

FIRST PRINT

PETROLEUM (ONSHORE) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to regulate exploration for petroleum and petroleum mining operations (other than offshore exploration and operations) in New South Wales. These were previously regulated by the Petroleum Act 1955, which the Bill proposes to repeal.

The Bill is directed to improving the 1955 Act in several ways. In particular, the Bill:

- provides for an increased length of tenure of exploration licences;
- affords a title-holder greater security of title by limiting the period within which a petroleum title can be legally challenged;
- adopts new principles concerning the release to industry and to the public of technical and other data relating to petroleum discoveries;
- provides some assurance that an explorer who discovers petroleum will be able to obtain a lease to obtain it in quantity; and
- makes further provision for the protection of the environment.

PART 1—PRELIMINARY

Formal and preliminary matters (clauses 1-5)

This Part specifies the short title of the proposed Act, provides for its commencement on a day or days to be proclaimed and defines certain terms used in it.

A method is provided (by reference to latitude and longitude) of notionally dividing the surface of the Earth into sections (called "graticular sections" or "blocks") for the purposes of the proposed Act. (The areas to be licensed or leased for petroleum mining or exploration purposes are defined in terms of these blocks.)

A method is also provided (by reference to a spheroid approximation of the shape of the planet) of determining the position of any point, line or area at the surface of the Earth where this is necessary for the purposes of the proposed Act or of any instrument made under it.

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PART 2—RIGHTS OF THE CROWN AS TO PETROLEUM, HELIUM AND CARBON DIOXIDE

Ownership by the Crown (clauses 6 and 7)

This Part provides that all petroleum, helium and carbon dioxide naturally located on or below the surface of land in New South Wales is, and is to be regarded as always having been, the property of the Crown. No compensation is payable in respect of any such substance that was at any time vested in any other person, and all instruments of title relating to Crown lands are to be taken to include a reservation to the Crown of all such substances located on or below the surface of the land to which the instruments relate. (These provisions are a continuation of provisions in the Petroleum Act 1955 except in so far as they relate to carbon dioxide.)

An offence of prospecting for or mining petroleum without authority is contained in clause 7. The offence carries a maximum penalty of 1,000 penalty units (currently \$100,000).

PART 3—PETROLEUM TITLES

Division 1—Provisions relating to titles generally

Areas in respect of which titles may be granted (clauses 8 and 9)

The Minister is empowered to grant exploration licences, assessment leases, production leases or special prospecting authorities (all of which are collectively referred to as "petroleum titles") in relation to petroleum over any area in New South Wales other than:

- (a) an area of land included in the territorial sea (as defined in the Petroleum (Submerged Lands) Act 1982);
- (b) a reserved area, that is, an area designated (by notification in the Government Gazette) as one in respect of which no such title is to be granted;
- (c) an area in respect of which a petroleum title has already been granted to another person; or
- (d) an area in respect of which another person has made an application for such a title, where that application awaits determination.

The Minister may invite applications for petroleum titles by advertisement in the Gazette. Notification of all grants of such titles (and of refusals) is to be published in the Gazette.

Applications (clauses 10–16)

Each application for a title is to relate to one area only. (An "area" consists of 2 or more adjoining blocks.) An application is to be in a form approved by the Minister and is to be accompanied by the prescribed fee, plans of the area to which the application relates, a statement of intended operations and evidence of the financial standing and technical qualifications of the applicant (together with evidence of the applicant's ability to comply with the relevant provisions of the proposed Act and regulations).

The Minister may, before granting a title, require the applicant to furnish security in relation to the applicant's obligations under the title.

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Titleholders (clauses 18 and 26)

A title may be granted to a nominee of the applicant.

A title is, in law, taken to be personal property rather than real property (and may be disposed of during the lifetime of the holder or devolve to another on the holder's death).

Renewal of titles (clauses 19 and 20)

Petroleum titles are capable of renewal subject to the same policy as relates to the grant of original titles. A title continues in force pending determination of an application for its renewal.

Refusal, cancellation of applications and titles (clauses 21 and 22)

An application for a title may be refused if it is not made in accordance with the relevant provisions of the proposed Act or the regulations, if the grant of the title would contravene the proposed Act, or if the Minister decides that it would be in the public interest to grant a title over the land concerned to someone else.

A title may be cancelled if the holder does not comply with the conditions attached to it, fails to use the land to which it relates for the purposes for which it was granted, or uses that land for other purposes. It may also be cancelled (wholly or in part) on the written request of the titleholder or if any part of the land to which the title relates is required for any public purpose.

Conditions of titles (clauses 23 and 24)

A title is subject to the conditions specified in it and any conditions prescribed by the regulations. Such of those conditions as relate to the working of the land to which the title relates may be suspended if the titleholder makes written application for such suspension and furnishes reasons the Minister considers to be adequate. The period of the suspension is not to exceed 6 months, and the suspension itself may be subject to conditions.

Validity of titles (clause 25)

The grant of a title cannot be challenged except in proceedings commenced within 3 months after the date on which notification of the granting of the title is published in the Gazette.

Discovery of petroleum (clauses 27 and 28)

The holder of a licence relating to land on which petroleum is discovered must immediately inform the Minister of the discovery of any petroleum and must furnish the Minister with written particulars of that discovery within 3 days.

The Director-General of the Department of Minerals and Energy may direct the holder of a licence relating to land on which petroleum has been discovered to provide the Director-General with written particulars of technical data relating to the find (such as the chemical composition and physical properties of the petroleum and the nature of the stratum in which it occurs). The Director-General may also direct the licence-holder to do such things as the Director-General considers necessary to obtain and determine that technical data.

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Division 2—Exploration licences

Nature of exploration licences (clauses 29–32)

An exploration licence confers on its holder the exclusive right to explore the land to which it relates for petroleum.

The licence must not relate to an area of more than 140 blocks or of less than 1 block (unless the Minister considers that a smaller area is warranted), and its initial term must not exceed 6 years.

Renewals of licences are limited to areas not exceeding 75 per cent of the area in respect of which the licence was originally granted (unless the Minister determines otherwise in view of special circumstances in a particular case).

The Minister may also direct the licence-holder to apply for an assessment lease or production lease in respect of so much of the land as the Minister specifies. If the licence-holder does not comply with the direction, the Minister may cancel the licence.

Division 3—Assessment leases

Nature of assessment leases (clauses 33–37)

An assessment lease confers on its holder the exclusive right to explore the land to which it relates for petroleum and to assess any petroleum deposit on that land.

The lease must not relate to an area of more than 4 blocks and its initial term must not exceed 6 years.

The Minister may direct the holder of an assessment lease to apply for a production lease in respect of so much of the land as the Minister specifies. If the leaseholder does not comply with the direction, the Minister may cancel the lease.

An applicant (or intending applicant) for an assessment lease must give notice of the application (or proposed application) either before lodging it or within 21 days afterwards by causing particulars sufficient to identify the land concerned to be published in a newspaper circulating throughout New South Wales.

Division 4—Special prospecting authorities

Nature of prospecting authorities (clauses 38–40)

A special prospecting authority confers on its holder the exclusive right to conduct certain speculative or scientific surveys on the land to which it relates.

No limitations regarding the area to which the authority is to relate are specified—the area is to be the area considered feasible by the Minister.

The initial term of such an authority is not to exceed 12 months.

Division 5—Production leases

Nature of production leases (clauses 41–45)

A production lease confers on its holder the exclusive right to conduct petroleum mining operations on the land to which it relates. It also confers the right to construct and maintain on that land such structures, and to install such equipment, as are necessary in respect of the lease.

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The lease must not relate to an area of more than 4 blocks and its initial term is not to exceed 21 years.

A production lease may be granted only to an applicant who has held the land concerned under an exploration licence or an assessment lease, unless the Minister invites applications for such a lease. The person who is the incumbent holder is entitled to a lease if the provisions of the proposed Act and regulations and the conditions of the previous titles held by that person have been complied with and if the person agrees to comply with the conditions of the lease.

An applicant (or intending applicant) for a production lease must give notice of the application (or proposed application) either before lodging it or within 21 days afterwards by causing particulars sufficient to identify the land concerned to be published in a newspaper circulating throughout New South Wales.

PART 4—CONSENT OF OTHER GOVERNMENT AUTHORITIES

Division 1—Titles other than production leases

The Environmental Planning and Assessment Act 1979 (clauses 46 and 47)

Proposals for petroleum titles (other than production leases) require an environmental impact study in accordance with Part 5 of the Environmental Planning and Assessment Act. If, however, having carried out that impact study, the Minister decides to grant the title to an applicant, the applicant is entitled to carry out operations authorised by the title (that is, the requirements of the Environmental Planning and Assessment Act are taken to be satisfied in respect of those operations for the lifetime of the title).

Division 2—Objections by government agencies to granting of production leases

Objections (clauses 48–54)

The Minister must serve notice of an application for a production lease on a Government Department or statutory authority if the Minister is of the opinion that the Department or authority would be materially affected by the granting of the lease. (Any corporation established under an Act may be designated by the Minister as a “statutory authority” for the purposes of this Division.)

In particular, detailed notice of such applications must be served on the Director of Planning.

