

Authorised Version No. 055
Petroleum (Submerged Lands) Act 1982

No. 9772 of 1982

Authorised Version incorporating amendments as at
1 January 2011

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART I—PRELIMINARY	3
Division 1—Interpretation, application and construction of Act	3
1 Short title and commencement	3
2 Transitional provisions	3
3 <i>Repealed</i>	3
4 Definitions	4
4A Infrastructure facilities	16
5 Space above or below adjacent area	18
6 Application of Act	18
6A Act to apply subject to international obligations	18
7 Petroleum pool extending into two licence areas	18
8 <i>Repealed</i>	21
Division 2—Administration of the Commonwealth adjacent area	22
9 Commonwealth adjacent area	22
10 Minister as member of Joint Authority	22
11 Minister as Designated Authority	22
12 Delegations under Commonwealth Act	22
13 Public servants performing functions under Commonwealth Act	23
PART II—APPLICATION OF LAWS	24
14 Modification of the applied provisions	24
15 Jurisdiction of State courts	25
15A Disapplication of State occupational health and safety laws	26
PART III—MINING FOR PETROLEUM	27
Division 1—Preliminary	27
16 Delegation	27
17 Graticulation of Earth's surface	28
18 Reservation of blocks	29

<i>Section</i>	<i>Page</i>
Division 2—Exploration permits for petroleum	30
19 Exploration for petroleum	30
20 Advertisement of blocks	30
21 Application for permits	31
21A Where 2 or more applications are made in respect of the same block or blocks	32
22 Grant or refusal of permit in relation to application	33
22AA Withdrawal by a joint applicant	34
22AB Withdrawal of application	35
22AC Effect of withdrawal or lapse of application	35
23 Application for permit in respect of surrendered etc. blocks	36
24 Application fee etc.	37
25 Consideration of applications	38
26 Request by applicant for grant of permit in respect of advertised blocks	40
27 Grant of permit on request	41
28 Rights conferred by permit	41
29 Term of permit	42
30 Application for renewal of permit	43
31 Application for renewal of permit to be in respect of reduced area	44
32 Grant or refusal of renewal of permit	45
33 Conditions of permit	48
34 Discovery of petroleum to be notified	48
35 <i>Repealed</i>	49
36 Nomination of blocks as location	49
37 Declaration of location	50
38 Immediately adjoining blocks	51
Division 2A—Retention leases for petroleum	52
38A Application by permittee for lease	52
38B Grant or refusal of lease in relation to application	53
38BA Application of sections 38A and 38B where permit is transferred	56
38BB Application by licensee for lease	56
38BC Grant or refusal of lease in relation to application by licensee	58
38BD Application of sections 38BB and 38BC where licence is transferred	59
38C Rights conferred by lease	60
38D Term of lease	60
38E Notice of intention to cancel lease	60
38F Application for renewal of lease	62
38G Grant or refusal of renewal of lease	63
38H Conditions of lease	68

<i>Section</i>	<i>Page</i>
38J Discovery of petroleum to be notified	69
38K <i>Repealed</i>	69
Division 3—Production licences for petroleum	69
39 Recovery of petroleum in adjacent area	69
40 Application for licence by holder of permit	70
40A Application for licence by holder of lease	72
41 Application for licence	73
42 Determination of rate of royalty	74
43 Notification as to grant of licence	75
44 Grant of licence	76
44A Application of sections 41 to 44 where permit etc. transferred	77
45 Variation of licence area	78
46 Determination of permit or lease as to block not taken up	78
47 Application for licence in respect of surrendered etc. blocks	81
48 Application fee etc.	83
49 Request by applicant for grant of licence	84
50 Grant of licence on request	87
51 Grant of licences in respect of individual blocks	88
52 Rights conferred by licence	89
53 Term of licence	90
53A Termination of licence if no operations for 5 years	90
54, 55 <i>Repealed</i>	91
56 Conditions of licence	91
57 <i>Repealed</i>	91
58 Directions as to recovery of petroleum	91
59 Unit development	92
Division 3A—Infrastructure licences	96
59A Construction etc. of infrastructure facilities	96
59B Application for infrastructure licence	97
59C Notification as to grant of an infrastructure licence	97
59D Notices to be given by Minister	98
59E Grant of infrastructure licence	99
59F Rights conferred by infrastructure licence	100
59G Term of infrastructure licence	101
59H Termination of infrastructure licence if no operations for 5 years	101
59J Conditions of infrastructure licence	102
59K Variation of infrastructure licence	102
Division 4—Pipeline licences	104
60 Construction etc. of pipelines etc.	104
61 Acts done in an emergency etc.	105
62 Removal of pipeline etc. constructed in contravention of Act	106
63 Terminal station	107
64 Application for pipeline licence	107

