sale or transfer of, or a transfer of, the land (unless that approval is revoked by the Chief Commissioner).
- (2) An agreement or transfer is not eligible if the new home, or the land on which the new home is located or to be built, is intended to be used, or made available for use, for any purpose that is not ancillary to the use and occupation of the land for residential purposes (such as a commercial, industrial or professional purpose).
- (3) However, an agreement for the purchase, or a transfer, of a farming property on which there is a new home or on which a new home is to be constructed is not excluded.
- (4) For a vacant land purchase, the agreement or transfer is not eligible unless the laying of the foundations for the home commences:
 - (a) within 26 weeks after the agreement for sale or transfer is completed or, in the case of a transfer executed otherwise than in conformity with an agreement for sale or transfer, the transfer occurs, or
 - (b) within any longer period allowed by the Chief Commissioner.

86 Agreement or transfer must be completed

- (1) An agreement or transfer is eligible only if it is completed.
- (2) For the purposes of this Division, an agreement or transfer is **completed** when a purchaser or transferee becomes entitled to possession of the home or land and, if the interest in the land acquired by the purchaser or transferee is registrable under a law of the State, the interest is so registered.

87 Cap on dutiable value of transaction

An agreement or transfer is not eligible if the dutiable value of the dutiable property that is the subject of the agreement or transfer exceeds:

- (a) \$650,000 in the case of a new home purchase or an off the plan purchase, or
- (b) \$450,000 in the case of a vacant land purchase.

87A Making of applications

- (1) An application for the new home grant is to be made to the Chief Commissioner in an approved form.
- (2) An application must be made within 3 months after the relevant agreement for sale or transfer is entered into or, in the case of a transfer executed otherwise than in conformity with an agreement for sale or transfer, within 3 months after the transfer occurs.
- (3) The Chief Commissioner may accept an application after expiry of the 3-month period if satisfied that the delay in making an application was caused by circumstances beyond the control of the applicant or applicants.
- (4) The Chief Commissioner may at any time (whether before or after the approval of an application) require the applicant or applicants to provide such further information as the Chief Commissioner may consider necessary for the proper administration of the scheme.

87B Application may be approved in advance

The Chief Commissioner may approve an application in relation to any agreement or transfer in anticipation of compliance with any of the requirements of this Division.

87C Method by which new home grant is to be paid

- (1) If the Chief Commissioner approves an application for the new home grant, the Chief Commissioner is to apply the amount of the new home grant as a credit against liability for duty on the agreement or transfer.
- (2) A refund of any tax overpaid is to be provided in accordance with section 18 of the *Taxation Administration Act 1996*.
- (3) A new home grant is paid when it is applied as provided for by this section.

87D Recovery of grant amount wrongly paid

- (1) The Chief Commissioner may revoke his or her approval of an application under the scheme if the Chief Commissioner subsequently forms the opinion that the agreement or transfer is not eligible under the scheme.

- (2) If the Chief Commissioner revokes his or her approval of an application under the scheme, and the new home grant has already been paid, the amount of the new home grant is to be deducted from the amount paid as duty in respect of the agreement or transfer.
- (3) If approval of an application is revoked, and the agreement or transfer was chargeable with duty of less than \$5,000, or not chargeable with duty, a person to whom the new home grant was paid under the approval is liable to repay the amount of the grant, as duty, to the Chief Commissioner.
- (4) Liability for any duty payable as a result of the revocation of the Chief Commissioner's approval arises when notice of the revocation is served on the taxpayer.

87E Charge on land for duty liability of applicant

- (1) Any duty liability that an applicant has under the scheme in respect of an agreement or transfer is a charge on the applicant's interest in the land that is the subject of the agreement or transfer.
- (2) An applicant has a duty liability under the scheme in respect of an agreement or transfer if the applicant is required to pay an amount of duty to the Chief Commissioner because the Chief Commissioner has revoked his or her approval of an application for the new home grant in respect of the agreement or transfer.
- (3) The charge created by this section gives the Chief Commissioner an interest in the land and, accordingly, the Chief Commissioner may lodge a caveat in respect of the land under the *Real Property Act 1900* to protect that interest.
- (4) The caveat must be withdrawn when the amount of the duty liability has been paid.
- (5) The amount of the duty liability is the amount of duty that the applicant is required to pay to the Chief Commissioner in respect of the relevant agreement or transfer, together with any interest or penalty tax payable.
- (6) In this section:
applicant includes a former applicant.

87F Standing appropriation

The Consolidated Fund is appropriated to the extent necessary for the payment of amounts under this Division.

87G Definitions

In this Division:

home means a building (affixed to land) that:

- (a) may lawfully be used as a place of residence, and
- (b) is, in the Chief Commissioner's opinion, a suitable building for use as a place of residence.

new home means a home that has not been previously occupied or sold as a place of residence.

new home grant means the grant payable under this Division.

new home purchase—see section 83.

off the plan purchase—see section 83.

vacant land purchase—see section 83.

Commencement

Schedule 1.3 commences or is taken to have commenced on 1 July 2012.

Explanatory note

Schedule 1.3 establishes a new scheme to provide assistance in the purchase or construction of new homes. The scheme provides assistance to a home buyer or builder only if assistance is not available under the First Home—New Home scheme or the *First Home Owner Grant Act 2000*.

The scheme provides for a grant of \$5,000 in respect of the following transactions:

- (a) a new home purchase,
- (b) an off the plan purchase,
- (c) a vacant land purchase (that is intended as the site of a new home).

A **new home** is a home that has not previously been occupied or sold as a place of residence. For a new home purchase or an off the plan purchase, a new home includes a substantially renovated home.

Only agreements entered into on or after 1 July 2012, or transfers that occur on or after 1 July 2012, will be eligible. (Transfers made pursuant to agreements entered into before 1 July 2012 are not eligible.)

The grant is available only if the dutiable value of the dutiable property that is the subject of the agreement or transfer does not exceed \$650,000 (in the case of a new home purchase or an off the plan purchase) or \$450,000 (in the case of a vacant land purchase).

The grant is to be applied as a credit against the duty payable in respect of the eligible agreement or transfer. If the duty payable does not exceed \$5,000, or no duty is chargeable, the amount of the difference, up to the full \$5,000, would be payable to the taxpayer concerned.

Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21

[1] **Section 1 Name of Act**

Insert “(*New Homes*)” after “*Grant*”.

[2] **Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

new home—see section 4A.

[3] **Section 4A**

Insert after section 4:

4A New homes

- (1) A ***new home*** is a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home and a home built to replace demolished premises.
- (2) For the purposes of this section, a home is a ***substantially renovated home*** if:
 - (a) the sale of the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, a taxable supply as a sale of new residential premises within the meaning of section 40–75 (1) (b) of that Act, and
 - (b) the home, as renovated, has not been previously occupied or sold as a place of residence.
- (3) For the purposes of this section, a home is a ***home built to replace demolished premises*** if:
 - (a) in the case of a contract for the purchase of a home—the sale of the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, a taxable supply as a sale of new residential premises within the meaning of section 40–75 (1) (c) of that Act, and
 - (b) in the case of a comprehensive home building contract to have a home built or the building of a home by an owner builder—the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, new residential premises within the meaning of section 40–75 (1) (c) of that Act, and

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- (c) the home, as built to replace the demolished premises, has not been previously occupied or sold as a place of residence, and
 - (d) the owner of the home did not occupy the demolished premises as a place of residence before they were demolished.

[4] Section 6A Multiple occupancy contract

Omit “made on or after 1 July 2002” wherever occurring in section 6A (1).

[5] Section 13 Eligible transactions

Omit section 13 (1). Insert instead:

- (1) An *eligible transaction* is:
 - (a) a contract made on or after 1 October 2012 for the purchase of a new home in New South Wales, or
 - (b) a comprehensive home building contract made on or after 1 October 2012 by the owner of land in New South Wales, or by a person who will on completion of the contract be the owner of land in New South Wales, to have a new home built on the land, or
 - (c) the building of a new home in New South Wales by an owner builder if the building work commences on or after 1 October 2012.

[6] Section 13 (3A)

Insert after section 13 (3):

- (3A) A contract made on or after 1 October 2012 is not an eligible transaction if the Chief Commissioner is satisfied that:
 - (a) the contract replaces a contract made before 1 October 2012, and
 - (b) the replaced contract was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.

Note. See also Part 11 of Schedule 1.

[7] Section 13A First home owner grant cap

Omit “\$835,000” from section 13A (2) (a). Insert instead “\$650,000”.

[8] Section 13A (4)

Omit the subsection.

[9] Section 18

Omit the section. Insert instead:

18 Amount of grant

- (1) The amount of the first home owner grant is:
 - (a) in the case of an eligible transaction with a commencement date on or after 1 October 2012 but before 1 January 2014—\$15,000, or
 - (b) in the case of an eligible transaction with a commencement date on or after 1 January 2014—\$10,000.
- (2) For an eligible transaction with a commencement date on or after 1 October 2012 that is a contract to purchase a home, or a comprehensive home building contract, made pursuant to an option granted in the transitional period, the amount of the grant is \$7,000.
- (3) A contract is made pursuant to an option granted in the transitional period if:
 - (a) in the case of a contract to purchase a home—the purchaser had an option to purchase the home granted during the transitional period or the vendor had an option to require the purchaser to purchase the home granted during the transitional period, or
 - (b) in the case of a comprehensive home building contract—either party had a right or option granted during the transitional period to require the other party to enter into the contract.
- (4) The maximum amount of the first home owner grant is the consideration for the eligible transaction. Accordingly, if the amount that would be payable, but for this subsection, exceeds the consideration for the eligible transaction, the amount of the first home owner grant is the consideration for the eligible transaction.
- (5) In this section:
the transitional period means the period starting on the date the Bill for the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012* was introduced in the Legislative Assembly and ending immediately before 1 October 2012.

[10] Sections 18A–18C

Omit the sections.

[11] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

[12] Schedule 1, Part 11

Insert after Part 10:

**Part 11 Provisions consequent on enactment of
State Revenue and Other Legislation
Amendment (Budget Measures) Act 2012**

18 Pre-1 October 2012 contracts and transfers

Part 2 of this Act, as in force immediately before its amendment by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012*, continues to apply in respect of the following:

- (a) a contract made before 1 October 2012 for the purchase of a home in New South Wales,
- (b) a comprehensive home building contract made before 1 October 2012,
- (c) the building of a home in New South Wales by an owner builder if the building work commenced before 1 October 2012.

Note. Accordingly, the above transactions may still be eligible for the grant that was payable under Part 2 before 1 October 2012.

19 Replacement contracts

- (1) A contract made on or after 1 October 2012 that replaces a contract made before that date (an *earlier contract*) is taken, for the purposes of Part 2 of this Act, as in force immediately before its amendment by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012*:
 - (a) to have been made on the date the earlier contract was made, and
 - (b) to have a commencement date that is the date the earlier contract was made.

State Revenue and Other Legislation Amendment (Budget Measures)
Bill 2012

Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21

- (2) A contract replaces another contract if the Chief Commissioner is satisfied the contract made at the earlier date was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.

Note. Under section 13 (3A), the above transaction is not an eligible transaction. As a result of this transitional provision the transaction may still be eligible for the grant that was payable before 1 October 2012.

[13] Long title

Insert “who purchase or build new homes” after “first home owners”.

Commencement

Schedule 2 commences on 1 October 2012.

Explanatory note

The amendments limit the operation of the first home owner grant scheme, from 1 October 2012, to new homes. That is, a first home owner will be able to obtain the grant in respect of the purchase or construction of a home only if it is a new home. A **new home** is defined as a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home and a home built to replace demolished premises. The amendments also increase the amount of the first home owner grant payable for new homes, on and from 1 October 2012.

Items [3] and [5] limit eligibility under the first home owner grant scheme to contracts for new homes entered into, or the building of a new home by an owner builder that is started, on or after 1 October 2012. Items [1], [2] and [13] are consequential amendments (including a change to the name and long title of the Act).

Item [7] lowers the cap on the first home owner grant to homes with a value of \$650,000 (from \$835,000). Item [8] removes a provision that allows the regulations to prescribe a different cap.

Item [9] increases the amount of the grant, on and from 1 October 2012, to \$15,000 (up from \$7,000). On and from 1 January 2014, the grant will be \$10,000. Item [6] prevents the use of replacement contracts to obtain the increased grant.

Items [4] and [10] remove redundant provisions of the *First Home Owner Grant Act 2000*.

Item [11] provides for the making of savings and transitional regulations as a consequence of the enactment of any Act that amends the *First Home Owner Grant Act 2000*.

Item [12] enables the existing first home owner grant to continue to apply to contracts entered into, or the building of a home by an owner builder that starts, before 1 October 2012 and provides for other transitional matters.