Any Government Department, statutory authority or the Director of Planning when served with such notice may object to the granting of the lease, or propose that certain conditions be imposed on the lease, if granted. The Minister and the Government authority concerned may resolve the objections, but if the objections are not resolved, the matter is to be referred to the Premier for a decision. A lease may not be granted until any objections have been resolved or the Premier has decided the matter.

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A production lease must include any condition proposed in accordance with this Division (unless the proposal is withdrawn or the Premier rejects it) and any condition which the Premier directs.

Failure to include a condition required to be included in a lease does not invalidate the lease, but the Minister may amend the lease so as to include the omitted condition.

Division 3—Objections by local councils to granting of production leases

Objections (clauses 55–61)

Notice of an application for a production lease must be served on the local council if the land to which the application relates is not affected by an environmental planning instrument.

The council concerned may object to the granting of the lease, or propose that certain conditions be included in it, if granted. The Minister must take any such objection or proposal into account when deciding whether or not to grant the lease.

If such a lease is granted after compliance with the Division and petroleum mining operations under the lease are commenced within 5 years of the date on which the lease takes effect, the leaseholder is taken (for the purposes of the Environmental Planning and Assessment Act 1979) to be entitled to use the land the subject of the lease according to the terms of the lease. However, the leaseholder is still required to obtain any necessary approvals relating to the erection of buildings, the opening of roads and the subdivision of land.

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

Development consent required (clauses 62–69)

If a development consent is necessary for the use of land for the purposes of obtaining petroleum, an applicant for a production lease in relation to that land must be served with a notice requiring the applicant to make application for that consent to the appropriate consent authority. The consent authority is to be informed of that notice, and advised that it should lodge with the Minister proposals for conditions it wishes to have included in the lease (if granted).

The consent of the owner of the land to which the application relates is not required.

If development consent to the operations to be carried out under the lease is refused, then the lease cannot be granted. But if development consent is obtained, then any condition of a defined class (see clause 62) relating to operations under the lease that are imposed on the development consent is void as against the holder of the lease.

If an applicant for a production lease obtains the appropriate development consent, and if the lease is granted and petroleum mining operations under the lease are commenced within 5 years of the date on which the consent was given, nothing in or done under the Environmental Planning and Assessment Act 1979 prevents the leaseholder from carrying on petroleum mining operations on the land the subject of the lease. However, the leaseholder is still required to obtain any necessary approvals relating to the erection of buildings, the opening of roads and the subdivision of land, and must comply with all non-operational conditions of the development consent.

PART 5—RESTRICTIONS ON TITLES**Reserved lands (clause 70)**

Holders of petroleum titles must not, without the consent of the Minister, enter on, or conduct any prospecting or mining operations on, lands used, acquired, reserved or granted for public purposes (e.g. roads, recreation reserves, racecourses). The Minister is not to grant that consent, in relation to land that is a State recreation area under the National Parks and Wildlife Act 1974, without the written concurrence of the Minister administering that Act or, if the land is within an irrigation area, the Water Administration Ministerial Corporation.

Cultivated land (clause 71)

Holders of petroleum titles must not, without the consent of the owner and occupier of the land, carry out any prospecting or mining operations or erect any works on land under cultivation. However, the Minister may define an area of the surface of any parcel of such land on which such activities may take place. Before their commencement, an assessment must be made of the amount of compensation to be paid for any loss of or damage to any crop on that land.

Other land (clause 72)

Holders of petroleum titles must not, without the consent of the owner and occupier of the land, carry out any prospecting or mining operations or erect any works on land within 50 metres of land being used as a garden, vineyard or orchard or within 200 metres of the principal residence of the owner or occupier of such land, or on any land on which there is any substantial building or other valuable improvement. If necessary, the Minister is to determine whether any improvement on the land is substantial or valuable, and the Minister may define an area adjoining any such improvement as an area on which the prohibited activities may not be carried out without the consent of the owner and occupier of the land.

Disputes (clause 73)

If a dispute concerning operations carried out (or proposed to be carried out) on any part of any land to which a petroleum title relates arises between the holder of the relevant petroleum title and another person (being a person authorised in certain ways to prospect or mine for gold or any minerals on that land), either party (or both of them) may refer the matter to the Minister for determination. The Minister is to refer the matter to the mining warden for an inquiry and report, on receipt of which the Minister may make such orders (including orders as to the payment of costs) and give such directions as appear to the Minister to be just and equitable in the circumstances.

PART 6—ROYALTIES AND FEES**Royalty payable (clauses 74, 75, 81 and 82)**

A royalty is payable to the Minister by the holder of a petroleum title in respect of all petroleum the holder recovers from the land to which the title relates.

The rate of the royalty is that prescribed by the regulations unless the titleholder, in the application for the title, nominated a higher rate. In that case, the higher rate is the rate payable. The regulations may not prescribe a rate of more than 10 per cent of the value of the petroleum at the equipment used to recover it (the "well-head").

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With regard to any second or subsequent licence granted to the same licensee, the rate to be prescribed by the regulations is the percentage that would be the prescribed rate if that licence were the continuation of the previous licence.

The royalty is to be calculated in respect of each named month and to be paid not later than the last day of the next named month. There are penalties for late payment.

Reduction of royalty (clause 76)

If the Minister is of the opinion that circumstances justify a reduction in the rate of royalty payable, the Minister may determine a lower rate. Such a determination prevails over the regulations. It may be revoked or varied by the Minister.

Royalty not payable in certain cases (clause 77)

No royalty is payable under the proposed Act in respect of petroleum unavoidably lost before the quantity recovered was ascertained, petroleum used by the holder of the relevant petroleum title for purposes authorised by that title, petroleum flared or vented (with the approval of the Minister) in connection with the recovery of petroleum or petroleum returned to a natural reservoir (although a royalty is payable on the petroleum recovered from that reservoir).

Value of petroleum recovered (clause 79)

For the purposes of the proposed Act, the value at the well-head of the petroleum recovered is the amount agreed between the titleholder and the Minister, or, where there is no agreement, the amount determined by the Minister.

Quantity of petroleum recovered (clause 80)

For the purposes of the proposed Act, the quantity of petroleum recovered during a royalty period is the quantity measured during that period by a measuring device approved by the Minister and installed at an approved place or, where no such device is installed (or the Minister is not satisfied as to the accuracy of the measurement), the quantity determined by the Minister.

Fees (clause 83)

In addition to the relevant royalties, a fee for the privilege of being permitted to carry on operations under a petroleum title is payable to the Director-General of the Department of Minerals and Energy.

PART 7—REGISTRATION OF TITLES AND DEALINGS**Records and transfers of title (clauses 85 and 86)**

The Director-General must keep a record of each petroleum title granted.

A title may, with the approval of the Minister, be transferred. An application for transfer must be accompanied by copies of every instrument affecting the title together with details of the proposed transferee's technical qualifications and the technical advice and financial resources that will be available to the transferee. The Minister may impose conditions on the transfer.

Registration of dealings (clause 87)

Copies of every instrument affecting a petroleum title may be lodged with the Director-General for registration, and the Director-General is to keep a register of all such instruments. Failure to register such an instrument does not invalidate it.

PART 8—INSPECTION AND CONTROL**Access to lands and records (clauses 88, 90 and 95)**

The Minister and any officer authorised for the purpose by the Minister is to have access, at all reasonable hours, to all land (and improvements and equipment on the land) subject to a petroleum title (or the subject of an easement or right of way under the proposed Act) and to all documents and records relating to that land. The access is to be granted for the purpose of allowing the Minister or officer to examine and inspect the land and the documents and records (and to make copies of or take extracts from the documents and records) and to ascertain whether the requirements of the title and of the proposed Act are being observed.

An officer of the Department or a surveyor authorised by the Minister may, together with any necessary assistants, enter such land for the purpose of carrying out any survey or of defining any road or for any other purpose authorised by the proposed Act or the regulations.

Similarly, a geologist, geophysicist or geochemist employed by the Department may, with any necessary assistants, enter such land for the purpose of removing any sample of petroleum, water or strata.

Reasonable force may be used in the exercise of a power conferred by this Part.

Notice and compensation (clauses 91 and 92)

Where practicable, an officer must give reasonable notice to the owner and occupier of the land of the officer's intention to enter that land before doing so. The officer must also produce evidence of his or her authority to enter the land if required by the owner or occupier.

The Minister may direct the warden to assess the compensation payable by the Crown as a result of any damage caused as a result of the exercise of any powers conferred by this Part.

Residential premises (clauses 93 and 94)

The powers conferred by this Part may not be exercised in relation to a part of any premises being used for residential purposes except with the consent of the occupier of that part of the premises or under the authority of a search warrant. A person may apply for a search warrant in this respect only if the person has reasonable grounds for believing that a provision of the proposed Act or the regulations or a requirement of the petroleum title has been, or is being, contravened in or on the premises in respect of which the warrant is sought.

PART 9—EASEMENTS AND RIGHTS OF WAY**Land under petroleum title (clause 96)**

The Minister may grant, so as to burden land the subject of a petroleum title, such easements and rights of way as are necessary or appropriate to the development or working of that land or of land to which other petroleum titles relate. Such a grant may be varied or revoked at any time.

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Crown or private land (clause 97)

The Minister may grant such rights of way burdening Crown or private land for the construction of access roads to the land the subject of a petroleum title. Such a grant may be varied or revoked at any time.