<i>Section</i>	<i>Page</i>
65 Grant or refusal of pipeline licence	110
66 Rights conferred by pipeline licence	115
67 Term of pipeline licence	116
67A Termination of pipeline licence if no operations for 5 years	116
68, 69 <i>Repealed</i>	117
70 Conditions of pipeline licence	117
71 Variation of pipeline licence on application by pipeline licensee	117
72 Variation of pipeline licence by Minister	119
73 Common carrier	120
74 Ceasing to operate pipeline	120
Division 5—Registration of instruments	121
75AA Definition	121
75 Register of certain instruments to be kept	121
76 Particulars to be entered in Register	121
77 Memorials to be entered on permits etc. determined etc.	123
78 Approval and registration of transfers	124
79 Entries in Register on devolution of title	126
80 <i>Repealed</i>	127
81 Approval of dealings creating etc. interests etc. in existing titles	127
81A Approval of dealings in future interests etc.	133
82 True consideration to be shown	134
83 Minister not concerned with certain matters	135
84 Power of Minister to require information as to dealings	135
85 Production and inspection of documents	136
86 Inspection of Register and documents	137
87 Evidentiary provisions	137
87A Minister may make corrections to Register	138
88 Appeals	139
89 Minister not liable to certain actions	139
90 Offences	140
91 Assessment of fee	140
92 Imposition of registration fees	140
93 Exemption from duty	144
Division 6—General	145
94 Notice of grants of permits etc. to be published	145
95 Date of effect of surrender etc. and of permits etc.	146
96 Commencement of works	147
97 Work practices	148
97A Conditions relating to insurance	151
98 Maintenance etc. of property	152
99 Sections 97 and 98 to have effect subject to this Act etc.	153
100 <i>Repealed</i>	154
101 Directions	154

<i>Section</i>	<i>Page</i>
102 Compliance with directions	157
103 Exemption	158
103A Suspension of rights conferred by permit or lease	161
104 Surrender of permits etc.	161
105 Cancellation of permits etc.	165
106 Cancellation of permit etc. not affected by other provisions	167
107 Removal of property etc. by permittee etc.	169
108 Removal of property etc. by Minister	172
109, 110 <i>Repealed</i>	173
111 Special prospecting authorities	173
112 Access authorities	176
113 Sale of property	183
114 <i>Repealed</i>	184
115 Minister etc. may require information to be furnished etc.	185
116 Power to examine on oath	186
117 Failing to furnish information etc.	186
118 <i>Repealed</i>	187
119 Safety zones	187
120 Discovery and use of water	188
121 <i>Repealed</i>	188
122 Records etc. to be kept	189
122A Regulations about data management	189
123 Scientific investigations	191
124 Interference with other rights	192
124A Interfering with offshore petroleum installation or operations	193
125 Inspectors	193
126 Powers of inspectors	194
127 Property in petroleum	195
128 Suspension of rights conferred by permit	195
129 Certain payments to be made by State to Commonwealth	196
130 Determination to be disregarded in certain cases	196
131 Continuing offences	197
132 Persons concerned in commission of offences	197
133 Prosecution of offences	198
134 Orders for forfeiture in respect of certain offences	199
135 Disposal of forfeited goods	200
136 Time for bringing proceedings for offences	200
137 Judicial notice	200
138 Service	200
138A Service of documents on two or more permittees etc.	202
Division 7—Fees and royalties	203
139 Permit fees	203
139A Lease fees	203
140 Licence fees	204
140A Infrastructure licence fees	204

<i>Section</i>	<i>Page</i>
141 Pipeline licence fees	204
142 Time of payment of fees	204
143 Royalty	204
144 Reduction of royalty in certain cases	206
145 Royalty not payable in certain cases	207
146 Ascertainment of well-head	207
147 Ascertainment of value	208
148 Ascertainment of quantity of petroleum recovered	208
149 Payment of royalty	208
150 Penalty for late payment	208
151 Fees and penalties debts due to the State	209
Division 8—Area to be avoided and safety zones	209
151A Definitions	209
151B Emergency periods	213
151C Minister may authorize entry into area to be avoided	214
151D Unauthorized vessel not to enter area to be avoided	215
151E Powers of authorized persons	216
151F Search warrants	219
151G Exercise of powers in serious circumstances	220
PART IIIA—RELEASE OF INFORMATION	221
Division 1—Preliminary	221
151H Definitions	221
151I Application of Part	223
Division 2—Protection of confidentiality of information and samples	224
Subdivision A—Information and samples obtained by the Minister	224
151J Protection of confidentiality of documentary information obtained by the Minister	224
151K Protection of confidentiality of petroleum mining samples obtained by the Minister	224
151L Minister may make information or samples available to other Ministers	225
Subdivision B—Information and samples obtained by a Victorian Minister	226
151M Protection of confidentiality of information obtained by a Victorian Minister	226
151N Protection of confidentiality of petroleum mining samples obtained by a Victorian Minister	226