Schedule 3 Amendments relating to increased traffic and parking fines

3.1 Amendment of Road Transport (General) Regulation 2005

Clause 170

Omit the clause. Insert instead:

170 Penalty levels

For the purposes of this Regulation, penalty amounts are expressed in terms of the following levels:

Level 1 means a penalty of \$66.

Level 2 means a penalty of \$99.

Level 2A means a penalty of \$105.

Level 3 means a penalty of \$165.

Level 3A means a penalty of \$173.

Level 4 means a penalty of \$232.

Level 4A means a penalty of \$243.

Level 5 means a penalty of \$298.

Level 5A means a penalty of \$313.

Level 6 means a penalty of \$397.

Level 6A means a penalty of \$417.

Level 7 means a penalty of \$496.

Level 7A means a penalty of \$521.

Level 8 means a penalty of \$596.

Level 8A means a penalty of \$626.

Level 9 means a penalty of \$762.

Level 9A means a penalty of \$799.

Level 10 means a penalty of \$960.

Level 10A means a penalty of \$1,008.

Level 11 means a penalty of \$1,191.

Level 11A means a penalty of \$1,251.

Level 12 means a penalty of \$1,258.

Level 12A means a penalty of \$1,321.

Level 13 means a penalty of \$1,556.

Level 14 means a penalty of \$2,052.

Level 14A means a penalty of \$2,154.

Level 15 means a penalty of \$2,187.

Level 15A means a penalty of \$2,296.

Level 16 means a penalty of \$3,111.

Level 16A means a penalty of \$3,267.

Level 17 means a penalty of \$3,374.

Level 17A means a penalty of \$3,543.

Note. “A” numbers are used in relation to motor vehicle speeding offences under Rule 20 of the *Road Rules 2008*.

Explanatory note

The amendment increases, by 12.5%, the fines payable under penalty notices issued for a range of alleged traffic and parking offences under the road rules and other road transport related legislation. The offences concerned and the applicable level of penalty for each offence are set out in Schedule 3 to the *Road Transport (General) Regulation 2005*.

3.2 Amendment of Motor Vehicles Taxation Act 1988 No 111

Section 9 Unregistered vehicles and vehicles upon which tax has not been paid

Omit “5 penalty units” from section 9 (1). Insert instead “6 penalty units”.

Explanatory note

The amendment increases the maximum penalty that a court may impose on the conviction of a person for an offence against the section in order to ensure that the increased fine payable under a penalty notice for the offence under the amendment made by Schedule 3.1 does not exceed the amount of the penalty that may be imposed by a court for the offence.

3.3 Amendment of Road Rules 2008

Rule 10–2 NSW rule: penalties and disqualifications for speeding offences

Omit “30 penalty units” and “20 penalty units” from rule 10–2 (3).

Insert instead “34 penalty units” and “23 penalty units”, respectively.

Explanatory note

The amendment increases the maximum penalty that a court may impose on the conviction of a person for certain speeding offences against the *Road Rules 2008* in order to ensure that the increased fine payable under a penalty notice for the offences under the amendment made by Schedule 3.1 does not exceed the amount of the penalty that may be imposed by a court for the offences.

3.4 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20

Section 71 Regulations

Omit “30 penalty units” from section 71 (7). Insert instead “34 penalty units”.

Explanatory note

The amendment increases the maximum penalty that the road rules or other regulations may authorise a court to impose on the conviction of a person for offences created by the road rules or other regulations as a consequence of the amendment made by Schedule 3.1.

Commencement

Schedule 3 commences or is taken to have commenced on 1 July 2012.

Schedule 4 Amendment of Fines Regulation 2010

[1] Clause 4 Enforcement costs

Omit “\$50” from clause 4 (1) (a). Insert instead “\$65”.

[2] Clause 4 (1) (c)

Omit “\$50”. Insert instead “\$65”.

Commencement

Schedule 4 commences or is taken to have commenced on 1 July 2012.

Explanatory note

The amendments increase from \$50 to \$65 the standard additional amount payable on the issue of a fine enforcement order and also for various other enforcement actions following a failure of a person to pay the fine under a penalty notice issued in respect of any offence.

Schedule 5 Amendment of mining legislation

5.1 Amendment of Mine Safety (Cost Recovery) Act 2005 No 116

Section 3 Definitions

Insert “, to the extent that it relates to work health and safety requirements” after “*Petroleum (Onshore) Act 1991*” in paragraph (g) of the definition of *mine safety legislation* in section 3 (1).

Commencement

Schedule 5.1 commences or is taken to have commenced on 1 July 2012.

Explanatory note

The amendment relates to the proposal, dealt with by Schedule 5.2, to establish a separate Fund for administration costs arising under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*. The amendment ensures that there is no overlap between the new Minerals and Petroleum Administrative Fund and the Mine Safety Fund.

5.2 Amendment of Mining Act 1992 No 29

[1] Section 26 Conditions of exploration licence

Omit section 26 (1). Insert instead:

- (1) An exploration licence is subject to such conditions (if any) as the decision-maker imposes when the licence is granted, or at any other time under a power conferred by this Act.

[2] Section 29A Amendment of exploration licence in respect of certain conditions

Omit the section.

[3] Section 44 Conditions of assessment lease

Omit section 44 (1). Insert instead:

- (1) An assessment lease is subject to such conditions (if any) as the decision-maker imposes when the lease is granted, or at any other time under a power conferred by this Act.

[4] Section 47A Amendment of assessment lease in respect of certain conditions

Omit the section.

[5] Section 70 Conditions of mining lease

Omit “Minister” from section 70 (1) (a). Insert instead “decision-maker”.

[6] Section 70 (1) (b)

Omit the paragraph. Insert instead:

- (b) such other conditions (if any) as the decision-maker imposes when the lease is granted, or at any other time under a power conferred by this Act.

[7] Section 70 (2) (a)

Omit the paragraph.

[8] Section 100 Conditions of consolidated mining lease

Omit section 100 (c). Insert instead:

- (c) such other conditions (if any) as the Minister imposes when the lease is granted, or at any other time under a power conferred by this Act.

[9] Section 159 Records

Insert at the end of section 159 (1) (b):

, and

- (c) every other matter in relation to which the Director-General is required to keep a record by the regulations.

[10] Section 175 Special conditions

Omit section 175 (2) (f).

[11] Section 175 (2) (h1)

Omit the paragraph.

[12] Section 192 Conditions of mineral claim

Omit section 192 (1) (d). Insert instead:

- (d) any other conditions (not inconsistent with any other condition referred to in this subsection) that the Director-General imposes when the claim is granted, or at any other time under a power conferred by this Act.

[13] Section 198 Determination of application for renewal of mineral claim

Omit “in such manner as the Director-General may (in accordance with the special conditions) determine” from section 198 (3).

Insert instead “in such manner (not inconsistent with the special conditions) as the Director-General may determine”.

[14] Section 223A Special conditions

Omit section 223A (2) (c) and (d).

[15] Section 229 Conditions of licence

Omit section 229 (d). Insert instead:

- (d) any other conditions (not inconsistent with any other condition referred to in this section) that the Director-General imposes when the licence is granted, or at any other time under a power conferred by this Act.

[16] Section 241 Rehabilitation by Minister at holder's expense

Omit "may cause to be taken any of the steps specified in the notice in which the direction was given" from section 241 (1).

Insert instead "may take any action necessary to give effect to the direction".

[17] Section 241 (3)

Omit "the taking of those steps". Insert instead "the taking of that action".

[18] Section 241 (5)

Omit "the taking of steps". Insert instead "the taking of any action".

[19] Section 242C Derelict Mine Sites Fund

Insert after section 242C (3) (c):

- (c1) any money paid into the Fund from the Minerals and Petroleum Administrative Fund maintained under Part 14B, and

[20] Section 258 Conditions of permit

Omit section 258 (1). Insert instead:

- (1) A permit is subject to such conditions as are imposed by the Minister or Director-General when granting the permit, or at any other time under a power conferred by this Act.

[21] Section 261A Definitions

Omit the definitions of *obligation under an authorisation* and *security deposit condition*.

Insert in alphabetical order:

assessed deposit has the meaning given by section 261BC.

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

minimum deposit has the meaning given by section 261BF.

obligations under an authorisation means:

- (a) any obligations under the conditions of an authorisation, other than an obligation to pay royalty, and
- (b) any obligations on the holder of the authorisation under Part 11.

security deposit condition means a condition of an authorisation imposed under section 261B.

[22] Section 261B Security deposit conditions

Omit section 261B (1). Insert instead:

- (1) A decision-maker may impose a condition on an authorisation that requires the holder of the authorisation to provide and maintain a security deposit to secure funding for the fulfilment of obligations under the authorisation, including obligations under the authorisation that may arise in the future.

[23] Section 261B (2) (a)

Insert “the subject of the obligations” after “activities”.

[24] Section 261B (3)–(4A)

Omit section 261B (3) and (4). Insert instead:

- (3) A security deposit condition may be varied to change the required amount of the deposit (whether the deposit was provided by the holder of the authorisation or by another person) or any other requirement of the condition.
- (4) A security deposit condition may be imposed or varied:
 - (a) when an authorisation is granted or renewed, or
 - (b) when a full or partial transfer of an authority is approved under this Act, or
 - (c) when a mineral claim is transferred under this Act, or
 - (d) at any other time during the term of an authorisation.

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- (4A) A security deposit condition, or a variation to a security deposit condition, takes effect as follows:
- (a) in the case of a security deposit condition imposed when an authorisation is granted—when the grant takes effect,
 - (b) in the case of a security deposit condition imposed or varied when an authorisation is renewed—when the renewal takes effect,
 - (c) in the case of a security deposit condition imposed or varied when a full or partial transfer of an authority is approved under this Act—when the transfer is registered under this Act,
 - (d) in the case of a security deposit condition imposed or varied when a mineral claim is transferred under this Act—when the mineral claim is transferred,
 - (e) in any other case—when written notice of the imposition or variation of the condition is served on the holder of the authorisation or on any later date specified in the notice.

[25] Section 261B (5)

Omit the subsection. Insert instead:

- (5) A security deposit condition may require a single security deposit to be provided and maintained in respect of more than one authorisation held by the same person.

[26] Section 261B (6)

Omit “75V”. Insert instead “89K or 115ZH”.

[27] Sections 261BA–261BF

Insert after section 261B:

261BA Security may be required before application for authorisation is granted

- (1) If a decision-maker proposes to grant an authorisation subject to a security deposit condition, the decision-maker 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 provided and maintained under that condition before the authorisation is granted.

- (2) If a decision-maker requires a security deposit to be provided before an authorisation is granted, the authorisation must not be granted unless the security deposit is provided.

261BB 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 authorisation concerned as at the date the decision-maker imposes or varies the condition, or
- (b) if there is no assessed deposit for the authorisation—the minimum deposit for the authorisation as at the date the decision-maker imposes or varies the condition.

261BC Director-General may assess amount of security deposit

- (1) The Director-General may assess the amount of the security deposit that may be required by a security deposit condition for a particular authorisation or, in the case of a group security deposit, for a particular group of authorisations.
- (2) The amount of the security deposit as assessed by the Director-General is the *assessed deposit* for the authorisation or authorisations concerned.
- (3) The Director-General must make an assessment if the regulations require an assessment to be made.
- (4) The Director-General may make an assessment at any other time:
 - (a) at the request of the decision-maker, or
 - (b) on the Director-General'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 authorisation.
- (6) The Director-General is to make an assessment under this section having regard to the estimated cost of fulfilling any obligations under the authorisation or authorisations concerned, including obligations under the authorisation that may arise in the future.
- (7) An assessed deposit must not be less than the minimum deposit for the authorisation or, in the case of a group security deposit, the sum of the minimum deposits for all affected authorisations.
- (8) After an assessment is made, the Director-General must give written notice of the assessment:
 - (a) to the holder of an affected authorisation, and

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- (b) to the decision-maker (if not the Director-General).
 - (9) The notice given to the holder of an affected authorisation must:
 - (a) set out the reasons for the Director-General'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 Director-General is to exercise his or her functions under this section having regard to any guidelines approved by the Minister.
 - (11) An assessment by the Director-General 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 Director-General may revise his or her assessment under this section. For that purpose, the Director-General 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 an authorisation and, for that purpose, a reference in this section, and in sections 261BD and 261BE, to a holder of an authorisation is taken to include a reference to a person who, on grant, will be a holder of an authorisation.

261BD Application for review of assessed deposit

- (1) The holder of an authorisation may apply for a review by the Minister of the Director-General's assessment of the amount of the security deposit that may be required for the authorisation.
- (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 in the approved form or on the Department's website), and

- (e) be accompanied by any fee required by the regulations, and
 - (f) be lodged with the Director-General within 28 days after notice is given to the holder of the authorisation of the assessment or within such other period as the regulations may prescribe.
- (3) The holder of an authorisation 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.