PART 10—COMPENSATION**Compensation (clause 98)**

Any person whose estate or interest in land is injuriously affected (or likely to be so affected) by any activities carried on under the proposed Act where those activities affect (or are likely to affect) any portion of the surface of the land, is entitled to be compensated by the holder of the petroleum title concerned or the person to whom the easement or right of way has been granted.

If an easement or right of way burdening land the subject of a petroleum title is granted under the proposed Act, and if the operations of the titleholder under that title are detrimentally affected (or likely to be so affected) by the operations of the petroleum titleholder to whom the grant was made (where those operations affect, or are likely to affect, any portion of the surface of the land), the holder of the title for whose benefit the grant was made is obliged to compensate the titleholder detrimentally affected.

Agreement as to compensation (clause 99)

The person liable to pay compensation and any person to whom that compensation is to be paid may agree on the amount concerned. If they are unable to agree, the warden may, on the application of any one of them, assess that amount.

Assessment of compensation (clauses 101–103)

If the warden assesses the amount of compensation payable, the assessment is to be made of the loss caused (or likely to be caused) by, for example, damage to vegetation or improvements on the land arising from the petroleum operations, severance of the land from other land of the owner or occupier of that land and the effect on stock on the land. Where the entitlement to compensation arises from the holding of a petroleum title, the assessment is also to be of the loss caused (or likely to be caused) by the detrimental effect on the operations of that titleholder. The warden must have regard to any amount of compensation already paid (whether to the person then entitled to it or to a predecessor in title) in respect of the loss being assessed.

The assessment is to be made in the manner prescribed by the regulations and only after notice has been given to the persons who appear to the warden to be interested in the assessment.

The amount assessed is to be paid into the warden's court and is to be paid out of that court on the application of any person entitled to it. If the person liable to pay does not do so, that person's petroleum title or the easement or right of way granted to that person may be cancelled or revoked.

Additional assessments must be made if further loss, arising from one or more compensable causes, is caused to the land to which the original assessment related and the whole of the amount paid into the court under that original assessment has been duly paid out.

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An appeal may be made against an assessment by the warden. The appeal is to be brought in the same manner as an appeal against an assessment of the warden under the Mining Act 1973.

PART 11—WARDENS AND OFFICERS

Appointed under certain other Acts (clause 104)

Wardens and certain other officers appointed under the Mining Act 1973, and inspectors of mines appointed under the Mines Inspection Act 1901, are constituted the appropriate wardens, officers and inspectors for the purposes of the proposed Act.

Such other officers as may be necessary may be appointed by the Governor under the Public Sector Management Act 1988.

Wardens' courts (sections 105–107)

Wardens' courts under the Mining Act 1973 are constituted as wardens' courts for the purposes of the proposed Act.

The court has jurisdiction to hear and determine suits relating to such matters as, for example, the ascertainment and adjustment of boundaries of land held under a petroleum title, the right to the occupation of such land, the right to petroleum in or to be taken out of such land and disputes as to the operations on or the working or management of such land.

The warden may also be directed by the Minister to hold an inquiry in open court in regard to any matter affecting any title, easement or right of way granted or applied for under the proposed Act.

PART 12—RELEASE OF INFORMATION

Release of information and of samples (clauses 109–111)

Information relating to the subsoil or petroleum in a block, and samples from a block, may be released by the Minister to third parties at any time later than 2 years after the information or samples were furnished to the Minister. (This does not include any matter contained in a report, return or document that, in the opinion of the Minister is a conclusion drawn from, or an opinion based on, that information. A matter of that kind may not be released until later than 5 years after it was furnished to the Minister or made available.)

Objections to release of assessments (clauses 112–115)

Before the release of any matter that may not be released until later than 5 years after it was furnished to the Minister, interested persons must be invited (by notice published in the Gazette) to lodge with the Minister a notice objecting to the proposed release. Any such notice must state the grounds of the objection.

Only persons who would be (or could reasonably be expected to be) adversely affected in respect of the person's business, commercial or financial affairs by the release of the information may object to the proposed release.

The Minister must consider all objections received within a specified time and must notify the objector of the Minister's decision in relation to it. None of the information the subject of an objection may be released until the objection is determined.

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Confidentiality of information etc. (clause 116)

Information and samples relating to a block must not be released otherwise than in accordance with the provisions of this Part or for the purposes of the administration of the proposed Act and the regulations.

PART 13—MISCELLANEOUS

Delegation (clause 117)

Any of the Minister's functions may be delegated by the Minister to any office-holder.

Interest in petroleum title (clause 118)

No person charged with any judicial or official function under the proposed Act may hold any beneficial interest in any petroleum title (other than a special prospecting authority) during the person's tenure of office.

Safety (clauses 119 and 120)

In carrying out operations under a petroleum title, the titleholder must have regard to the safety, health and welfare of all persons involved.

An inspector who finds that anything connected with those operations is dangerous may give notice of that finding to the appropriate person and, if the inspector thinks it necessary, direct that the operations cease. A copy of any such notice is to be sent to the Minister.

Power to dispose of land (clause 121)

The powers to deal with land conferred by any other Act are not affected by anything in the proposed Act, except that any such dealings are subject to any rights arising under the proposed Act that are in existence at the time of that dealing.

Furnishing of records and returns (clauses 122, 124 and 126)

Details of operations and expenditures relating to land subject to a petroleum title, together with plans of the land, must be furnished to the Minister annually.

Any statistics, returns or other information required by the Minister must be furnished on request. Records necessary for the compilation of such information must be kept.

Any person who inserts false particulars in any document required to be furnished under the proposed Act, or who supplies any false information, is liable to a maximum penalty of 100 penalty units (currently \$10,000).

Samples of strata, petroleum and water (clause 123)

A holder of a petroleum title must collect, label and preserve samples of strata, petroleum and water and must have those samples scientifically examined.

Offences (clauses 127 and 128)

The proposed Act creates various offences, such as those relating to the obstruction or hindering of a person exercising a function under the proposed Act.

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Proceedings for offences may be taken in a summary way before a warden who is also a Magistrate. Proceedings for the offence of prospecting or mining for petroleum without an authority may also be taken on indictment before the District Court.

Regulations (clause 129)

A regulation-making power is conferred on the Governor.

Repeals (clause 130)

The Petroleum Act 1955 and regulations under that Act are repealed.

Amendment of Search Warrants Act 1985 (clause 132)

The Search Warrants Act 1985 is amended as a consequence of the enactment of the proposed Act.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

This Schedule enacts appropriate savings and transitional provisions as a consequence of the enactment of the proposed Act.

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

PETROLEUM (ONSHORE) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

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

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

3. (1) In this Act:

“**block**” means a graticular section referred to in section 4;

“**Crown land**” means all land within the State that is not private land;

“**Department**” means the Department of Minerals and Energy;

“**Director-General**” means the Director-General of the Department;

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

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

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

“**land**” includes land covered by water;

“**lease for pastoral purposes**” means a lease expressed to be for the purposes of grazing or grazing and the giving of access to water, whether or not the whole or part of the land comprised in the lease may be used for agricultural purposes;

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“onshore area” means any area of land in New South Wales that is not included in the territorial sea within the meaning of the Petroleum (Submerged Lands) Act 1982;

“owner” includes any trustee, guardian or person holding title at law for the benefit of another and any mortgagee in possession, part-owner or lessee from the Crown;

“petroleum” means:

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

and includes any substance referred to in paragraph (a), (b) or (c) of this definition that has been returned to a natural reservoir, but does not include any substance prescribed to be a mineral for the purposes of the Mining Act 1973;

“petroleum deposit” means any naturally occurring accumulation of petroleum on or below the surface of the earth;

“petroleum title” means an exploration licence, assessment lease, production lease or special prospecting authority in force under this Act;

“private land” means:

- (a) land held in fee simple by any person, other than land vested in the Crown or in any person holding it for or on behalf of the Crown or as trustee for public purposes; or
- (b) land held under any of the tenures continued in force under the Crown Lands (Continued Tenures) Act 1989 or comprised in a folio of the Register kept under the Real Property Act 1900, being a folio created in respect of any such tenure; or
- (c) land in the process of alienation from the Crown; or
- (d) any other holdings or lands declared by the regulations not to be Crown lands;

“prospect” means search for a petroleum deposit;

“warden” means a warden under this Act;

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

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

Graticulation of the Earth's surface

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

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

into graticular sections, each of which is bounded:

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

Points etc. to be ascertained by reference to Australian Geodetic Datum

5. (1) If, for the purposes of this Act or of any instrument under this Act, it is necessary to determine the position on the surface of the Earth of a point, line or area, that position is to be determined by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of 100/29825 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia.

(2) That station is taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have ground level of 571.2 metres above the spheroid referred to in subsection (1).

**PART 2—RIGHTS OF THE CROWN AS TO PETROLEUM,
HELIUM AND CARBON DIOXIDE**

These substances the property of the Crown

6. (1) All petroleum, helium and carbon dioxide existing in a natural state on or below the surface of any land in the State is the property of the Crown, and is to be taken to have been so always. No compensation

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is payable by the Crown for any such petroleum, helium or carbon dioxide that was at any time vested in any person other than the Crown.