261BE Review of assessed deposit by Minister

- (1) If an application for review of the Director-General's assessment of the amount of a security deposit that may be required for an authorisation is duly made, the Minister is to review the Director-General's assessment.
- (2) In conducting a review, the Minister:
 - (a) is to have regard to any submissions made by the holder of the authorisation in relation to the assessment the subject of the review, and
 - (b) otherwise, has the same functions as the Director-General in relation to an assessment.
- (3) The review, if conducted by a delegate of the Minister, is not to be conducted by the Director-General or a person who, as the delegate of the Director-General, made the assessment the subject of the review.
- (4) Following the review, the Minister may:
 - (a) affirm the Director-General's assessment, or
 - (b) amend the Director-General's assessment, or
 - (c) set aside the Director-General'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 Director-General. However, the assessment or amendment is not reviewable under this section.

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- (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 or, if the decision-maker is not the Minister, direct the decision-maker to vary, a security deposit condition in accordance with the assessment or amendment, and
 - (b) direct the Director-General to reassess any administrative levy payable for an affected authorisation, 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 an authorisation directly affects the administrative levy payable in respect of an authorisation under Part 14A. In general terms, the levy is one percent of the amount of the security deposit.

261BF Minimum deposit

- (1) The *minimum deposit* for an authorisation is the amount prescribed by the regulations as the minimum deposit in relation to the type of authorisation concerned.
- (2) A change to the minimum deposit for an authorisation does not affect the validity of a security deposit condition imposed or varied before the change takes effect.

[28] Section 261C Content of security deposit condition

Insert before section 261C (1):

- (1A) A security deposit condition may:
 - (a) be in a standard form, being a form prescribed by the regulations, or
 - (b) be in a form approved by the decision-maker.

[29] Section 261C (1)

Insert “(whether in a standard form or otherwise)” after “security deposit condition”.

[30] Section 261C (1) (a)

Omit the paragraph.

[31] Section 261C (1) (h)

Omit the paragraph.

[32] Section 261C (3)

Omit the subsection.

[33] Section 261D Form of security deposit

Omit section 261D (2).

[34] Section 261E Security deposit can be taken to be provided for consolidated mining lease or multiple authorisations

Omit “or by a related corporation” from section 261E (2) (a).

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

Insert after section 261F (1):

- (1A) The Minister may make a claim on or realise a security deposit for a failure to comply with a direction under section 240 even if the security deposit condition under which it was provided was imposed before the direction was given.

[36] Section 261F (2)

Omit “the holder of the authorisation”.

Insert instead “the holder of the authorisation or, if the authorisation has been cancelled or has otherwise ceased to have effect, the former holder of the authorisation”.

[37] Section 261F (3) (b)

Omit “in causing steps specified in the direction under section 240 to be taken”.

Insert instead “in giving effect to the direction under section 240”.

[38] Section 261F (8)

Insert after section 261F (7):

- (8) In relation to a group security deposit, a reference in this section to the authorisation is a reference to any authorisation in respect of which the group security deposit is provided and maintained.

[39] Section 261G Lapsing of security deposit requirement and return of money

Insert “obligations” before “under the authorisation” in section 261G (2) (b).

[40] Parts 14A and 14B

Insert after Part 14:

Part 14A Fees

Division 1 Preliminary

292A Definitions

- (1) In this Part:
authorisation fee means an annual rental fee or administrative levy payable under this Part.
grant anniversary date—see section 292B.
- (2) A reference in this Part to when an authorisation is granted or renewed is taken, in relation to a grant or renewal of an authorisation that takes effect under this Act after the date that it is granted or renewed, to be a reference to when the grant or renewal takes effect.

292B Meaning of “grant anniversary date”

- (1) In this Part, a *grant anniversary date* means an anniversary of the date on which an authorisation is granted.
- (2) To avoid doubt, a reference in this Part to a grant anniversary date occurring during the term of an authorisation includes any part of the term of an authorisation occurring after the term for which the authorisation as granted or renewed was due to expire but during which the authorisation continues to have effect under section 117.

Note. Section 117 provides for the continuation of an authorisation if an application is made for renewal of the authorisation and it is not finally disposed of before the date on which the authorisation would otherwise cease to have effect.

Division 2 Fees payable for authorisation

292C Fees payable in respect of authorisation

- (1) The following fees are payable under this Part to the Director-General, on behalf of the Crown, for the privilege of being the holder of an authorisation:
 - (a) an annual rental fee,
 - (b) an administrative levy.
- (2) The authorisation fees are payable in addition to any royalty payable under Part 14 and any other fees payable under this Act.

292D Authorisation fees payable by holder of authorisation

- (1) An authorisation fee is payable by a person who is, or will be, a holder of the authorisation at the time liability for the fee arises.
- (2) If there is more than one holder of an authorisation, each of the holders is jointly and severally liable for payment of an authorisation fee.

Division 3 Annual rental fee

292E Liability for annual rental fee

- (1) Liability for an annual rental fee arises on the grant of an authorisation and on each grant anniversary date that occurs during the term of the authorisation.
- (2) An annual rental fee for which liability arises on the grant of an authorisation must be paid, in advance, before the authorisation is granted.
- (3) An authorisation for which an annual rental fee is payable must not be granted until the first annual rental fee is paid.
- (4) In subsection (3), a reference to the granting of an authorisation includes a reference to the taking of any action under this Act as a result of which an authorisation is taken to have been granted under this Act.

Note. For example, a partial transfer of an authorisation cannot be registered under section 122 (5) until the annual rental fee is paid.
- (5) 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 Director-General by notice in writing served on a person liable.

292F 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.

292G Exemptions

The following authorisations are exempt from the requirement to pay an annual rental fee:

- (a) an exploration licence held by the Director-General,
- (b) a small-scale title,
- (c) an environmental assessment permit,
- (d) any authorisation, or authorisation of a class, exempted by the regulations.

Division 4 Administrative levy

292H Definitions

In this Division:

annual administrative levy—see section 292I.

minimum deposit has the same meaning as it has in Part 12A.

security deposit condition has the same meaning as it has in Part 12A.

term administrative levy—see section 292J.

292I Liability for annual administrative levy

- (1) The administrative levy payable under this Part for an authorisation (other than a small-scale title) is an annual administrative levy.
- (2) Liability for an annual administrative levy arises on the grant of an authorisation and on each grant anniversary date that occurs during the term of an authorisation.
- (3) An annual administrative levy for which liability arises on the grant of an authorisation must be paid, in advance, before the authorisation is granted.
- (4) An authorisation for which an annual administrative levy is payable must not be granted until the first annual administrative levy is paid.

- (5) In subsection (4), a reference to the granting of an authorisation includes a reference to the taking of any action under this Act as a result of which an authorisation is taken to have been granted under this Act.

Note. For example, a partial transfer of an authorisation cannot be registered under section 122 (5) until the administrative levy is paid.

- (6) An annual 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 Director-General by notice in writing served on a person liable.

292J Liability for term administrative levy (small-scale titles)

- (1) The administrative levy payable under this Part for a small-scale title is a term administrative levy.
- (2) Liability for a term administrative levy arises on the grant of a small-scale title and, in the case of a mineral claim, on renewal of the mineral claim.
- (3) A term administrative levy must be paid, in advance, before a small-scale title is granted and, in the case of a mineral claim, before the claim is renewed.
- (4) A small-scale title for which a term administrative levy is payable must not be granted or renewed until the term administrative levy is paid.
- (5) In subsection (4), a reference to the granting of a small-scale title includes a reference to the taking of any action under this Act as a result of which a small-scale title is taken to have been granted under this Act.

292K Amount of annual administrative levy

- (1) The amount of an annual 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 provided and maintained under a security deposit condition that has effect in relation to the authorisation for which the administrative levy is payable when liability for the levy arises.
- (3) If a single security deposit is required to be provided and maintained in respect of more than one authorisation, the amount of the annual administrative levy is:
- (a) one percent of the relevant proportion of the security deposit amount, or

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- (b) one percent of the minimum deposit for the authorisation at the date liability arises,
whichever is the greater.
- (4) The *relevant proportion* is the proportion that one bears to the number of authorisations for which the security deposit is required to be provided and maintained (disregarding any authorisations that have been cancelled or have otherwise ceased to have effect before liability arises).
- (5) A security deposit is required to be provided and maintained under a security deposit condition even if the condition requires the security deposit to be provided at a future date or within a period ending on a future date.
- (6) If no security deposit is required to be provided and maintained in respect of an authorisation on a date liability for an annual administrative levy arises, and there is a minimum deposit for the authorisation at that date, the security deposit amount is taken to be that minimum deposit.
- (7) For the purpose of enabling payment of the first annual administrative levy in advance of liability arising, a decision-maker is to give notice to an applicant for the grant of an authorisation of any security deposit condition that will be imposed on the grant.

292L Minimum amount of annual administrative levy

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

292M Amount of term administrative levy

- (1) The amount of a term administrative levy is the annual administrative levy multiplied by the term of the authorisation.
- (2) The annual administrative levy for an authorisation in respect of which a term administrative levy is payable is calculated in the same way as it is for an authorisation for which an annual administrative levy is payable.

- (3) To avoid doubt, the minimum amount for an annual administrative levy applies in relation to a calculation of a term administrative levy.

Note. Accordingly, the minimum administrative levy for an authorisation in respect of which a term administrative levy is payable will be \$100 (the minimum amount of the annual administrative levy) multiplied by the term of the authorisation.

- (4) The ***term of an authorisation*** is the number of years for which the authorisation is granted or, in the case of a liability for an administrative levy arising on the renewal of a mineral claim, renewed.
- (5) Any period of less than a year for which a small-scale title is granted or renewed is to be counted as a year.
- (6) The period for which a mineral claim is renewed is to include any period during which, before its renewal, the mineral claim was taken to continue to have effect under section 117.
- (7) For the purpose of enabling payment of a term administrative levy in advance of liability arising, a decision-maker is to give notice to an applicant for the grant or renewal of a small-scale title of:
- (a) any security deposit condition that will have effect on the grant or renewal, and
 - (b) the proposed term of the authorisation.
- (8) In this section:
year means a period of 12 months.

292N Exemptions

The following authorisations are exempt from the requirement to pay an administrative levy:

- (a) an exploration licence held by the Director-General,
- (b) any authorisation, or authorisation of a class, exempted by the regulations.

Division 5 General

292O Assessment of liability

- (1) The Director-General is to assess the liability of a person for an authorisation fee.

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- (2) The Director-General may reassess the liability of a person for an authorisation fee 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.

292P Recovery of fees

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

292Q Failure to pay fee

A failure to pay an authorisation fee within the time required under this Part is a contravention of this Act, but is not an offence.

Note. A contravention of this Act can be taken into account when decisions about the grant or renewal of authorisations are made under this Act.

292R Late payment fee

- (1) If an authorisation fee is not paid within the time required under this Part, the Director-General may charge a late payment fee in respect of the authorisation 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 authorisation fee was required to be paid and ending on (and excluding) the day the authorisation fee is paid.
- (3) A late payment fee is taken to form part of, and is recoverable in the same way as, the authorisation fee.

292S Effect of cancellation or suspension

- (1) The cancellation of an authorisation does not affect any liability for an authorisation fee that arose on a date that occurred before that cancellation.
- (2) Subject to the regulations, an authorisation fee does not cease to be payable, or become refundable, because the Director-General directs a person to suspend operations under the authorisation.

Note. Section 382A gives the Director-General power to waive or refund fees payable under this Act in appropriate cases.

Part 14B Finance

Note. See also Part 7A of the *Petroleum (Onshore) Act 1991*.

292T Minerals and Petroleum Investment Fund

- (1) There is to be established in the Special Deposits Account a fund called the Minerals and Petroleum Investment Fund (*the Investment Fund*).
- (2) The Investment Fund is to be administered by the Director-General.
- (3) There is payable into the Investment Fund:
 - (a) annual rental fees payable under Part 14A of this Act or under Part 7A of the *Petroleum (Onshore) Act 1991*, and
 - (b) all money directed or authorised to be paid into the Investment Fund by or under this or any other Act, and
 - (c) the proceeds from the investment of money in the Investment Fund.
- (4) There is payable from the Investment Fund:
 - (a) such amounts as the Director-General authorises for the purpose of funding any authorised investment program (including any associated administrative expenses), and
 - (b) administrative expenses incurred in relation to the Investment Fund, and
 - (c) administrative expenses incurred in relation to the collection and recovery of amounts payable into the Investment Fund, and
 - (d) any refund required under this Act or the *Petroleum (Onshore) Act 1991* of an amount paid as an annual rental fee.
- (5) The Director-General may invest money in the Investment Fund in any manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*.
- (6) The annual report of the Department is to include details of the amounts paid from the Investment Fund during the financial year to which the report relates and the purposes for which those payments were made.
- (7) In this section:
authorised investment program means any Government program or initiative the object of which is to promote investment in State minerals or petroleum (or both), including:

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- (a) the program administered by the Department known as the *New Frontiers minerals and energy exploration initiative* (or *New Frontiers*), and
 - (b) any other program or initiative that provides for, or improves, the geoscience information available in respect of State minerals or petroleum (or both), and
 - (c) any other program or initiative declared by the regulations under this Act or under the *Petroleum (Onshore) Act 1991* to be an authorised investment program.

petroleum has the same meaning as it has in the *Petroleum (Onshore) Act 1991*.

292U Minerals and Petroleum Administrative Fund

- (1) There is to be established in the Special Deposits Account a fund called the Minerals and Petroleum Administrative Fund (*the Administrative Fund*).
- (2) The Administrative Fund is to be administered by the Director-General.
- (3) There is payable into the Administrative Fund:
 - (a) administrative levies payable under Part 14A of this Act or under Part 7A of the *Petroleum (Onshore) Act 1991*, and
 - (b) all money directed or authorised to be paid into the Administrative Fund by or under this or any other Act, and
 - (c) the proceeds from the investment of money in the Administrative Fund.
- (4) There is payable from the Administrative Fund:
 - (a) such amounts as the Director-General authorises for the purpose of funding minerals and petroleum administrative costs, and
 - (b) administrative expenses incurred in relation to the Administrative Fund, and
 - (c) administrative expenses incurred in relation to the collection and recovery of amounts payable into the Administrative Fund, and
 - (d) any refund required under this Act or the *Petroleum (Onshore) Act 1991* of an amount paid as an administrative levy, and
 - (e) such amounts as the Director-General authorises for payment into the Derelict Mine Sites Fund.

Schedule 5 Amendment of mining legislation

- (5) The Director-General may invest money in the Administrative Fund in any manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*.
- (6) The annual report of the Department is to include details of the amounts paid from the Administrative Fund during the financial year to which the report relates and the purposes for which those payments were made.
- (7) In this section:
minerals and petroleum administrative costs means the costs associated with the following:
 - (a) the administration and enforcement of this Act and the *Petroleum (Onshore) Act 1991*,
 - (b) community and industry liaison carried out in connection with this Act or the *Petroleum (Onshore) Act 1991* (including the provision of information about activities carried out under this Act and the *Petroleum (Onshore) Act 1991*),
 - (c) rehabilitation of land or water disturbed by activities carried out under this Act, the *Petroleum (Onshore) Act 1991* or former legislation relating to mining,
 - (d) any other costs declared by the regulations to be minerals and petroleum administrative costs.***petroleum*** has the same meaning as it has in the *Petroleum (Onshore) Act 1991*.

[41] Section 382A Waiver or refund of fees

Insert at the end of the section:

- (2) The regulations may make further provision for the waiver or refund of fees payable under this Act.

[42] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

[43] Schedule 6, Part 16

Insert after Part 15:

**Part 16 Provisions consequent on enactment of
State Revenue and Other Legislation
Amendment (Budget Measures) Act 2012**

137 Definitions

In this Part:

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

2008 amending Act means the *Mining Amendment Act 2008*.

138 Security deposit conditions

- (1) An amendment made to Part 12A by the amending Act applies in respect of the imposition or variation of a security deposit condition on or after the commencement of the amendment.
- (2) An amendment made to Part 12A does not affect the validity of any requirement of a security condition imposed before the commencement of the amendment, including a requirement of a condition referred to in clause 139.

139 Validation

A condition of an authorisation requiring the holder of the authorisation to provide or maintain a security in respect of the authorisation that was imposed or varied, or purportedly imposed or varied, under this Act on or after the commencement of Part 12A of this Act (15 November 2010) that would have been validly imposed or varied if the amendments made to this Act by the 2008 amending Act had not been made is taken to have been, and to have always been, validly imposed or varied under Part 12A.

140 Levies required under existing orders

- (1) On the commencement of Part 14A, as inserted by the amending Act, an order made under section 175 or 223A, to the extent that it requires the payment of a levy on the grant or renewal of an authorisation, applies only in respect of a grant or renewal that took effect before that commencement.
- (2) A levy payable under such an order is to be applied as provided for by the order.

141 Payment of annual rental fee and administrative levy by existing authorisation holder

- (1) The requirements of Part 14A with respect to payment of an annual rental fee or administrative levy extend to an authorisation granted before 1 July 2012 that is in force on 1 July 2012 (an *existing authorisation*).
- (2) Accordingly:
 - (a) for an existing authorisation (other than exempt authorisations), liability for an annual rental fee arises on each grant anniversary date that occurs on or after 1 July 2012, and
 - (b) for an existing authorisation (other than a small-scale title), liability for an annual administrative levy arises on each grant anniversary date that occurs on or after 1 July 2012, and
 - (c) for an existing authorisation that is a mineral claim, liability for a term administrative levy arises on the renewal of the mineral claim.

142 Payment in advance of annual rental fee and administrative levy

- (1) The Minister may waive the requirement under Part 14A that an annual rental fee or administrative levy for which liability will arise on the grant or renewal of an authorisation be paid in advance before the authorisation is granted or renewed.
- (2) Accordingly, the decision-maker may grant or renew the authorisation 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).

[44] Dictionary

Insert in alphabetical order:

administrative levy means an administrative levy payable under Part 14A.

annual rental fee means an annual rental fee payable under Part 14A.

environmental assessment permit means a permit under section 252.

Commencement

Schedule 5.2 commences or is taken to have commenced on 1 July 2012.

Explanatory note

Annual rental fee

The amendments introduce an annual rental fee for authorisations under the *Mining Act 1992* (the **principal Act**).

Liability for an annual rental fee arises on the grant of an authorisation and on each grant anniversary date that occurs during the term of the authorisation. The annual rental fee for which liability arises on grant of an authorisation must be paid in advance, before the grant is made.

The amount of the annual rental fee for an authorisation is to be determined as provided for by the regulations (see Schedule 5.4).

Administrative levy

The amendments introduce an administrative levy for authorisations under the principal Act.

For all authorisations other than small-scale titles, the administrative levy is an annual levy. For small-scale titles, the administrative levy is a term levy.

In the case of an annual administrative levy, liability arises on the grant of the authorisation and on every grant anniversary date. The levy for which liability arises on grant must be paid in advance, before the grant is made.

In the case of a term administrative levy (payable for a small-scale title), liability arises on the grant of the small-scale title and on renewal (which only applies to mineral claims).

The amount of the annual administrative levy is, in general terms, one percent of the security deposit amount (being the amount of the security deposit required to be provided and maintained under a security deposit condition that has effect in relation to the authorisation for which the levy is payable when liability arises). A different calculation applies where one security deposit is required in respect of several authorisations. If no security deposit is required to be provided and maintained in respect of the authorisation, the annual administrative levy is one percent of the minimum deposit for the authorisation (in relation to minimum deposits, see further below).

The minimum annual administrative levy is \$100 (or any other amount prescribed by the regulations).

The amount of the term administrative levy is calculated by multiplying the term for which a small-scale title is granted or renewed (in years) by the annual administrative levy.

Other provisions relating to annual rental fee and administrative levy

The amendments provide for other matters relating to the annual rental fee and administrative levy, including for the recovery of fees as a debt and late payment fees.

Establishment of Funds

The amendments provide for the establishment of the following Funds:

- (a) a Minerals and Petroleum Investment Fund (the **Investment Fund**),
- (b) a Minerals and Petroleum Administrative Fund (the **Administrative Fund**).

Annual rental fees paid under the principal Act and the *Petroleum (Onshore) Act 1991* are to be paid into the Investment Fund. The Fund is to be used, to the extent

authorised by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (referred to in this Schedule as **the Director-General**), principally to fund programs that promote investment in State minerals and petroleum, in particular, for the purposes of the *New Frontiers* program.

Administrative levies paid under the principal Act and the *Petroleum (Onshore) Act 1991* are to be paid into the Administrative Fund. The Fund is to be used, to the extent authorised by the Director-General, principally to fund minerals and petroleum administrative costs (such as costs associated with the administration and enforcement of the principal Act and the *Petroleum (Onshore) Act 1991*).

Security deposit arrangements

The amendments make a number of changes to the security deposit provisions in the principal Act. The changes relate, in part, to the introduction of an administrative levy.

The principal change is that the amount of the security deposit that may be required under a security deposit condition imposed on an authorisation must be either an amount assessed for the authorisation concerned by the Director-General or the minimum deposit for the authorisation. The minimum deposit is prescribed by the regulations for the type of authorisation concerned (see Schedule 5.4).

The amendments make provision for the assessment of the security deposit amount by the Director-General and the review of those assessments by the Minister.

Other amendments to the security deposit arrangements:

- (a) remove provision for a single security deposit condition to be applied to several authorisations, where the authorisations are held by different people, and
- (b) enable the regulations to prescribe a standard form of security deposit condition, and
- (c) clarify that a security deposit may be required in respect of obligations that may arise under an authorisation in the future, and
- (d) clarify when a security deposit condition can be imposed or varied, and when it takes effect, and
- (e) make other changes of a statute law revision nature.

The amendments also validate the imposition of security deposit conditions in accordance with provisions of the Act that formerly had effect.

Other amendments

Other provisions in Schedule 5.2:

- (a) extend the record keeping requirements under the principal Act to accommodate the keeping of records in respect of the annual rental fee, and
- (b) make changes consequential to the above amendments, and
- (c) provide for the making of savings and transitional regulations, and
- (d) set out transitional arrangements in relation to the above amendments, including provision for the phasing-in of the requirements made by the amendments.

5.3 Amendment of Mining Amendment Act 2008 No 19

[1] Schedule 1 Amendment of Mining Act 1992

Omit Schedule 1 [64]. Insert instead:

[64] Section 70 Conditions of mining lease

Insert after section 70 (1) (a):

- (a1) a condition that the holder must comply with a rehabilitation and environmental management plan approved by the Director-General under this Act in carrying out any activities authorised by the lease, or that the holder of a lease is authorised to carry out under this Act (whether in or outside the mining area), and

[2] Schedule 1 [152] Section 198 Determination of application for renewal of mineral claim

Omit “and (3)”.

[3] Schedule 1 [152], proposed section 198 (3)

Omit the subsection.

[4] Schedule 1 [204], proposed section 239B

Omit proposed section 239B (6) and (7). Insert instead:

- (6) A condition imposed under this section may be varied.
- (7) A condition may be imposed or varied under this section:
 - (a) when an authorisation is granted or renewed, or
 - (b) when a full or partial transfer of an authorisation is approved under this Act, or
 - (c) when a mineral claim is transferred under this Act, or
 - (d) at any other time during the term of the authorisation.
- (7A) A condition imposed or varied under this section takes effect as follows:
 - (a) in the case of a condition imposed on the grant of an authorisation—when the grant takes effect,
 - (b) in the case of a condition imposed or varied on the renewal of an authorisation—when the renewal takes effect,
 - (c) in the case of a condition imposed or varied when a full or partial transfer of an authorisation is approved under this Act—when the transfer is registered under this Act,

Schedule 5 Amendment of mining legislation

- (d) in the case of a reporting condition imposed or varied when a mineral claim is transferred under this Act—when the mineral claim is transferred,
 - (e) in any other case—when written notice of the imposition or variation of the condition is served on the holder of the authorisation or on any later date specified in the notice.
- (7B) A condition imposed under this section may be revoked at any time by written notice served on the holder of the authorisation.

[5] Schedule 1 [204], proposed section 239B (8)

Omit “75V”. Insert instead “89K or 115ZH”.

[6] Schedule 1 [204], proposed section 239C

Omit proposed section 239C (3)–(5). Insert instead:

- (3) A reporting condition may be varied.
- (4) A reporting condition may be imposed or varied:
 - (a) when an authorisation is granted or renewed, or
 - (b) when a full or partial transfer of an authority is approved under this Act, or
 - (c) when a mineral claim is transferred under this Act, or
 - (d) at any other time during the term of an authorisation.
- (5) A reporting condition, or a variation to a reporting condition, takes effect as follows:
 - (a) in the case of a reporting condition imposed when an authorisation is granted—when the grant takes effect,
 - (b) in the case of a reporting condition imposed or varied when an authorisation is renewed—when the renewal takes effect,
 - (c) in the case of a reporting condition imposed or varied when a full or partial transfer of an authority is approved under this Act—when the transfer is registered under this Act,
 - (d) in the case of a reporting condition imposed or varied when a mineral claim is transferred under this Act—when the mineral claim is transferred,
 - (e) in any other case—when written notice of the imposition or variation of the condition is served on the holder of the authorisation or on any later date specified in the notice.
- (6) A reporting condition may be revoked at any time by written notice served on the holder of the authorisation.

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- (7) A person who provides information or a document in compliance with, or in purported compliance with, a reporting condition is guilty of an offence if the person provides the information or document knowing that it is false or misleading in a material particular.
- Maximum penalty:
- (a) in the case of a corporation—1,000 penalty units, or
 - (b) in the case of a natural person—200 penalty units.
- (8) A person is not guilty of an offence against subsection (7) in respect of the provision of a document that is false or misleading in a material particular if the person, when providing the document, discloses the manner in which the document is false or misleading.