(2) All Crown grants and leases and every licence and other instrument of title or tenure under any Act relating to lands of the Crown whether granted before or after the commencement of this section, are to be regarded as containing a reservation to the Crown of all petroleum, helium and carbon dioxide existing in a natural state on or below the surface of the land comprised in the instrument concerned.

Offence of prospecting or mining without authority

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

Maximum penalty: 1,000 penalty units.

(2) Nothing in this section prevents a person from prospecting for or mining petroleum if the person is entitled to do so by virtue of a legal instrument:

- (a) approved by the Minister under Part 7; or
- (b) approved under the Mining Act 1973 by the Minister administering that Act.

PART 3—PETROLEUM TITLES

Division 1—Provisions relating to titles generally

Invitation of applications

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

Grant of petroleum titles

9. (1) The Minister may grant a petroleum title over any onshore area within the State, except:

- (a) an area designated by the Minister, by notification published in the Gazette, as an area in respect of which a petroleum title is not to be granted; or
- (b) an area included in an existing petroleum title held by a person other than the applicant; or
- (c) an area included in an application made by another person for a petroleum title, where the application has not yet been determined.

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(2) A notification under subsection (1) (a) may be varied or rescinded by a subsequent notification.

(3) Land included in a petroleum title may be Crown land or private land or partly Crown land and partly private land.

(4) A petroleum title takes effect on the date on which it is signed by the Minister or on a later date specified in the title.

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

Applications to relate to one area only

10. An application for a petroleum title must relate to only one area defined by a block or by contiguous blocks.

Making of applications for petroleum titles

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

Fee for processing applications

12. An application for a petroleum title must be accompanied by the fee prescribed by the regulations in respect of the application.

Applications to be supported by plans

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

Applications to be supported by proposed work program

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

Applications to be supported by evidence of financial standing

15. (1) An application for a petroleum title must be accompanied by evidence of:

- (a) the financial standing of the applicant; and

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- (b) the technical qualifications of the applicant and of his or her technical advisers; and
- (c) the ability of the applicant to comply with the provisions of this Act and the regulations relating to the petroleum title for which application is made.

(2) The applicant, if so requested in writing by the Minister, must furnish such further evidence relating to the matters referred to in subsection (1) as the Minister requires.

(3) If the applicant fails to furnish such further evidence to the satisfaction of the Minister within 30 days of such a request, the application may be refused.

Bond or security to be furnished

16. Before granting a petroleum title, the Minister may require the applicant to give security in such amount and form as the Minister may determine for fulfilment of the applicant's obligations under the title.

Form of titles

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

Title to nominee

18. (1) A petroleum title may, at the request in writing of the applicant, be granted to a person nominated by the applicant.

(2) When such a request is made, a reference in this Act to the applicant for a title includes a reference to the nominee.

Renewal of title

19. (1) The holder of a petroleum title may apply for renewal of the title by application made within the time prescribed by subsection (2).

(2) The prescribed time is:

- (a) in the case of the holder of a petroleum title granted for a term of more than 6 months—during the last 6 months (but not during the last 3 months) of the term of the title; and
- (b) in any other case—during the last month of the term of the title.

(3) The Minister may refuse to grant a renewal of a title on any ground on which the Minister might have refused to grant the title originally or might have cancelled the title during its term.

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

(5) Any requirements, prohibitions and restrictions under this Act that relate to titles and applications for titles apply (except to the extent provided by this Act or the regulations) in the same way to renewals and applications for renewal.

Continuation of title pending renewal

20. If an application for the renewal of a title has not been finally dealt with before the date on which the title would, but for this section, expire, the title continues in force until the date on which the title is renewed or on which notification of refusal of renewal is published in the Gazette or such earlier time as the title is cancelled.

Grounds on which application may be refused

21. An application for a petroleum title may be refused if:

- (a) the application is not made in accordance with this Part and any other relevant provisions of this Act or the regulations; or
- (b) the grant of the title concerned would contravene this Act; or
- (c) the applicant does not meet the Minister's minimum standards in relation to the nature and extent of activities that should be carried on by the holder of the title under the authority of the title; or
- (d) having regard to the nature and extent of the activities proposed to be carried on by the applicant under the authority of the title, the Minister decides that, in the public interest, it would be better to grant to someone else the same or another kind of title over the land concerned.

Cancellation of titles

22. (1) A petroleum title may be cancelled by the Minister if its holder, at any time during the term of the title:

- (a) fails to fulfil or contravenes any of the conditions of the title; or
- (b) fails to use the land comprised in the title in good faith for the purposes for which it has been granted; or
- (c) uses the land for a purpose other than that for which the title has been granted.

(2) A petroleum title may be cancelled either wholly or in part by the Minister on the written request of the holder of the title.

(3) If during the term of any petroleum title any part of the land comprised in the title is required for any public purpose, the Minister

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may, on one month's notice given by the Minister to the holder of the title, cancel the title so far as it relates to the relevant part of the land, either with or without restrictions as to depth.

(4) A cancellation under this section takes effect on the date of notification of the cancellation in the Gazette.

(5) No compensation is payable by the Crown for or in respect of the cancellation of a petroleum title.

Conditions of titles

23. (1) A petroleum title is subject to:

- (a) the conditions imposed by the Minister and specified in the title; and
- (b) any conditions prescribed by the regulations.

(2) In the event of any inconsistency between conditions prescribed by the regulations and conditions imposed by the Minister, the latter prevail to the extent of the inconsistency.

(3) The conditions that may be imposed on a title include (but are not limited to) conditions with respect to:

- (a) work to be carried out by the holder of the title in or in relation to the land comprised in the title during or after the term of the title; and
- (b) amounts to be expended by the holder of the title in carrying out any such work.

(4) Conditions of the kind referred to in subsection (2) may include provision for the carrying out of an approved work program, and approved expenditure, for each year of the term of the title. Such conditions may be varied by the Minister from time to time by notice in writing served on the holder of the title.

Suspension of conditions of petroleum title

24. (1) The Minister may from time to time, on written application being made by the holder of any petroleum title, and if the Minister considers that adequate reasons have been furnished, authorise suspension of any or all of the conditions relating to the working of the land comprised in the title.

(2) The period of such a suspension cannot on any occasion exceed 6 months.

- (3) In granting such a suspension, the Minister may impose conditions:
- (a) for the protection of any wells, equipment or works on the land; or

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- (b) for the protection of any petroleum deposits, water or minerals in the land or in any adjacent land; or
- (c) for any other purpose.

Limitation on challenges to validity of titles

25. (1) The grant of a petroleum title cannot be challenged in any legal proceedings commenced later than 3 months after the date on which notification of the grant of the title is published in the Gazette.

(2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the time limited by subsection (1).

Title taken to be personal property

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

(2) When any application for a petroleum title is granted, it is the duty of the applicant, or the person nominated by the applicant as the title holder, or the legal representatives of the holder on death or bankruptcy, to execute the title when called on. The execution of the title by any such legal representatives is as binding on all persons as if it had been duly executed by the applicant or by a nominee as referred to above.

Discovery of petroleum to be notified

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

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

Directions by Director-General on discovery of petroleum

28. (1) If petroleum is discovered in land comprised in a petroleum title, the Director-General may, from time to time, by instrument in writing served on the holder of the title, direct the holder to furnish to the Director-General, within the period specified in the instrument, particulars in writing of any one or more of the following:

- (a) the chemical composition and the physical properties of the petroleum; and

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- (b) the nature of the stratum in which the petroleum occurs; and
- (c) any other matters relating to the discovery that are specified by the Director-General in the instrument.

(2) The Director-General may, by instrument in writing served on the holder of the title, direct the holder to do, within the period specified in the instrument, such things as the Director-General thinks necessary and specifies in the instrument to determine the chemical composition and physical properties of the petroleum and to determine the quantity of petroleum in the petroleum deposit to which the discovery relates or, if part only of that petroleum deposit is within the land comprised in the title, in the part of the petroleum deposit that is within that land.

Division 2—Exploration licences**Rights of holders of exploration licences**

29. The holder of an exploration licence has the exclusive right to carry out such surveys and other operations, and to execute such works, as are necessary to explore the land comprised in the licence for petroleum.

Area of exploration licence

30. The area comprised in an exploration licence must be:
- (a) not more than 140 blocks; and
 - (b) not less than 1 block, except in cases where for special reasons the Minister considers that a smaller area is necessary or desirable.

Term of exploration licence

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

(2) The size of the area over which the renewal of an exploration licence is granted must not exceed 75 per cent of the size of the area over which the licence was originally granted, unless the Minister, being satisfied that special circumstances exist, otherwise determines.

Direction to holder of exploration licence to apply for lease

32. (1) If petroleum is discovered in land comprised in an exploration licence the Minister may, by instrument in writing, direct the holder of the licence to apply, within such period as may be specified in the direction, for an assessment lease or a production lease in respect of so much of that land as is so specified.

(2) If the holder of an exploration licence does not apply for an assessment lease or production lease in accordance with directions given under this section, the Minister may cancel the licence.

Division 3—Assessment leases

Rights of holders of assessment leases

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

Area of assessment lease

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

Term of petroleum assessment lease

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

Notice of application for assessment lease to be published

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

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

Direction to holder of assessment lease to apply for production lease

37. (1) The Minister may, by instrument in writing, direct the holder of an assessment lease to apply, within such period as may be specified in the direction, for a production lease in respect of so much of the land comprised in the assessment lease as is so specified.