[7] Schedule 1 [204], proposed section 239D

Omit proposed section 239D (1)–(3). Insert instead:

- (1) Any document or information provided under a reporting condition imposed under this Division may be taken into consideration by the Director-General 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 Director-General is authorised, despite any other Act or law, to provide a relevant agency with any such document or information.
- (3) Any such document or information is required to be provided by the holder of an authorisation, whether or not the document or information might incriminate the holder.
- (3A) However, information provided by a natural person in compliance with a reporting condition is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 239C (7)) if the person, when providing the information, objected to the provision of the information on the grounds that it might incriminate him or her.

[8] Schedule 1 [273], Schedule 6

Omit subclause (1) of the proposed clause with the heading **Environmental management conditions and directions**.

Insert instead:

- (1) A condition of an authority of a kind referred to in Division 2 of Part 11 of this Act (before the substitution of that Division by the

2008 Act), and in force immediately before the commencement of this clause, continues to have effect and is taken, on that commencement, to be a condition imposed under section 239B.

- (1A) Accordingly the condition may be varied or revoked as provided for by that section.

Commencement

Schedule 5.3 commences or is taken to have commenced on 30 June 2012.

Explanatory note

Schedule 5.3 makes a number of amendments to uncommenced provisions of the *Mining Amendment Act 2008* to facilitate the commencement of those provisions.

The amendments:

- (a) clarify when the imposition or variation of an environment protection condition or reporting condition takes effect (consistently with similar provisions for security deposit conditions inserted by Schedule 5.2), and
- (b) make it clear that it is an offence to knowingly provide false or misleading information in compliance or purported compliance with a reporting condition, whether or not the person giving the information is required to give a certificate in respect of the information, and
- (c) make it clear that a person is required to comply with a reporting condition whether or not the information to be provided is self-incriminating, but that information provided by a natural person cannot be used as evidence of an offence against the person if the person objected to the provision of incriminating information, and
- (d) clarify the operation of transitional provisions relating to those uncommenced amendments, and
- (e) generally ensure consistency with the amendments set out in Schedule 5.2.

5.4 Amendment of Mining Regulation 2010

[1] Clause 34 Records concerning authorities

Insert after clause 34 (1) (e):

- (e1) the annual rental fee area for an authority granted or proposed to be granted, if the Director-General is required to keep a record of the annual rental fee area under Division 2 of Part 7A,

[2] **Part 7A**

Insert after Part 7:

Part 7A Fees

Division 1 General

65A Fees

- (1) The matters for which fees are payable under the Act and this Regulation are set out in Column 1 of Schedule 10.
- (2) The fee for a particular matter is the amount set out opposite the matter in Column 2 of that Schedule.

65B Other fees

The Director-General may determine the fee payable for any service provided in connection with the administration or execution of the Act for which a fee is not prescribed by this Regulation.

Division 2 Annual rental fees

65C Calculation of annual rental fee

- (1) An annual rental fee specified in Schedule 10 as per hectare, per square kilometre, per square metre or per unit is to be calculated on the basis of the annual rental fee area.
- (2) The *annual rental fee area* is the number of hectares, square kilometres, square metres or units of land comprised in the annual rental fee area for the authorisation for which the annual rental fee is payable, as specified in the record kept by the Director-General under the Act.
- (3) If the annual rental fee area includes a part of a unit, that part is to be disregarded.
- (4) If the annual rental fee area includes a part of a hectare, square kilometre, or square metre, that part is to be included in the calculation.
- (5) If there is no annual rental fee area for an authorisation for which an annual rental fee is payable, the annual rental fee is to be calculated as if the authority area, as specified in the record of the authority kept by the Director-General under the Act, were the annual rental fee area.

- (6) To avoid doubt, subclause (5) continues to apply until an annual rental fee area is determined for the authorisation under this Division and specified in the record kept by the Director-General under the Act.

65D Annual rental fee area

- (1) The Director-General is to determine an annual rental fee area for any authorisation that is granted or proposed to be granted on or after 1 July 2012.
- (2) The Director-General may determine (and must determine, if required to do so by this Division) an annual rental fee area for an authorisation granted before 1 July 2012.
- (3) The annual rental fee area is a description of the land to which the authorisation applies, or is proposed to apply, in terms that enable an annual rental fee payable under Part 14A of the Act to be calculated in respect of the authorisation.
- (4) Exclusions specified, or proposed to be specified, in an authorisation are to be counted towards the annual rental fee area.
- (5) The Director-General is required to record an annual rental fee area determined under this clause in the record kept by the Director-General under section 159 of the Act.
- (6) The Director-General may, if the Director-General considers it is fair and reasonable to do so, revise his or her determination of the annual rental fee area for an authorisation by varying the determination or substituting a new determination.
Note. For example, the Director-General might revise his or her determination of the annual rental fee area if an application for partial renewal of an authority is made and, because of section 117 of the Act, the authority continues to have effect but only in relation to a smaller area of land.
- (7) If the Director-General revises his or her determination of the annual rental fee area for an authorisation, the Director-General is to update the record of the annual rental fee area kept under section 159 of the Act to reflect that revision.
- (8) It is not necessary to determine an annual rental fee area in respect of an authorisation if the authorisation is exempt from the requirement to pay an annual rental fee.

65E Minimum annual rental fee

If the annual rental fee payable in respect of an authorisation under Part 14A of the Act would, but for this clause, be less than \$100, the annual rental fee is taken to be \$100.

65F References to initial term (Schedule 10)

- (1) In Schedule 10, a reference to the *initial term* of an authorisation is a reference to the initial term for which the authorisation is granted.
- (2) The initial term of an authorisation does not include any period starting when the authorisation, as granted, would have expired, but for section 117 of the Act, and during which the authorisation continues to have effect under that section.
- (3) A term of an authorisation is *after* another term, for the purposes of Schedule 10, if it starts when, or at any time after, the other term ends.

65G Phasing-in of annual rental fee for authorisations granted before 1 July 2012

- (1) In relation to an authorisation in force on 1 July 2012 that was renewed or due for renewal before 1 July 2012, the current term of the authorisation is taken to be the initial term of the authorisation for the purposes of Schedule 10.
- (2) The *current term* of the authorisation is the term starting on the date when the authorisation was last renewed or, if the authorisation has not been renewed by 1 July 2012 but continues in effect under section 117 of the Act, the date that it was last due for renewal.
- (3) The current term of the authorisation ends when the authorisation is next due for renewal (on or after 1 July 2012) or when the authorisation ceases to have effect (whichever happens sooner).
- (4) An authorisation is *due for renewal* when the term for which it is granted or renewed is due to expire (that is, disregarding any period for which the authorisation is taken to continue to have effect under section 117 of the Act).

65H Grant anniversary date occurring during period in which authorisation is automatically extended

- (1) The amount of the annual rental fee payable under Part 14A of the Act in respect of a grant anniversary date that occurs during a period in which an authorisation is taken to continue to have effect under section 117 of the Act is to be reassessed if the decision-maker finally disposes of an application for renewal of the authorisation by refusing it.
- (2) In such a case, the annual rental fee payable in respect of the most recent grant anniversary date to have occurred is taken to be the

relevant proportion of the annual rental fee that, but for this clause, would be payable.

- (3) The *relevant proportion* is the proportion that the number of days in the period from (and including) that most recent grant anniversary date to (but not including) the date the application is refused bears to 366 days.
- (4) A refund is to be provided, as necessary, in accordance with the reassessment.

65I Transitional arrangements for determination of annual rental fee area for authorities in force

- (1) The holder of an authority in force immediately before 1 July 2012, and in relation to which an annual rental fee area has not been determined by the Director-General under this Division, may apply to the Director-General for:
 - (a) a determination of the annual rental fee area for the authority, and
 - (b) a reassessment of any liability for an annual rental fee that arose before that determination.
- (2) The application must be lodged with the Director-General before 1 July 2013.
- (3) If an application is made in accordance with this clause, the Director-General must:
 - (a) determine an annual rental fee area for the authority, and
 - (b) reassess any annual rental fee for which liability arose before the determination in accordance with the determination.
- (4) An application under this clause must:
 - (a) be in writing, and
 - (b) be lodged with the Director-General, and
 - (c) specify the manner in which it is requested that the annual rental fee area be defined, and
 - (d) state the reasons why it is fair and reasonable to define the annual rental fee area in the manner specified, and
 - (e) be accompanied by any information or documents required in relation to the request by the Director-General (which requirement may be specified on the Department's website).

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- (5) An application under this clause may be made as an adjunct to a request for the partial cancellation of the authority under section 125 of the Act, and the Director-General may have regard to that request when determining the annual rental fee area.

Division 3 Administrative levies

65J Grant anniversary date occurring during period in which authorisation is automatically extended

- (1) The amount of the annual administrative levy payable under Part 14A of the Act in respect of a grant anniversary date that occurs during a period in which an authorisation is taken to continue to have effect under section 117 of the Act is to be reassessed if the decision-maker finally disposes of an application for renewal of the authorisation by refusing it.
- (2) In such a case, the annual administrative levy payable in respect of the most recent grant anniversary date to have occurred is taken to be the relevant proportion of the annual administrative levy that, but for this clause, would be payable.
- (3) The *relevant proportion* is the proportion that the number of days in the period from (and including) that most recent grant anniversary date to (but not including) the date the application is refused bears to 366 days.
- (4) A refund is to be provided, as necessary, in accordance with the reassessment.

65K Transitional assessment arrangements

- (1) The holder of an authorisation to which the transitional assessment arrangements apply may apply to the Director-General for an assessment of the amount of the security deposit that may be required by a security deposit condition for the authorisation.
- (2) The transitional assessment arrangements apply to the following authorisations:
 - (a) an authorisation in force on 1 July 2012 that, on that date, is subject to a security deposit condition that requires the holder to provide and maintain a security deposit (other than a group security deposit) in excess of the minimum deposit for that authorisation,
 - (b) an authorisation in force on 1 July 2012 that, on that date, is subject to a security deposit condition that requires a group security deposit to be provided and maintained that

is in excess of the sum of the minimum deposits for all authorisations for which that group security deposit is required (disregarding any authorisations that have been cancelled or otherwise ceased to have effect).

- (3) An application under this clause may be made no later than 6 months after liability for the first administrative levy payable in respect of the authorisation arises.
- (4) An application must:
 - (a) be in writing, and
 - (b) be lodged with the Director-General, and
 - (c) contain particulars of the grounds on which the assessment is sought, and
 - (d) be accompanied by any information or documents required in relation to the application by the Director-General (which requirement may be specified on the Department's website).
- (5) If an application is made in accordance with this clause, the Director-General must assess the amount of the security deposit.
- (6) Section 261BC of the Act applies in relation to an assessment under this clause in the same way as it applies to an assessment under that section.
- (7) After the Director-General makes the assessment, the decision-maker for the authorisation is to vary the security deposit condition imposed on the authorisation so that the amount of the security deposit required to be provided and maintained in respect of the authorisation is the assessed deposit.
- (8) If the assessed deposit is less than the security deposit required to be provided and maintained in respect of the authorisation at the time the application is made, the Director-General is to reassess any liability for an administrative levy that arose before the assessment as if the amount of the security deposit required to be provided and maintained had been, at the time that the liability arose, the assessed deposit.
- (9) Sections 261BD and 261BE of the Act apply in relation to an assessment under this clause in the same way as they apply in relation to an assessment under section 261BC of the Act.
- (10) In this clause:
group security deposit has the same meaning as it has in Part 12A of the Act.

[3] Clause 75

Omit the clause. Insert instead:

75 Minimum deposit—security deposit condition

- (1) This clause has effect for the purposes of section 261BF of the Act.
- (2) The minimum deposit for an authorisation, other than a small-scale title or environmental assessment permit, is \$10,000.
- (3) The minimum deposit for a small-scale title or environmental assessment permit is \$1,000.

[4] Schedule 10 Fees

Omit “(Clause 75)” from the source reference. Insert instead “(Clause 65A)”.

[5] Schedule 10, item 10A

Insert after item 10 in the matter relating to Exploration licences:

10A	Annual rental fee (section 292F of the Act)	\$0.20 per ha or \$20 per sq km or \$0.00002 per sq m or \$60 per unit
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[6] Schedule 10, item 12A

Insert after item 12 in the matter relating to Assessment leases:

12A	Annual rental fee (section 292F of the Act):	
(a)	for a grant anniversary date occurring during the initial term of the lease	\$12 per ha or \$1,200 per sq km or \$3,600 per unit
(b)	for a grant anniversary date occurring during a term of the lease after the initial term	\$24 per ha or \$2,400 per sq km or \$7,200 per unit

[7] Schedule 10, item 24A

Insert after item 24 in the matter relating to Mining leases:

24A	Annual rental fee (section 292F of the Act)	\$6.50 per ha or \$650 per sq km or \$0.00065 per sq m
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Commencement

Schedule 5.4 commences or is taken to have commenced on 1 July 2012.