(2) If the holder of an assessment lease does not apply for a production lease in accordance with directions given under this section, the Minister may cancel the assessment lease.

Division 4—Special prospecting authorities**Rights of holders of special prospecting authorities**

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

Area of special prospecting authority

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

Term of special prospecting authority

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

Division 5—Production leases**Rights of holders of production leases**

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

Grant of production lease

42. (1) A production lease may be granted only to an applicant who has held the land concerned under an exploration licence or an assessment lease, unless the Minister, by notice published in the Gazette, has invited applications for a production lease in respect of the area concerned.

(2) A person who has held the land concerned under an exploration licence or assessment lease is entitled to be granted a production lease in respect of the land if:

- (a) the person has complied with the terms and conditions of the licence or lease; and

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- (b) to grant the production lease would not contravene the Environmental Planning and Assessment Act 1979 or any other Act; and
- (c) the person accepts the conditions of the lease.

Notice of application for production lease to be published

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

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

Area of production lease

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

Term of production lease

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

**PART 4—CONSENT OF OTHER GOVERNMENT
AUTHORITIES**

Division 1—Titles other than production leases

Application of Part 5 of Environmental Planning and Assessment Act 1979

46. Nothing in this Act precludes or limits the application of Part 5 of the Environmental Planning and Assessment Act 1979 to operations carried out or proposed to be carried out under a petroleum title other than a production lease.

Environmental Planning and Assessment Act 1979 not otherwise to affect operations

47. If the provisions of Part 5 of the Environmental Planning and Assessment Act 1979 are complied with and a petroleum title other than a production lease is granted, then:

- (a) for the purposes of the Environmental Planning and Assessment Act 1979, the holder of the title is taken to be entitled to use the land comprised in the title for the purpose of carrying out operations authorised by the title; and
- (b) nothing in or done under the Environmental Planning and Assessment Act 1979 or an environmental planning instrument within the meaning of that Act operates so as to prevent the holder of the title from carrying out any such operations on the land comprised in the title; and
- (c) to the extent that anything in, or done under, that Act or any such instrument would so operate, it is of no force or effect in relation to the land comprised in the title or the holder of the title.

Division 2—Objections by government agencies to granting of production leases**Application of this Division to government bodies**

48. (1) In this Division, “Government Department” includes an administrative office.

(2) The Minister may, by order published in the Gazette, designate a corporation established by an Act as a statutory authority for the purposes of this Division. A corporation so designated is a “statutory authority” for the purposes of this Division.

Notice of application for production lease to be sent to Government Departments

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

- (a) stating that an application for the lease has been lodged; and
- (b) containing a description or a plan of the area of land over which the lease is sought; and

- (c) stating that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister within the period specified in the notice.

Notice to be sent to Director of Planning

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

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

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

Objection to grant of production lease

51. A Government Department or statutory authority or the Director of Planning, if served with a notice under this Division, may, within the period specified in the notice, by instrument in writing lodged with the Minister:

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

Resolution of objections

52. (1) The Minister may take, or cause to be taken, such steps as the Minister thinks appropriate in connection with any objection or proposal

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made under this Division and if agreement is not then reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

(2) If any matter is referred to the Premier under this section the Premier may give whatever decision the Premier thinks appropriate.

(3) If required by the Premier to do so, the Minister is to direct a warden to inquire into, and report to the Premier on, any matter referred under this section or any matter connected with such a matter.

Grant of production lease after objection or proposal

53. (1) A production lease must include:

- (a) a condition proposed, in accordance with this Division, to be included in it (unless the proposal for the inclusion of the condition is withdrawn, or rejected by the decision of the Premier) or, if the condition is modified, the condition as so modified; and
- (b) any condition directed to be included in the lease by the decision of the Premier.

(2) The failure to include a condition in a lease as required by this section does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(3) The Minister must cause to be served on the registered holder of a lease amended under subsection (2) a notice in writing setting out the details of the amendment, and the amendment has effect from the date on which the notice is served.

Power to refuse grant of title not affected

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

Division 3—Objections by local councils to granting of production leases

Definitions

55. In this Division, “council” and “local government area” have the same meanings as in the Local Government Act 1919.

Notice of application to be sent to councils in certain cases

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

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

Objection by council

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

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

Consideration of objection

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

Granting of petroleum title after objection or proposal

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

Consent still required for certain works

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

Power to refuse grant of title not affected

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

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

62. In this Division:

“**consent authority**” means an authority or body empowered to grant a development consent;

“**development consent**” has the same meaning as in the Environmental Planning and Assessment Act 1979;

“**operational condition**” means a condition concerning:

- (a) the preparation of land for petroleum mining; or
- (b) mining methods to be employed; or
- (c) the reinstatement of land either during the carrying on of petroleum mining operations or after they have ceased; or
- (d) safety measures to be adopted before petroleum mining operations are commenced or while they are being carried on or after they have ceased; or
- (e) guaranteed deposits or sureties to be made or given with regard to the performance of any matter referred to in paragraph (a), (b), (c) or (d).

Applicant for lease required to obtain development consent

63. If a development consent is necessary under the Environmental Planning and Assessment Act 1979 for the use of land for the purpose of obtaining petroleum, the Minister, before a production lease over the land is granted to the applicant for the lease (being an applicant who has not already obtained that consent), must cause an instrument in writing to be served:

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- (a) on the applicant for the lease, requiring the applicant to make application to the appropriate consent authority for that development consent; and
- (b) on the consent authority concerned:
 - (i) notifying the consent authority that the applicant for the lease has been required to apply for development consent and stating, in the instrument, the conditions proposed to be included in the lease, if granted; and
 - (ii) informing the consent authority that proposals for the inclusion in the lease, if granted, of conditions (including operational conditions) which the consent authority wishes to have included in the lease should be lodged with the Minister within a period specified in the instrument.

Consent of landowner not necessary in application required by this Division

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

Avoidance of certain conditions imposed on grant of development consent

65. (1) Any condition (being an operational condition) imposed by a consent authority, or a body hearing an appeal from a consent authority, as a condition of, or in connection with, a development consent for the purpose of obtaining petroleum is void, and development consent authorising the use of the land concerned for that purpose is taken to have been given free of the condition.

(2) It does not matter whether the development consent was given before or after the grant of the production lease, or whether the condition is sought to be imposed at the time of granting development consent or at any later time.

Environmental Planning and Assessment Act 1979 not otherwise to affect operations

66. (1) After an applicant for a production lease over any land obtains development consent from a consent authority, or from a body hearing an appeal from the consent authority, to the use of the land for the purpose of obtaining petroleum and the lease is granted to that applicant:

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- (a) for the purposes of the Environmental Planning and Assessment Act 1979, the holder of the lease is taken to be entitled to use the land comprised in the lease for the purpose of carrying out operations authorised by the lease; and
- (b) nothing in or done under the Environmental Planning and Assessment Act 1979 or an environmental planning instrument within the meaning of that Act operates so as to prevent the holder of the lease from carrying out any such operations on the land comprised in the lease; and
- (c) to the extent that anything in, or done under, that Act or any such instrument would so operate, it is of no force or effect in relation to the land comprised in the lease or the holder of the lease.

(2) This section ceases to apply in the case of a production lease if petroleum mining operations under the lease have not been commenced within 5 years from the date on which the consent was given to the use of the land (subject to the lease) for the purpose of obtaining petroleum.

Effect of outright refusal of development consent

67. If a consent authority, or a body hearing an appeal from a consent authority, does not give its consent to the use of land for the purpose of obtaining petroleum to a person applying for that consent, the Minister is bound to refuse the application of that person for a production lease over the land.

Certain consents and conditions still operative

68. This Division does not operate so as to exempt the holder of a production lease:

- (a) from obtaining any development consent which the holder is required to obtain in connection with the erection of buildings, the opening of roads or the subdivision of lands; or
- (b) from complying with any condition (not being an operational condition) subject to which development consent to use the land for the purpose of obtaining petroleum was given.

Power to refuse grant of title not affected

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

PART 5—RESTRICTIONS ON TITLES**Restrictions on rights of holders of titles over reserved lands etc.**

70. (1) Without the consent of the Minister being first obtained, nothing in this Act or the regulations or in any petroleum title authorises any person to enter on or conduct any prospecting or mining operations on the surface of any of the following classes of lands, namely:

- (a) streets, lanes, roads or highways;
- (b) lands reserved, dedicated, appropriated, resumed or acquired for public purposes whether vested in the Crown or in any person for or on behalf of the Crown or in any person as trustee for public purposes;
- (c) lands granted or vested in trust by the Crown for the purposes of a racecourse, cricket-ground, show-ground, recreation reserve, park or permanent common or for any other public purpose.

(2) The Minister may refuse consent under this section or may grant consent either unconditionally or on such conditions as the Minister thinks fit. A condition on any such consent operates as a condition of the title.

(3) The Minister may not grant consent under this section in respect of lands within a state recreation area under the National Parks and Wildlife Act 1974:

- (a) without the concurrence in writing of the Water Administration Ministerial Corporation, where the lands concerned are within an irrigation area as defined in the Crown Lands Act 1989; or
- (b) without the concurrence in writing of the Minister for the time being administering the National Parks and Wildlife Act 1974, in any other case.