Explanatory note

Annual rental fee

The amendments provide for the calculation of annual rental fees. An annual rental fee is to be calculated by reference to the annual rental fee area for an authorisation. The annual rental fee area is the number of hectares, square kilometres, square metres or units of land comprised in the annual rental fee area for the authorisation, as specified in the record kept by the Director-General in relation to the authorisation under the principal Act.

The annual rental fee area for an authorisation is a description of the land to which the authority applies (or is proposed to apply), in terms that enable the annual rental fee to be calculated. The annual rental fee area is to be determined by the Director-General.

The Director-General is to determine an annual rental fee area for all authorisations granted on or after 1 July 2012 for which an annual rental fee is payable. For authorisations granted before that date, the authority area, as specified in the records currently kept by the Director-General, is to be used as the basis of calculation of the annual rental fee. However, transitional arrangements permit an existing authority holder to apply to the Director-General to have an annual rental fee area determined for the authority, and liability for an annual rental fee can be assessed or reassessed in accordance with that determination.

The amendments provide for a minimum annual rental fee of \$100.

The amendments also make provision for reassessment of liability for an annual rental fee in the event that an application for renewal of an authority is refused, and for other matters concerning the annual rental fee.

Administrative levy

The amendments make provision for reassessment of liability for an administrative levy in the event that an application for renewal of an authorisation is refused.

The amendments also provide for transitional arrangements in respect of the assessment of the administrative levy payable in respect of an authorisation. The provisions permit an existing authorisation holder to apply to the Director-General for an assessment of the amount of the security deposit that may be required in respect of the authorisation. An application may be made only if the security deposit required under the authorisation exceeds the minimum deposit for the authorisation. An application must be made no later than 6 months after liability for the first administrative levy payable in respect of the authorisation arises. If the assessed deposit is less than the existing security deposit required in respect of the authorisation, liability for an administrative levy is to be reassessed in accordance with that assessment.

Security deposit conditions—minimum deposit

The amendments prescribe the following minimum deposits for authorisations:

- (a) \$10,000 for all authorisations other than small-scale titles,
- (b) \$1,000 for small-scale titles.

The minimum deposit is the minimum amount that can be required under a security deposit condition.

The minimum deposit is also used as the basis for calculating the administrative levy payable in respect of an authorisation if no security deposit condition applies to the authorisation. (Note however that a minimum annual administrative levy of \$100 applies.)

Schedule 6 Amendment of petroleum (onshore) legislation

6.1 Amendment of Petroleum (Onshore) Act 1991 No 84

[1] Section 3 Definitions

Omit the definitions of *appropriate fee*, *appropriate lodgment fee* and *appropriate petroleum title fee* from section 3 (1).

Insert in alphabetical order:

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

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

environment protection legislation has the same meaning as in the *Protection of the Environment Administration Act 1991*.

[2] Section 12 Fee for processing applications

Omit “appropriate lodgment fee in respect of the application”.

Insert instead “lodgment fee prescribed by the regulations”.

[3] Sections 16 and 16A

Omit the sections.

[4] Section 19 Renewal of title

Insert “(including requirements with respect to fees)” after “requirements” in section 19 (5).

[5] Section 22 Cancellation and suspension of title

Insert at the end of section 22 (1) (c):

, or

- (d) contravenes a provision of this Act or the regulations (whether or not the holder is prosecuted or convicted of an offence arising from the contravention).

[6] Section 22 (3A) (b)

Omit “in the title”.

[7] Section 22 (3B)

Insert after section 22 (3A):

- (3A) A condition of a title is identified as a condition related to environmental management if the condition is identified as a condition related to environmental management:
- (a) in the title, or
 - (b) in any notice of the imposition or variation of the condition given to the title holder.

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

Omit “appropriate fee” from section 69G (2).

Insert instead “fee prescribed by the regulations”.

[9] Part 6, Division 2

Omit the Division. Insert instead:

**Division 2 Conditions relating to the environment,
rehabilitation and reporting**

75 Conditions for environment protection and rehabilitation

- (1) Without limiting any other provision of this Act, a condition may be imposed on a petroleum title that requires the holder of the title to carry out activities for any one or more of the following purposes:
- (a) the conservation of the environment, and the protection of the environment from harm as a result of activities under the title or the prevention, control or mitigation of any such harm,
 - (b) the rehabilitation of land or water that is or may be affected by activities under the title,
 - (c) the afforestation (including for carbon sequestration within the meaning of section 87A of the *Conveyancing Act 1919* and related environmental purposes) of any part of the land comprised in a petroleum title that may have been adversely affected by activities under the petroleum title,
 - (d) the offsetting of any such adverse effects by the dedication or conservation of land for a public purpose or the rehabilitation of land or water other than the land comprised in a petroleum title.

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- (2) However, a condition referred to in subsection (1) (c) may be imposed only at the request of an applicant for, or the holder of, the petroleum title.
 - (3) A condition may be imposed under this section:
 - (a) whether or not the land or water that is or may be affected by the activities is or has at any time been land comprised in a petroleum title, and
 - (b) whether or not the activities were carried out by the current holder of the petroleum title, and
 - (c) whether or not the activities were authorised by the petroleum title, and
 - (d) if the petroleum title has been previously wholly or partly transferred, whether or not the activities were carried out under the transferred petroleum title.
 - (4) A condition relating to land or water outside land comprised in a petroleum title (including land previously comprised in a petroleum title):
 - (a) may be imposed only in relation to matters arising, or likely to arise, directly from activities carried out under a petroleum title, and
 - (b) may require the provision and management of environmental off-sets related to the matters referred to in paragraph (a), and
 - (c) may require the monitoring of environmental impacts and the provision of environmental data in relation to the land or water.
 - (5) A condition may be imposed on the holder of a petroleum title in relation to the rehabilitation of land or water affected by activities carried on under a petroleum title that has been cancelled or previously carried on without a petroleum title only if the condition is imposed when the petroleum title is granted or with the consent of the holder.
 - (6) A condition imposed under this section may be varied.
 - (7) A condition may be imposed or varied under this section:
 - (a) when a petroleum title is granted or renewed, or
 - (b) when a full or partial transfer of a petroleum title is approved under this Act, or
 - (c) at any other time during the term of the petroleum title.

- (8) A condition imposed or varied under this section takes effect as follows:
 - (a) in the case of a condition imposed on the grant of a petroleum title—when the grant takes effect,
 - (b) in the case of a condition imposed or varied on the renewal of a petroleum title—when the renewal takes effect,
 - (c) in the case of a condition imposed or varied when a full or partial transfer of a petroleum title is approved under this Act—when the transfer is registered under this Act,
 - (d) in any other case—when written notice of the imposition or variation of the condition is served on the holder of the petroleum title or on any later date specified in the notice.
- (9) A condition imposed under this section may be revoked at any time by written notice served on the holder of the petroleum title.
- (10) This section does not affect the operation of section 89K or 115ZH (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

76 Conditions requiring reporting

- (1) A condition may be imposed on a petroleum title to require the holder to provide the Director-General with reports detailing any one or more of the following:
 - (a) the extent to which the conditions of the petroleum title, or any provisions of this Act or the regulations applicable to activities under the petroleum title, have or have not been complied with,
 - (b) particulars of any non-compliance with any such conditions or provisions,
 - (c) the reasons for any such non-compliance,
 - (d) any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects, of that non-compliance.
- (2) A condition imposed under this section (a **reporting condition**) may require a report to be certified as correct by the holder, another person approved by the Director-General or a person who is a member of a class of persons prescribed by the regulations.
- (3) A reporting condition may be varied.
- (4) A condition may be imposed or varied under this section:
 - (a) when a petroleum title is granted or renewed, or

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- (b) when a full or partial transfer of a petroleum title is approved under this Act, or
 - (c) at any other time during the term of the petroleum title.
 - (5) A condition imposed or varied under this section takes effect as follows:
 - (a) in the case of a condition imposed on the grant of a petroleum title—when the grant takes effect,
 - (b) in the case of a condition imposed or varied on the renewal of a petroleum title—when the renewal takes effect,
 - (c) in the case of a condition imposed or varied when a full or partial transfer of a petroleum title is approved under this Act—when the transfer is registered under this Act,
 - (d) in any other case—when written notice of the imposition or variation of the condition is served on the holder of the petroleum title or on any later date specified in the notice.
 - (6) A reporting condition may be revoked at any time by written notice served on the holder of the petroleum title.
 - (7) A person who provides information or a document in compliance with, or in purported compliance with, a reporting condition is guilty of an offence if the person provides the information or document knowing that it is false or misleading in a material particular.

Maximum penalty:

 - (a) in the case of a corporation—1,000 penalty units, or
 - (b) in the case of a natural person—200 penalty units.
 - (8) A person is not guilty of an offence against subsection (7) in respect of the provision of a document that is false or misleading in a material particular if the person, when providing the document, discloses the manner in which the document is false or misleading.

76A Use of information provided under reporting condition

- (1) Any document or information provided under a reporting condition imposed under this Division may be taken into consideration by the Director-General 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 Director-General 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 reporting condition is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 76 (7)) 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 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.

[10] **Part 7, heading**

Omit the heading. Insert instead:

Part 7 Royalties

[11] **Section 93 Title fees**

Omit the section.

[12] **Part 7A**

Insert after Part 7:

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.

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- (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 Director-General, 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.

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 Director-General 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 Director-General 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 Director-General 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 Director-General is to assess the liability of a person for a fee payable under this Part.
- (2) The Director-General 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 Failure to pay fee

A failure to pay a fee payable under this Part within the time required under this Part is a contravention of this Act, but is not an offence.

Note. A contravention of this Act is grounds for cancellation of a petroleum title.

94Q Late payment fee

- (1) If a fee payable under this Part is not paid within the time required under this Part, the Director-General 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.

[13] Section 95 Records of titles

Insert at the end of section 95 (1) (b):

, and

- (c) every other matter in relation to which the Director-General is required to keep a record by the regulations.

[14] Section 96 Applications for transfer of title

Omit “appropriate lodgment fee” from section 96 (2) (a).

Insert instead “prescribed fee for approval of the transfer of title”.

[15] Section 96A Registration of transfers

Omit “appropriate lodgment fee” from section 96A (2) (b).

Insert instead “prescribed fee for registration of a transfer”.

[16] Section 96B Caveats

Omit “appropriate lodgment fee” from section 96B (1).

Insert instead “prescribed fee for the lodgment of a caveat”.

[17] Section 97 Registration of certain interests

Omit “appropriate lodgment fee” from section 97 (3).

Insert instead “prescribed fee for registration”.

[18] Part 10A

Insert after Part 10:

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.

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- (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.

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 Director-General may assess amount of security deposit

- (1) The Director-General 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 Director-General is the *assessed deposit* for the petroleum title or petroleum titles concerned.
- (3) The Director-General must make an assessment if the regulations require an assessment to be made.
- (4) The Director-General may make an assessment at any other time:
 - (a) at the request of the Minister, or
 - (b) on the Director-General'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 Director-General 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 Director-General 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 Director-General'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 Director-General is to exercise his or her functions under this section having regard to any guidelines approved by the Minister.

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- (11) An assessment by the Director-General 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 Director-General may revise his or her assessment under this section. For that purpose, the Director-General 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 Director-General'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 Director-General 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 Director-General'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 Director-General'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 Director-General in relation to an assessment.
- (3) The review, if conducted by a delegate of the Minister, is not to be conducted by the Director-General or a person who, as the delegate of the Director-General, made the assessment the subject of the review.
- (4) Following the review, the Minister may:
 - (a) affirm the Director-General's assessment, or
 - (b) amend the Director-General's assessment, or
 - (c) set aside the Director-General'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 Director-General. 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.

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- (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 Director-General 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.

[19] Section 118 Release of certain data

Omit "appropriate fee" from section 118 (b).

Insert instead "fee prescribed by the regulations".

[20] Section 119 Release of samples

Omit "appropriate fee" from section 119 (b).

Insert instead "fee prescribed by the regulations".

[21] Section 120 Release of assessments

Omit “appropriate fee” from section 120 (b).

Insert instead “fee prescribed by the regulations”.

[22] Section 136A Contravention of conditions of title

Omit “in the title” from paragraph (a) of the penalty to section 136A (1).

[23] Section 136A (1A)

Insert after section 136A (1):

(1A) A condition of a title is identified as a condition related to environmental management if the condition is identified as a condition related to environmental management:

(a) in the title, or

(b) in any notice of the imposition or variation of the condition given to the title holder.

[24] Section 137 Proceedings for offences

Omit “in the title” from section 137 (2) (b).

[25] Section 138 Regulations

Insert after section 138 (1) (g):

(g1) providing for the remission or waiver of any fees payable under this Act or the regulations, and

[26] Section 138A Minister to determine certain fees

Omit the section.