Restrictions on rights of holders of titles over cultivated land

71. (1) The holder of a petroleum title must not carry out any prospecting or mining operations or erect any works on the surface of any land which is under cultivation except with the consent of the owner and occupier of the land.

(2) The Minister may, however, if the Minister considers that the circumstances warrant it, define an area of the surface of any parcel of cultivated land on which prospecting or mining operations may be carried out or works may be erected, and may specify the nature of the operations

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to be carried out or the works to be erected. Before any such operations are commenced or works are erected, however, the warden is to assess the amount to be paid as compensation for any loss of or damage to any crop on the land concerned.

(3) Cultivation for the growth and spread of pasture grasses is not to be taken to be cultivation within the meaning of this section unless, in the opinion of the Minister, the circumstances so warrant.

(4) In the case of dispute as to whether land is or is not under cultivation within the meaning of this section, the Minister's decision on the matter is final.

Restrictions on rights of holders of titles over other land

72. (1) The holder of a petroleum title must not carry out any prospecting or mining operations or erect any works on the surface of any land:

- (a) within 50 metres of any land bona fide in use as a garden, vineyard or orchard; or
- (b) within 200 metres of the principal residence of the owner or occupier of any such land; or
- (c) on which there is any substantial building, bridge, dam, reservoir, well or other valuable improvement,

except with the consent of the owner and occupier of the land.

(2) If need be, the Minister is to determine whether any improvement referred to in subsection (1) (c) is substantial or valuable, and may define an area adjoining any such improvement on the surface of which no prospecting or mining operations are to be carried out or works erected without the consent of the owner and occupier of the land.

(3) The requirement to obtain any necessary consent referred to in subsection (2) is taken to be a condition of the title concerned.

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

73. (1) This section applies where, in respect of any part of any land comprised in a petroleum title, any person is authorised to prospect or mine for any minerals by virtue of:

- (a) any claim registered, or authority granted, under the Mining Act 1973; or
- (b) any authorisation or concession granted under the Coal Mining Act 1973; or
- (c) the person's ownership of any minerals; or

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- (d) an agreement with the owner of any minerals; or
- (e) the provisions of the State Coal Mines Act 1912,

and a difference arises between the holder of the petroleum title and the person so authorised about the operations carried out or proposed to be carried out by either party.

(2) Either party, or both of them, may refer the matter for determination to the Minister, who must then refer the matter to the warden for an inquiry and report.

(3) On receipt of the warden's report, the Minister may make such orders and give such directions to either or both of the parties as seem to the Minister to be just and equitable having regard to the public interest and the circumstances of the case.

(4) Such an order may direct the payment by either or both parties of any costs and expenses incidental to the conduct of the inquiry.

PART 6—ROYALTIES AND FEES

Royalty periods

74. In this Division, the "royalty periods" for a particular petroleum title are:

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

Royalty

75. (1) The holder of a petroleum title must pay to the Minister a royalty in respect of all petroleum recovered by the holder of the title in the area comprised in the title.

(2) The royalty is payable at the rate for the time being prescribed by the regulations (being not more than 10 per cent of the value at the well-head of the petroleum) unless the holder of the title, in his or her application for the title, nominated a higher rate, in which case royalty is payable at that higher rate.

(3) The rate to be prescribed by the regulations in respect of the petroleum recovered from the land comprised in a second or subsequent licence granted to the same licensee is the percentage that would be the prescribed rate if the licence so granted were the continuation in force of the previous licence.

Reduction of royalty in certain cases**76. (1) If:**

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

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

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

(3) Determinations of the Minister under this section have effect despite the regulations.

Royalty not payable in certain cases**77. (1) Royalty under this Act is not payable in respect of:**

- (a) petroleum that the Minister is satisfied was unavoidably lost before the quantity of that petroleum was ascertained; or
- (b) petroleum that is used by the holder of the petroleum title for the purposes of operations authorised by the title; or
- (c) petroleum that, with the approval of the Minister, is flared or vented in connection with operations for the recovery of petroleum.

(2) If petroleum that has been recovered by the holder of a petroleum title is, with the approval of the Minister, returned to a natural reservoir, royalty is not payable in respect of that petroleum by reason of that recovery, but this subsection does not affect the liability of that or any other holder of a petroleum title to pay royalty in respect of petroleum that is recovered from that natural reservoir.

Ascertainment of well-head

78. For the purposes of this Act, the well-head, in relation to any petroleum, is such equipment used for the recovery of the petroleum as is agreed between the holder of the petroleum title and the Minister or, in

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default of agreement within such period as the Minister allows, is such equipment used for the recovery of petroleum by that holder as is determined by the Minister as being that well-head.

Ascertainment of value

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

Ascertainment of quantity of petroleum recovered

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

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

Payment of royalty

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

Penalty for late payment

82. (1) If an amount of royalty is not paid in due time, there is payable to the Minister by the holder of the petroleum title an additional amount calculated at the rate of one-third of one per cent per day on the amount of royalty from time to time remaining unpaid, to be computed from the time when the royalty became payable until it is paid.

(2) An additional amount in respect of royalty is not payable under subsection (1) in respect of any period before the expiration of 7 days after the value of the petroleum was agreed or determined under this Part.

Title fees

83. (1) For the privilege of being permitted to carry on operations under a petroleum title, a fee in an amount prescribed by the regulations is payable to the Director-General on behalf of the Crown on the grant of the title.

(2) The fee is payable by the person to whom the title is granted and is payable in addition to any royalty payable under this Part.

Recovery of royalties, fees and penalties

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

PART 7—REGISTRATION OF TITLES AND DEALINGS**Records of titles**

85. A record is to be kept by the Director-General of every petroleum title granted.

Approval and registration of transfers of title

86. (1) A transfer of a petroleum title is of no force until it has been approved by the Minister.

(2) If it is desired that a petroleum title be transferred, one of the parties to the proposed transfer may make an application in writing to the Minister for approval of the transfer.

(3) An application for approval of a transfer of a petroleum title must be accompanied by:

- (a) an instrument setting out:
 - (i) the technical qualifications of the transferee or transferees; and
 - (ii) details of the technical advice that is or will be available to the transferee or transferees; and
 - (iii) details of the financial resources that are or will be available to the transferee or transferees; and
- (b) every instrument (whether a sublease, tribute agreement, option contract, mortgage, deed of trust, partnership agreement, working agreement or other instrument) affecting the title, together with a copy of each such instrument certified by any two persons to be a true copy of the original.

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(4) The Minister may refuse to approve of the transfer or may approve of it unconditionally or subject to such conditions as the Minister thinks necessary in the public interest to impose.

Registration of dealings

87. (1) The original or a copy of any instrument (whether a sublease, tribute agreement, option contract, mortgage, deed of trust, partnership agreement, working agreement or other instrument) affecting any petroleum title may be lodged with the Director-General for registration.

(2) The Director-General is to maintain a register of all such instruments lodged.

(3) Failure to register an instrument under this section does not affect its validity.

PART 8—INSPECTION AND CONTROL

Inspection of land, accounts etc.

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

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

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

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

Survey

89. An officer of the Department authorised by the Director-General for the purposes of this Part, or a surveyor so authorised, may at all reasonable times enter any land with such assistants as he or she may think necessary:

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- (a) for the purpose of carrying out any survey; or
- (b) for the purpose of defining any road; or
- (c) for the purpose of carrying out a geological or geophysical survey;
or
- (d) for any other purpose authorised by this Act or the regulations.

Sampling

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

Notice to owner and occupier

91. (1) Before a person enters any land pursuant to this Part, the person must:

- (a) if practicable, give reasonable notice to the owner and occupier of the land of the person's intention to do so; and
- (b) if required by that owner or occupier, produce evidence that the person is authorised by the Director-General for the purposes of this Part.

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

Compensation for damage

92. The Minister may direct the warden, in any particular case, to assess the compensation payable by the Crown in respect of any damage caused as a result of the exercise of any powers under this Part.

Residential premises

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

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

Search warrant

94. (1) In this section:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

(2) The Director-General or an officer of the Department may apply to an authorised justice for a search warrant in respect of any premises if the person has reasonable grounds for believing that a provision of this Act or the regulations or a requirement of a petroleum title has been or is being contravened in or on those premises.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a person named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for evidence of a contravention of this Act, the regulations or the requirements of a petroleum title.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

Use of force

95. If a person exercising any power under this Part is resisted by any person, such force may be used as is reasonably necessary for the exercise of the power.

PART 9—EASEMENTS AND RIGHTS OF WAY

Easements and rights of way over lands under petroleum title

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

(2) The Minister may from time to time vary or revoke any grants under this section.

Rights of way over Crown or private land

97. (1) The Minister may on such terms as the Minister thinks just grant for joint or several use rights of way through, on or in any Crown land or private land for the construction of access roads to the land comprised in a petroleum title.

(2) The Minister may from time to time vary or revoke any grants under this section.

PART 10—COMPENSATION**Compensation**

98. (1) The holder of a petroleum title, or a person to whom an easement or right of way has been granted under this Act, is liable to compensate every person having any estate or interest in any land injuriously affected, or likely to be so affected, by reason of any operations conducted or other action taken in pursuance of this Act or the regulations or the title, easement or right of way concerned.

(2) The holder of a petroleum title is liable to compensate any other holder of a petroleum title whose operations under the title are detrimentally affected, or likely to be so affected, by the grant under this Act of an easement or right of way through, on or over the land comprised in the title held by that other holder or by the use of any such easement or right of way.

(3) Compensation is not payable under this Act by the holder of a petroleum title, or a person to whom an easement or right of way has been granted under this Act, where the operations of the holder or person do not affect, and are not likely to affect, any portion of the surface of any land.

Parties to agree as to compensation

99. (1) The holder of a petroleum title may treat and agree with any person entitled to compensation under this Act as to the amount of the compensation.

(2) If within a time prescribed by the regulations the parties are unable to agree on the amount of compensation to be paid, then, on the application of any party, the warden may assess the amount of compensation to be paid by the holder of the title concerned. The warden's decision is binding on the parties.

Measure of compensation

100. (1) If compensation is assessed under this Act by the warden, the assessment is to be of the loss caused or likely to be caused:

- (a) by damage to the surface of land, and damage to the crops, trees, grasses or other vegetation on land, or damage to buildings and improvements on land, being damage which has been caused by or which may arise from prospecting or petroleum mining operations; and

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- (b) by deprivation of the possession or of the use of the surface of land or any part of the surface; and
 - (c) by severance of land from other land of the owner or occupier of that land; and
 - (d) by surface rights of way and easements; and
 - (e) by destruction or loss of, or injury to, or disturbance of, or interference with, stock on land; and
 - (f) by all consequential damage.
- (2) Without affecting the generality of subsection (1), where:
- (a) the holder of a petroleum title is liable to compensate another holder of a petroleum title; and
 - (b) the compensation is assessed under this Act by the warden,

the assessment is to be of the loss caused or likely to be caused by the operations of the other holder being detrimentally affected, or being likely to be so affected.

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

Manner of assessment

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

- (2) In making any such assessment, the warden:
- (a) may deal with the matter at any time and place fixed by the warden; and
 - (b) may make the assessment in the absence of any persons interested who appear to the warden to have been duly notified; and
 - (c) may adjourn the hearing to any time and place, subject to such terms as to costs or otherwise as the warden thinks fit; and
 - (d) has the powers of a warden's court.

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(3) The amount so assessed is to be paid, by the person adjudged liable to pay it, into the warden's court within the time specified by the warden and is from time to time, as may be thought necessary by the warden, to be paid out of court on the application of any person entitled to it.

(4) If the amount so assessed is not paid into court within the time specified by the warden, the petroleum title of the holder, or the easement or right of way granted to the person, liable to make the payment may be cancelled or revoked, as the case may be.

(5) If, after 6 months and before 12 months from the determination of a petroleum title, or the revocation of an easement or right of way, under this section, the whole or any part of an amount so paid into court has not been paid out under this section and has not been ordered to be paid out, any person who has paid the amount into court may apply to the warden for the payment out to him or her of the amount or part. The warden may order the amount or part to be paid accordingly.

(6) After the expiration of the 12-month period the warden may cause the amount or part to be paid into the Treasury and carried to the Consolidated Fund.

Additional assessment

102. If, after an assessment has been made in accordance with this Part, it is proved to the satisfaction of the warden:

- (a) that the whole of the amount paid into court pursuant to this Part has been duly paid out; and
- (b) that since the date of the payment out, or the last payment out, as the case may be, further loss has been caused to the land to which the assessment relates, or to other land, being loss arising from any one or more of the causes mentioned in section 100 (1);

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

Appeals from assessments

103. An appeal may be brought against an assessment made by the warden under this Act in the same manner as an appeal against an assessment of the warden made under the Mining Act 1973, and the provisions of that Act, with any necessary modifications, apply accordingly.

PART 11—WARDENS AND OFFICERS**Officers appointed under certain Acts taken to be officers under this Act**

104. (1) All wardens, registrars, surveyors and other officers appointed under the Mining Act 1973, and all inspectors of mines appointed under the Mines Inspection Act 1901, are by this section constituted wardens, registrars, mining surveyors and such other officers and inspectors, respectively, under and for the purposes of the administration of this Act. They have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on them by or under this or any other Act.

(2) The Governor may, from time to time, under and subject to the provisions of the Public Sector Management Act 1988, appoint such other officers as may be necessary for the purposes of this Act.

Wardens' courts

105. Wardens' courts under the Mining Act 1973, are by this section constituted wardens' courts for the purposes of this Act and the provisions of Part 9 of the Mining Act 1973, with any necessary modifications, apply accordingly.

Jurisdiction of court

106. (1) For the purposes of this Act, a warden's court has jurisdiction to hear and determine all proceedings relating to any of the following matters:

- (a) any demand concerning the ascertainment and adjustment of boundaries of land held under a petroleum title, or occupied by virtue of an easement or right of way granted under this Act, where such boundaries are in dispute or doubtful—in which case the court is to ascertain and determine such boundaries by such means as may be found convenient, and may make and give all such orders and directions as may be necessary for the purpose of carrying out or giving effect to its determination;
- (b) the right to the occupation of areas of land comprised in a petroleum title and the right to or ownership of petroleum and other materials obtained from them;
- (c) the right to the use of areas of land comprised in an easement or right of way granted under this Act;

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- (d) any encroachments on, infringements of or damage to any land comprised in a petroleum title;
- (e) any encroachments on, infringements of or damage to an easement or right of way granted under this Act;
- (f) any demand for debt or damages or both arising out of or made in respect of any contract whatever relating to the search for or mining of petroleum;
- (g) the right to any petroleum in or to be taken out of any land comprised in a petroleum title or in respect of any matter concerning or arising out of any contract relating to any such petroleum;
- (h) any demand concerning or arising out of any partnership for or in relation to the search for or mining of petroleum in any land comprised in or held under any petroleum title, easement or right of way granted under this Act, or any partnership in any such land, or in any works, machinery or petroleum, or concerning or arising out of any contract for or in connection with any such search or mining, or for the dissolution wholly or in part of any such partnership;
- (i) any demand concerning contributions to calls or to the expense of working or using any such land or works or any share or interest in any such contributions;
- (j) any demand concerning or arising out of any mortgage or assignment by way of security of or charge on any such land, works, machinery, petroleum or any share or interest in any such mortgage or assignment;
- (k) any demand concerning the cancellation and delivery up of instruments relating to:
 - (i) mortgages, charges or encumbrances of or on any such land, works, machinery or petroleum, or any share or interest in them; or
 - (ii) any assignment of such mortgages, charges and encumbrances; or
 - (iii) any contract respecting the working or use of any such land, works or machinery or any partnership for or in relation to the search for or mining of petroleum or the total or partial dissolution of any such partnership;
- (l) any money claimed to be due on any account relating to a partnership for or in relation to the search for or mining of petroleum or in any way accruing to the complainant from any such partnership, or any adventure or interest;

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- (m) the recovery of any money which any person is liable to pay under this Act or the regulations and for which no other mode of recovery is provided under this Act or the regulations;
- (n) all questions and disputes which may arise:
 - (i) between holders of petroleum titles; or
 - (ii) between holders of petroleum titles and owners or occupiers of private lands or occupiers of Crown lands;
- (o) all questions or disputes which may arise as to operations on or the working or management of the land comprised in a petroleum title;
- (p) such other matters as may be prescribed by this Act or the regulations.

(2) The jurisdiction conferred by this section extends to cases where the right or title of either party is derivative by assignment or otherwise as well as to where it is original.

Inquiry may be directed

107. The Minister may direct the warden to hold an inquiry on oath in open court with reference to any matter affecting any title, easement or right of way granted under this Act or any application for any such title, easement or right of way.

PART 12—RELEASE OF INFORMATION**Definitions**

108. (1) In this Part, a reference to a core, cutting or sample includes a reference to a portion of a core, cutting or sample.

(2) For the purposes of this Part:

- (a) cores and cuttings, and well data logs, sample descriptions and other documents, relating to the drilling of a well, are taken to have been furnished to the Minister not later than one month after the drilling of the well was, in the opinion of the Minister, substantially completed; and
- (b) geophysical or geochemical data relating to geophysical or geochemical surveys are taken to have been furnished to the Minister not later than one year after the geophysical or geochemical field work was, in the opinion of the Minister, substantially completed.

Release of certain data

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

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

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

Release of samples

110. The Minister may, at any time later than 2 years after being furnished with them:

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

any cores or cuttings from, or samples of, the subsoil in a block, or samples of petroleum recovered in a block, that have been furnished to the Minister under this Act.

Release of assessments

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

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

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

Invitation of objections to release of assessments

112. Before the Minister or another Minister makes available or publicly known any information under section 111, the Minister or the other Minister, as the case may be, must:

- (a) cause to be published in the Gazette a notice:
 - (i) stating that the Minister proposes to make the information available or publicly known; and
 - (ii) inviting persons having a right to make an objection to give to the Minister, by such day as is specified in the notice (being a day not earlier than 45 days after the publication of the notice), a notice objecting to the whole or any part of the information being made available or publicly known; and
 - (iii) stating that, if a person does not make an objection in accordance with the invitation, the person will be taken to have consented to the information being made available or publicly known; and
- (b) if it is practicable to do so, cause a copy of the notice so published in the Gazette to be served on the person who furnished the document containing the information.