[27] Schedule 1 Savings and transitional provisions

Insert at the end of clause 2 (1) (b):

any Act that amends this Act

[28] **Schedule 1, Part 7**

Insert after Part 6:

**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).

Commencement

Schedule 6.1 [9] commences on a day or days to be appointed by proclamation.

The remaining items in this Subschedule commence or are taken to have commenced on 1 July 2012.

Explanatory note

Annual rental fee

The amendments introduce an annual rental fee for petroleum titles under the *Petroleum (Onshore) Act 1991* (the *principal Act*).

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. The annual

rental fee for which liability arises on grant of a title must be paid in advance, before the grant is made.

The amount of the annual rental fee for a petroleum title is to be determined as provided for by the regulations (see Schedule 6.2).

Administrative levy

The amendments introduce an administrative levy for petroleum titles under the principal Act.

The levy is an annual administrative levy. Liability arises on the grant of the petroleum title and on every grant anniversary date. The levy for which liability arises on grant must be paid in advance, before the grant is made.

The amount of the administrative levy is, in general terms, one percent of the security deposit amount (being 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 levy is payable when liability arises). A different calculation applies where one security deposit is required in respect of several petroleum titles. If no security deposit is required to be given and maintained in respect of the petroleum title, the administrative levy is one percent of the minimum deposit for the petroleum title (in relation to minimum deposits, see further below).

The minimum administrative levy is \$100 (or any other amount prescribed by the regulations).

Other provisions relating to annual rental fee and administrative levy

The amendments provide for other matters relating to the annual rental fee and administrative levy, including for the recovery of fees as a debt and late payment fees.

Title fees and other fees under principal Act

The amendments transfer provisions relating to the existing title fee payable on the grant or renewal of a petroleum title (which remains payable) to the new Part 7A created by the amendments.

At present, the title fee and certain other fees payable under the principal Act are required to be determined by the Minister, with the concurrence of the Treasurer, but the practice has been to prescribe the fees payable. The amendments validate this practice and make it clear that, for the future, the title fee is to be prescribed by the regulations. The Minister is to recommend the making of such a regulation only with the concurrence of the Treasurer. Other fees are also to be prescribed by the regulations.

Security deposit arrangements

The amendments make a number of changes to the security deposit provisions in the principal Act. The changes relate, in part, to the introduction of an administrative levy.

The principal change is that the amount of the security deposit that may be required under a security deposit condition imposed on a petroleum title must be either an amount assessed for the petroleum title concerned by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (referred to in this Schedule as *the Director-General*) or the minimum deposit for the petroleum title. The minimum deposit is prescribed by the regulations for the type of petroleum title concerned (see Schedule 6.2).

The amendments make provision for the assessment of the security deposit amount by the Director-General and the review of those assessments by the Minister.

The amendments also:

- (a) transfer existing provisions relating to the imposition of security deposit conditions to a new Part, and
- (b) clarify that a security deposit may be required in respect of obligations that may arise under a petroleum title in the future, and

- (c) make other changes, of a statute law revision nature, to the security deposit arrangements under the principal Act so that they are more consistent with the *Mining Act 1992*.

Environment protection conditions

The amendments update the provisions of the principal Act relating to environment protection conditions and reporting conditions so that they are consistent with the scheme proposed for the *Mining Act 1992* (as set out in the *Mining Amendment Act 2008*, which is, as yet, uncommenced).

Other amendments

Other provisions in Schedule 6.1:

- (a) extend the record keeping requirements under the principal Act, to accommodate the keeping of records in respect of the annual rental fee, and
- (b) make changes consequential to the above amendments, and
- (c) provide for the making of savings and transitional regulations, and
- (d) set out transitional arrangements in relation to the above amendments, including providing for the phasing-in of the requirements made by the amendments.

6.2 Amendment of Petroleum (Onshore) Regulation 2007

[1] Clause 12 Records of titles: section 95

Insert after clause 12 (b) (iv):

- (iva) the annual rental fee area for a petroleum title granted or proposed to be granted, if the Director-General is required to keep a record of the annual rental fee area under Part 6,

[2] Part 6, Division 1, heading

Insert before clause 21:

Division 1 General

[3] Part 6, Divisions 2 and 3

Insert after clause 22:

Division 2 Annual rental fees

22A Calculation of annual rental fee

- (1) An annual rental fee specified in Schedule 1 as per block, per hectare, per square kilometre or per unit is to be calculated on the basis of the annual rental fee area.
- (2) The *annual rental fee area* is the number of blocks, hectares, square kilometres or units of land comprised in the annual rental fee area for the petroleum title for which the annual rental fee is

payable, as specified in the record kept by the Director-General under the Act.

- (3) If the annual rental fee area includes a part of a unit or block, that part is to be disregarded.
- (4) If the annual rental fee area includes a part of a hectare, or square kilometre, that part is to be included in the calculation.
- (5) If there is no annual rental fee area for a petroleum title for which an annual rental fee is payable, the annual rental fee is to be calculated as if the description of the land over which the petroleum title is in force, as specified in the record of the petroleum title kept by the Director-General under the Act, were the annual rental fee area.
- (6) To avoid doubt, subclause (5) continues to apply until an annual rental fee area is determined for the petroleum title under this Division and specified in the record kept by the Director-General under the Act.

22B Annual rental fee area

- (1) The Director-General is to determine an annual rental fee area for any petroleum title that is granted or proposed to be granted on or after 1 July 2012.
- (2) The Director-General may determine (and must determine, if required to do so by this Division) an annual rental fee area for a petroleum title granted before 1 July 2012.
- (3) The annual rental fee area is a description of the land to which the petroleum title applies, or is proposed to apply, in terms that enable an annual rental fee payable under Part 7A of the Act to be calculated in respect of the petroleum title.
- (4) Exclusions specified, or proposed to be specified, in a petroleum title are to be counted towards the annual rental fee area.
- (5) The Director-General is required to record an annual rental fee area determined under this clause in the record kept by the Director-General under section 95 of the Act.
- (6) The Director-General may, if the Director-General considers it is fair and reasonable to do so, revise his or her determination of the annual rental fee area for a petroleum title by varying the determination or substituting a new determination.
- (7) If the Director-General revises his or her determination of the annual rental fee area for a petroleum title, the Director-General

is to update the record of the annual rental fee area kept under section 95 of the Act to reflect that revision.

- (8) It is not necessary to determine an annual rental fee area in respect of a petroleum title if the petroleum title is exempt from the requirement to pay an annual rental fee.

22C Minimum annual rental fee

If the annual rental fee payable in respect of a petroleum title under Part 7A of the Act would, but for this clause, be less than \$100, the annual rental fee is taken to be \$100.

22D References to initial term and second term (Schedule 1)

- (1) In Schedule 1, a reference to the *initial term* of a petroleum title is a reference to the initial term for which the petroleum title is granted.
- (2) The initial term of a petroleum title does not include any period starting when the title, as granted, would have expired, but for section 20 of the Act, and during which the title continues in force under that section.
- (3) In Schedule 1, a reference to the *second term* of a petroleum title is a reference to:
- (a) the term (if any) for which the title is first renewed, and
 - (b) any part of the term of the petroleum title that starts when the initial term ends and during which the title continues in force under section 20 of the Act.
- (4) The second term of a petroleum title does not include the period starting when the title, as renewed, would have expired, but for section 20 of the Act, and during which the title continues in force under that section.
- (5) A term of a petroleum title is *after* another term, for the purposes of Schedule 1, if it starts when, or at any time after, the other term ends.

22E Phasing-in of annual rental fee for petroleum titles granted before 1 July 2012

- (1) In relation to a petroleum title in force on 1 July 2012 that was renewed or due for renewal before 1 July 2012, the current term of the title is taken to be the initial term of the title for the purposes of Schedule 1.

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- (2) The **current term** of the title is the term starting on the date when the petroleum title was last renewed or, if the title has not been renewed by 1 July 2012 but continues in force under section 20 of the Act, the date that it was last due for renewal.
 - (3) The current term of the title ends when the title is next due for renewal (on or after 1 July 2012) or when the title ceases to have effect (whichever happens sooner).
 - (4) For the purposes of clause 22D, the first term for which the title is renewed (if any) after the current term is taken to be the term for which the title is first renewed.
 - (5) A petroleum title is **due for renewal** when the term for which it is granted or renewed is due to expire (that is, disregarding any period for which the title is taken to continue in force under section 20 of the Act).

22F Grant anniversary date occurring during period in which petroleum title is automatically extended

- (1) The amount of the annual rental fee payable under Part 7A of the Act in respect of a grant anniversary date that occurs during a period in which a petroleum title is taken to continue in force under section 20 of the Act is to be reassessed if the Minister finally disposes of an application for renewal of the petroleum title by refusing it.
- (2) In such a case, the annual rental fee payable in respect of the most recent grant anniversary date to have occurred is taken to be the relevant proportion of the annual rental fee that, but for this clause, would be payable.
- (3) The **relevant proportion** is the proportion that the number of days in the period from (and including) that most recent grant anniversary date to (but not including) the date the application is refused bears to 366 days.
- (4) A refund is to be provided, as necessary, in accordance with the reassessment.

22G Transitional arrangements for determination of annual rental fee area for petroleum titles in force

- (1) The holder of a petroleum title in force immediately before 1 July 2012, and in relation to which an annual rental fee area has not been determined by the Director-General under this Part, may apply to the Director-General for:
 - (a) a determination of the annual rental fee area for the petroleum title, and

- (b) a reassessment of any liability for an annual rental fee that arose before that determination.
- (2) The application must be lodged with the Director-General before 1 July 2013.
- (3) If an application is made in accordance with this clause, the Director-General must:
 - (a) determine an annual rental fee area for the petroleum title, and
 - (b) reassess any annual rental fee for which liability arose before the determination in accordance with the determination.
- (4) An application under this clause must:
 - (a) be in writing, and
 - (b) be lodged with the Director-General, and
 - (c) specify the manner in which it is requested that the annual rental fee area be defined, and
 - (d) state the reasons why it is fair and reasonable to define the annual rental fee area in the manner specified, and
 - (e) be accompanied by any information or documents required in relation to the request by the Director-General (which requirement may be specified on the Department's website).
- (5) An application under this clause may be made as an adjunct to a request for the partial cancellation of the petroleum title under section 22, and the Director-General may have regard to that request when determining the annual rental fee area.

Division 3 Administrative levies

22H Grant anniversary date occurring during period in which petroleum title is automatically extended

- (1) The amount of the administrative levy payable under Part 7A of the Act in respect of a grant anniversary date that occurs during a period in which a petroleum title is taken to continue in force under section 20 of the Act is to be reassessed if the Minister finally disposes of an application for renewal of the petroleum title by refusing it.

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- (2) In such a case, the administrative levy payable in respect of the most recent grant anniversary date to have occurred is taken to be the relevant proportion of the administrative levy that, but for this clause, would be payable.
 - (3) The *relevant proportion* is the proportion that the number of days in the period from (and including) that most recent grant anniversary date to (but not including) the date the application is refused bears to 366 days.
 - (4) A refund is to be provided, as necessary, in accordance with the reassessment.

221 Transitional assessment arrangements

- (1) The holder of a petroleum title to which the transitional assessment arrangements apply may apply to the Director-General for an assessment of the amount of the security deposit that may be required by a security deposit condition for the petroleum title.
- (2) The transitional assessment arrangements apply to the following petroleum titles:
 - (a) a petroleum title in force on 1 July 2012 that, on that date, is subject to a security deposit condition that requires the holder to give and maintain a security deposit (other than a group security deposit) in excess of the minimum deposit for that petroleum title,
 - (b) a petroleum title in force on 1 July 2012 that, on that date, is subject to a security deposit condition that requires a group security deposit to be given and maintained that is in excess of the sum of the minimum deposits for all petroleum titles for which that group security deposit is required (disregarding any petroleum titles that have been cancelled or otherwise ceased to have effect).
- (3) An application under this clause may be made no later than 6 months after liability for the first administrative levy payable in respect of the petroleum title arises.
- (4) An application under this clause must:
 - (a) be in writing, and
 - (b) be lodged with the Director-General, and
 - (c) contain particulars of the grounds on which the assessment is sought, and

- (d) be accompanied by any information or documents required in relation to the application by the Director-General (which requirement may be specified on the Department's website).
- (5) If an application is made in accordance with this clause, the Director-General must assess the amount of the security deposit.
- (6) Section 106E of the Act applies in relation to an assessment under this clause in the same way as it applies to an assessment under that section.
- (7) After the Director-General makes the assessment, the Minister is to vary the security deposit condition imposed on the petroleum title so that the amount of the security deposit required to be given and maintained in respect of the petroleum title is the assessed deposit.
- (8) If the assessed deposit is less than the security deposit required to be given and maintained in respect of the petroleum title at the time the application is made, the Director-General is to reassess any liability for an administrative levy that arose before the assessment as if the amount of the security deposit required to be given and maintained had been, at the time that the liability arose, the assessed deposit.
- (9) Sections 106F and 106G of the Act apply in relation to an assessment under this clause in the same way as they apply in relation to an assessment under section 106E of the Act.
- (10) In this clause:
group security deposit has the same meaning as it has in Part 10A of the Act.

[4] Clause 24A

Insert before clause 25:

24A Minimum deposit—security deposit conditions

For the purposes of section 106H of the Act, the minimum deposit for a petroleum title is \$10,000.

[5] Schedule 1

Omit the Schedule. Insert instead:

Schedule 1 Fees

(Clause 21)

Matter	Fee
General administrative fees	
On application for a petroleum title (section 12)	\$1,000
On application for a renewal of a petroleum title (section 19)	\$1,000
On application for the appointment of an arbitrator under section 69G	\$180
On application for approval of a transfer of a title, for each title	\$1,000
On registration of a transfer	\$180
On lodgment of a caveat	\$250
Registration of any instrument under section 97	\$250
On application by a person for the grant of an easement or right of way under section 105	\$1,000
On application by a person for the grant of a right of way under section 106	\$1,000
Release of information in accordance with a request under section 118	120% of the cost to the Department of making available the information to which the request relates
Inspection of cores, cuttings or samples in accordance with a request under section 119	120% of the cost to the Department of making available the cores, cuttings or samples to which the request relates
Release of information in accordance with a request under section 120	120% of the cost to the Department of making available the information to which the request relates

State Revenue and Other Legislation Amendment (Budget Measures)
Bill 2012

Schedule 6 Amendment of petroleum (onshore) legislation

Matter	Fee
On application by a person on whom the rights of the registered holder of a title have devolved by operation of law to have the person's name recorded as the registered holder of the title, for each title	\$250
For noting a change of name of the registered holder of a title, for each title	\$250
Title fees	
Title fee—on grant of a petroleum exploration licence (section 94F):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
Title fee—on renewal of a petroleum exploration licence (section 94F):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
Title fee—on grant of a petroleum assessment lease (section 94F):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
Title fee—on renewal of a petroleum assessment lease (section 94F):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
Title fee—on grant of a petroleum production lease (section 94F):	
(a) if associated with methane drainage in or over a colliery	\$5,000
(b) in any other case	\$40,000
Title fee—on renewal of a petroleum production lease (section 94F):	
(a) if associated with methane drainage in or over a colliery	\$5,000
(b) in any other case	\$40,000
Title fee—on grant of a special prospecting authority (section 94F)	\$1,000

Matter	Fee
Annual rental fees	
Annual rental fee—petroleum exploration licence (section 94I):	
(a) for a grant anniversary date occurring during the initial term of the licence	\$60 per block or \$2.40 per unit
(b) for a grant anniversary date occurring during the second term of the licence	\$104 per block or \$4.16 per unit
(c) for a grant anniversary date occurring during a term of the licence after the second term	\$187.50 per block or \$7.50 per unit
Annual rental fee—assessment lease (section 94I):	
(a) for a grant anniversary date occurring during the initial term of the lease	\$9,000 per block or \$120 per sq km
(b) for a grant anniversary date occurring during a term of the lease after the initial term	\$18,000 per block or \$240 per sq km
Annual rental fee—special prospecting authority (section 94I)	\$18.75 per block
Annual rental fee—production lease (section 94I)	\$10,000 per block or \$133.33 per sq km or \$1.33 per ha

Commencement

Schedule 6.2 commences or is taken to have commenced on 1 July 2012.

Explanatory note

Annual rental fee

The amendments provide for the calculation of annual rental fees. An annual rental fee is to be calculated by reference to the annual rental fee area for a petroleum title. The annual rental fee area is the number of blocks, hectares, square kilometres or units of land comprised in the annual rental fee area for the title, as specified in the record kept by the Director-General, in relation to the title, under the principal Act.

The annual rental fee area for a petroleum title is a description of the land to which the title applies (or is proposed to apply), in terms that enable the annual rental fee to be calculated. The annual rental fee area is to be determined by the Director-General.

The Director-General is to determine an annual rental fee area for all petroleum titles granted on or after 1 July 2012 for which an annual rental fee is payable. For petroleum titles granted before that date, the description of the land over which the petroleum title is in force, as specified in the records currently kept by the Director-General, is to be used as the basis of calculation of the annual rental fee. However, transitional arrangements permit an existing petroleum title holder to apply to the Director-General to have an annual rental fee area determined for the title, and liability for an annual rental fee can be assessed or reassessed in accordance with that determination.

The amendments provide for a minimum annual rental fee of \$100.

State Revenue and Other Legislation Amendment (Budget Measures)
Bill 2012

Schedule 6 Amendment of petroleum (onshore) legislation

The amendments also make provision for reassessment of liability for an annual rental fee in the event that an application for renewal of a petroleum title is refused, and for other matters concerning the annual rental fee.

Administrative levy

The amendments make provision for reassessment of liability for an administrative levy in the event that an application for renewal of a petroleum title is refused.

The amendments also provide for transitional arrangements in respect of the assessment of the administrative levy payable in respect of a petroleum title. The provisions permit an existing title holder to apply to the Director-General for an assessment of the amount of the security deposit that may be required in respect of the title. An application may be made only if the security deposit required under the petroleum title exceeds the minimum deposit for the petroleum title. An application must be made no later than 6 months after liability for the first administrative levy payable in respect of the petroleum title arises. If the assessed deposit is less than the existing security deposit required in respect of the petroleum title, liability for an administrative levy is to be reassessed in accordance with that assessment.

Security deposit conditions—minimum deposit

The amendments prescribe a minimum deposit of \$10,000 for all petroleum titles. The minimum deposit is the minimum amount that can be required under a security deposit condition.

The minimum deposit is also used as the basis for calculating the administrative levy payable in respect of a petroleum title if no security deposit condition applies to the petroleum title. (Note however that a minimum administrative levy of \$100 applies.)

Schedule 7 Amendment of Electricity Supply Act 1995 No 94

**[1] Section 15A Distribution network service providers to allow small
renewable energy generators to feed-in to network**

Insert after section 15A (5):

- (5A) The credit recorded under subsection (5) by a distribution network service provider against charges payable is to be reduced by the amount determined by the Tribunal under Division 5 of Part 4 as the retailer benefit component for the supply of electricity as referred to in subsection (5).

[2] Section 15A (8G)

Omit the subsection. Insert instead:

- (8G) A retailer must, in accordance with the regulations (if any):
- (a) pay a regulated offer customer an amount consisting of the amount of any credit recorded under this section for any electricity supplied by the customer together with the amount of the retailer benefit component for the supply of that electricity (as determined by the Tribunal under Division 5 of Part 4), or
 - (b) reduce an amount payable by the regulated offer customer by an amount equal to the amount payable under paragraph (a).

Maximum penalty: 1,000 penalty units.

**[3] Section 34A Retail suppliers to credit electricity supplied by small retail
customers**

Omit section 34A (1). Insert instead:

- (1) A retail supplier must, in accordance with the regulations (if any):
- (a) pay a small retail customer an amount consisting of the amount of any credit recorded under section 15A for any electricity supplied by the small retail customer together with the amount of the retailer benefit component for the supply of electricity (as determined by the Tribunal under Division 5), or
 - (b) reduce an amount payable by the small retail customer by an amount equal to the amount payable under paragraph (a).

Commencement

Item [2] commences on a day to be appointed by proclamation.

Explanatory note (items [1]–[3])

Changes to solar bonus scheme payments to retailers of electricity

Under the solar bonus scheme for electricity contained in sections 15A and 34A of the *Electricity Supply Act 1995*, electricity customers receive payments (or equivalent credits) of varying amounts for electricity produced by their complying generators and supplied to the electricity distribution network. The amounts specified by the provisions for those payments are firstly credited by electricity distributors against network charges payable to them by electricity retailers and subsequently credited by the retailers to the customer supplying the electricity. The amendments will enable the electricity distributor concerned to reduce the credit given to the electricity retailer against network charges payable by the retailer by an amount (the retailer benefit component for the supply of electricity) determined by the Independent Pricing and Regulatory Tribunal (*IPART*). The electricity retailer will be required to credit to the customer supplying the electricity the amount credited by the distributor together with the amount of the retailer benefit component. The effect of these amendments is that the amount paid to the customer remains unchanged but the retailer will be required to contribute to the cost of that amount.

Item [1] provides for the reduction of the amount to be credited by the electricity distributor against network charges.

Item [3] provides that the amount paid or credited by an electricity retailer to a customer for electricity supplied under the scheme is to consist of the amount of the credit recorded by the electricity distributor together with the amount of the retailer benefit component for the supply of the electricity. Item [2] makes the same amendment to another provision of the Act, as a consequence of the proposed repeal of the provision amended by Schedule 1 [13] to the *Energy Legislation Amendment (National Energy Retail Law) Bill 2012* and its re-enactment by that Bill.

[4] Part 4, Division 5, heading

Omit the heading. Insert instead:

Division 5 Determinations by Tribunal

[5] Sections 43ECA and 43ECB

Insert after section 43EC:

43ECA Referrals for determinations relating to solar bonus scheme

- (1) The Minister may refer to the Tribunal, for investigation and report, the determination of the following:
 - (a) the retailer benefit component payable by a retailer to a customer for electricity produced by a complying generator and supplied to the distribution network by the customer under the scheme established under section 15A,
 - (b) the benchmark range for feed-in tariffs paid by retailers for electricity produced by complying generators and supplied to the distribution network.

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- (2) The reference may specify a period within which the Tribunal is to submit a report to the Minister and may require the Tribunal to consider specified matters when making its determination.
 - (3) The Minister may withdraw or amend the reference at any time before the Minister has received the report from the Tribunal.
 - (4) A report is to include any minority report by a member of the Tribunal who wishes to make such a report.
 - (5) The Tribunal is to conduct an investigation and make a determination in a report to the Minister in accordance with this Division.
 - (6) In this section:
complying generator has the same meaning as it has in section 15A.

43ECB Tribunal to determine retailer benefit component and feed-in tariff

- (1) The Tribunal may in a report to the Minister determine a matter specified in section 43ECA if a referral is made under that section. Any such report may be combined with any other report given under this Division.
- (2) The retailer benefit component determined by the Tribunal is to be determined having regard to the financial benefit to retailers as a result of the supply of electricity by customers under the scheme established under section 15A.
- (3) Before determining a matter specified in section 43ECA, the Tribunal must have regard:
 - (a) to any matter it is required by the reference to consider, and
 - (b) to the effect of the determination on competition in the retail electricity market.
- (4) A determination of any such matter may:
 - (a) specify the amount of the retailer benefit component or the range for the feed-in tariff, or
 - (b) specify the methodology for determining the amount or range.
- (5) A determination 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.

[6] Section 43EC Publication of determinations

Omit “determining regulated retail tariffs or regulated retail charges” from section 43EC (1).

Insert instead “under this Division”.

[7] Section 43EJ

Omit the section. Insert instead:

43EJ Division to cease to have effect

- (1) Sections 43EA–43EC cease to have effect on 30 June 2013 or on such earlier or later day as may be prescribed by the regulations.
- (2) This Division (other than sections 43EA–43EC) ceases to have effect on 31 December 2016 or on such earlier or later day as may be prescribed by the regulations.
- (3) Regulations of a savings or transitional nature may be made consequent on the operation of this section.

Explanatory note (items [4]–[7])

Determinations by Tribunal

Item [5] inserts proposed sections 43ECA and 43ECB. The proposed sections enable the Minister to refer to IPART for determination the retail benefit component payable by a retailer to a small retail customer for electricity supplied by the customer to the distribution network under the solar bonus scheme. The Minister may also ask IPART to determine the benchmark range for feed-in tariffs paid by retailers for electricity supplied to the distribution network by complying generators. The provisions also provide for IPART to determine these matters in a report to the Minister. Item [4] makes a consequential amendment.

Item [6] applies to the determinations provisions that require the determinations to be published in the Gazette and to take effect on publication or on a later day specified in the determination.

Item [7] provides for the provisions inserted by item [5] to cease to have effect on 31 December 2016 or such other day as the regulations may prescribe. It also retains and provides for the repeal of the provisions relating to IPART determinations of regulated electricity tariffs and charges on 30 June 2013, the date currently specified in the applicable regulations.

[8] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue and Other Legislation Amendment (Budget Measures) Act 2012, but only to the extent that it amends this Act.

Explanatory note (item [8])

Item [8] enables regulations containing savings and transitional provisions to be made as a consequence of the amendments made by the proposed Schedule.

Schedule 8 Repeal of Hawkesbury-Nepean River Act 2009 No 14

**Schedule 8 Repeal of Hawkesbury-Nepean River Act
2009 No 14**

The *Hawkesbury-Nepean River Act 2009* is repealed.