Objector to state ground

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

Who may object

114. A person has no right to make an objection to information being made available or publicly known under section 111 except on the grounds that to do so would disclose a trade secret or would disclose other information the disclosure of which would, or could reasonably be expected to, adversely affect the person in respect of his or her lawful business, commercial or financial affairs.

Consideration of objections

115. (1) The Minister must consider any objection received and must determine it within 45 days of receipt by allowing the objection wholly or in part or by rejecting it.

(2) The Minister is to notify the objector in writing of the decision.

(3) The Minister cannot make available or make publicly known any information under section 111 while an objection is undetermined.

Information to be otherwise confidential

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

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

PART 13—MISCELLANEOUS**Delegation of functions by Minister**

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

Minister or officer not to be interested in petroleum title

118. (1) The Minister may not, nor may any warden, registrar, mining surveyor, inspector or other officer charged with any judicial or official duties under this Act, hold either directly or indirectly, during his or her tenure of office, any beneficial interest in any petroleum title (other than a special prospecting authority).

(2) A person to whom subsection (1) applies who, while holding an interest in contravention of that subsection, acts in his or her office is guilty of an offence.

Maximum penalty: 100 penalty units.

Work practices

119. (1) The holder of a petroleum title must:

- (a) carry out all petroleum exploration operations and operations for the recovery of petroleum in the title area in a proper and workmanlike manner and in accordance with good oil-field practice; and
- (b) secure the safety, health and welfare of persons engaged in those operations in or about the title area.

Maximum penalty: 100 penalty units.

(2) This section operates as a condition of every petroleum title.

Notice to be given of cause of danger

120. (1) If an inspector finds any matter, thing or practice connected with the operations conducted on any land subject to a petroleum title, or with the use of any easement or right of way under this Act, to be so dangerous or defective as in the inspector's opinion to threaten or tend to injure the health or body of any person, the inspector may:

- (a) give notice of that finding in writing to the registered holder of the title or the manager of the operations or to the person to whom the easement or right of way was granted; and
- (b) state in the notice the particulars in which the inspector considers those operations to be dangerous or defective and require them to be remedied within a period specified in the notice; and
- (c) if the inspector thinks it necessary, direct that the registered holder of the title, the manager of the operations or the person to whom the easement or right of way was granted cause the operations or any part of the operations to cease, or cause persons on the land to be withdrawn, either indefinitely or for such period as is specified in the notice by the inspector.

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

Saving of powers to dispose of land

121. (1) Nothing in this Act or the regulations or in any petroleum title, or in any easement or right of way under this Act, abrogates or limits any power conferred on the Governor or any Minister of the Crown or any other person by any other Act to reserve, dedicate, grant, sell, lease or otherwise deal with or dispose of any land.

(2) Any such reservation, dedication, grant, sale, lease or other dealing or disposition is, however, subject to any rights that have been conferred by or under this Act or any petroleum title, or by any easement or right of way under this Act, and that are in existence at the time of the reservation, dedication, grant, sale, lease or other dealing or disposition.

Records to be furnished

122. (1) Every holder of a petroleum title must not later than on the first anniversary of the grant of the title, and at or before each such anniversary in each subsequent year, furnish to the Minister a record in the prescribed form of the operations conducted and expenditures incurred during the 12 months to which the record relates on the land comprised in the title, together with a plan drawn to the prescribed scale showing:

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- (a) the situation of all wells on that land; and
 - (b) all development and other works and improvements executed by the holder in connection with the holder's prospecting operations or mining operations; and
 - (c) full particulars of any ancillary rights acquired for the exercise of the rights or for the performance of the obligations arising out of the grant of such title; and
 - (d) such other matters and things as the regulations may require.
- (2) To the extent required by the regulations, every holder of a petroleum title must:
- (a) keep accurate geological plans, maps and records relating to the land comprised in the title; and
 - (b) furnish to the Minister such geological and other plans and information as to the progress of operations on such land as the Minister may from time to time require.

Samples of strata, petroleum and water

123. (1) Every holder of a petroleum title must:

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

Furnishing of statistics, returns etc.

124. (1) Every holder of a petroleum title and any other person carrying on any operation in connection with any such title who is called on so to do must, at such times and in such manner as the Minister may require, furnish such statistics, returns and other information as may be required and must keep such records as may be necessary for the completion of any such statistics and returns.

(2) Any information required under this section in respect of any particulars supplied in or omitted from a return must be furnished within such period as may be specified by the Minister.

(3) Statistics, returns and information obtained pursuant to this section, are to be treated as confidential, but the Minister may cause to be published or otherwise made available the results of such statistics, returns and information with respect to the whole of New South Wales or any portion of the State and such details furnished on an individual return (other than details relating to working expenses) as the Minister may think fit.

Notices

125. If under the provisions of this Act or the regulations or any petroleum title, it is provided that notice is to be given by the Minister, it is sufficient if such notice is signed by the Minister. All notices required to be served by this Act are sufficiently served if served in the manner prescribed by the regulations.

False returns

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

Maximum penalty: 100 penalty units.

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

Other offences

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

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

is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) A person who contravenes:

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

is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) Any owner or occupier of private land or any occupier of Crown land or any other person who:

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

is guilty of an offence.

Maximum penalty: 100 penalty units.

Proceedings for offences

128. (1) Proceedings for an offence under section 7 may be taken on indictment before the District Court or in a summary manner before a warden who is a Magistrate.

(2) A fine imposed by the District Court on conviction of the offender in proceedings referred to in subsection (1) may be enforced as if the conviction were an order for payment of a civil debt in the amount of the fine.

(3) If proceedings for an offence under section 7 are taken before the warden, the maximum penalty that may be imposed on conviction by the warden is 100 penalty units.

(4) Proceedings for any other offences under this Act may be taken in a summary way before any warden who is a Magistrate.

Regulations

129. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to prescribing any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, for or with respect to:

- (a) determining the dimensions, boundaries, form, position and extent of any land comprised or to be comprised in any petroleum title, their subsequent adjustment where necessary and the time when such a determination takes effect; and
- (b) determining requirements to be complied with by persons who want to acquire petroleum titles; and
- (c) providing for the registration and the mode of applying for and effecting the registration of petroleum titles, of the transfer or assignment of such titles or of any interest in them and of every assignment of a tribute or option contract affecting the land comprised in a petroleum title or any part of any such land; and
- (d) prescribing conditions or covenants subject to which any petroleum title is to be held, and the conditions on which exemption from the performance of any such covenants or conditions may be applied for, granted, and obtained, and, generally, for prescribing the manner in which and with what incidents, rights and obligations such titles are to be held, occupied, used, worked and enjoyed; and
- (e) the prevention of nuisances in or about the land comprised in any petroleum title and for cleansing and keeping clean the same; and
- (f) prescribing returns to be furnished by holders of petroleum titles of work done and petroleum obtained or any other products produced by any such holders; and
- (g) prescribing the fees payable for applications, surveys, exemptions from performance of conditions or covenants and for registration of transfers, assignments, subleases, tributes, option contracts, devolution of title or any other matter or thing required or permitted by this Act or the regulations to be registered; and
- (h) the treatment of water underground or at the surface and the prevention of waste or loss of water or petroleum or pollution of deposits of water or petroleum; and
- (i) prescribing the drilling machinery, materials and casing which are to be used in operations under or pursuant to this Act; and
- (j) regulating the separation, storage, transportation and utilisation of any of the products obtained pursuant to petroleum titles; and

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- (k) providing for the cessation in the prescribed circumstances of operations on land comprised in petroleum titles, and the precautions to be undertaken in regard to any operations on any such land; and
- (l) regulating the spacing of oil wells; and
- (m) ensuring that precautions are taken against flooding and providing methods to be adopted on abandonment of wells; and
- (n) providing that drilling operations are carried out with due diligence and by safe and satisfactory methods; and
- (o) the recovery, purification and utilisation of helium or carbon dioxide and the course of action to be taken on the discovery of helium or carbon dioxide; and
- (p) prescribing the technical and other reports to be furnished by the holders of petroleum titles.

(2) The regulations may provide for the adoption of any set of standards published by any person or body, and for the application of those standards, as in force from time to time, for any of the purposes of the regulations.

(3) The regulations may provide for the exemption of any person or class of persons from any requirement of this Act or the regulations.

(4) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

Repeals

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

Savings and transitional provisions

131. Schedule 1 has effect.

Consequential amendment of Search Warrants Act 1985 No. 37, s. 10

132. Section 10 of the Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in appropriate order the following matter:

section 94 of the Petroleum (Onshore) Act 1991;

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 131)

Definition

1. In this Schedule:

“the former Act” means the Petroleum Act 1955.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Licences and leases under the former Act

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

Applications for licences and leases

4. (1) An application made before the date of repeal of the former Act for a petroleum exploration licence or a petroleum mining lease, being an application that had not been determined before that date, is taken to be an application for an exploration licence or production lease (respectively) under this Act.

(2) Any such application is to be determined and otherwise dealt with in accordance with the provisions of the former Act.

Suspended conditions

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

Reserved lands

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

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Other matters**

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