<i>Section</i>	<i>Page</i>
Subdivision C—Miscellaneous	227
151O Fees	227
151P Review by Minister	227
151Q Information Privacy Act 2000	228
Division 3—Repealed	224
PART IIIB—DATUMS	229
151R Objects	229
151S Australian Geodetic Datum	229
151T Current datum, previous datum and changeover time	230
151U Use of current datum	230
151V Use of previous datum	231
151W Variation of titles etc.	232
151X Variation of applications for titles	234
151Y No change to actual position of point, line or area	234
151Z Transitional regulations	234
151ZA Definitions	234
PART IIIC—OCCUPATIONAL HEALTH AND SAFETY	235
Division 1—Introduction	235
151ZB Definitions	235
151ZC Occupational health and safety	235
151ZD Listed OHS laws	236
151ZE Regulations relating to occupational health and safety	236
Division 2—Functions and powers of the Safety Authority	237
151ZF Safety Authority's functions	237
151ZG Safety Authority's ordinary powers	238
151ZH Judicial notice of seal	239
Division 3—Safety Authority Board	239
151ZI Functions of the Board	239
151ZJ Powers of the Board	240
151ZK Validity of decisions	240
Division 4—Chief Executive Officer and staff of the Safety Authority	241
151ZL CEO acts for Safety Authority	241
151ZM Working with the Board	241
151ZN Delegation	241
151ZO Secondments to the Safety Authority	242

<i>Section</i>	<i>Page</i>
Division 5—Other Safety Authority provisions	242
151ZP Minister may require the Safety Authority to prepare reports or give information	242
151ZQ Directions to the Safety Authority	243
151ZR Reviews of operations of Safety Authority	243
151ZS Liability for acts and omissions	244
 PART IV—GENERAL	 246
151ZT Supreme Court—limitation of jurisdiction	246
152 Regulations	246
—————	
 SCHEDULES	 250
SCHEDULE 1—Transitional provisions	250
1 Application for renewal of permit	250
2 Indefinite term for pipeline licences	250
3 Release of information	251
4 Petroleum (Submerged Lands) (Amendment) Act 2004	251
 SCHEDULE 2—<i>Repealed</i>	 251
SCHEDULE 3—Area that includes the adjacent area	252
SCHEDULES 4, 5—<i>Repealed</i>	253
SCHEDULE 6—Area that includes the area to be avoided	254
SCHEDULE 7—Occupational Health and Safety	255
PART 1—INTRODUCTION	255
1 Objects	255
2 Simplified outline	255
3 Definitions	257
4 Facilities	261
5 Operator must ensure presence of operator's representative	264
6 Health and safety of persons using an accommodation facility	265
7 Contractor	265
 PART 2—OCCUPATIONAL HEALTH AND SAFETY	 265
Division 1—Duties relating to occupational health and safety	265
8 Duties of operator	265
9 Duties of persons in control of parts of facility or particular work	268
10 Duties of employers	270
11 Duties of manufacturers in relation to plant and substances	272
12 Duties of suppliers of facilities, plant and substances	274

<i>Section</i>	<i>Page</i>
13 Duties of persons erecting facilities or installing plant	276
14 Duties of persons in relation to occupational health and safety	276
15 Reliance on information supplied or results of research	278
Division 2—Regulations relating to occupational health and safety	280
16 Regulations relating to occupational health and safety	280
PART 3—WORKPLACE ARRANGEMENTS	282
Division 1—Introduction	282
17 Simplified outline	282
Division 2—Designated work groups	282
Subdivision A—Establishment of designated work groups	282
18 Establishment of designated work groups by request	282
19 Establishment of designated work groups at initiative of operator	284
Subdivision B—Variation of designated work groups	284
20 Variation of designated work groups by request	284
21 Variation of designated work groups at initiative of operator	286
Subdivision C—General	287
22 Referral of disagreement to reviewing authority	287
23 Manner of grouping members of the workforce	287
Division 3—Health and safety representatives	288
Subdivision A—Selection of health and safety representatives	288
24 Selection of health and safety representatives	288
25 Election of health and safety representatives	289
26 List of health and safety representatives	290
27 Members of designated work group must be notified of selection etc. of health and safety representative	291
28 Term of office	291
29 Training of health and safety representatives	291
30 Resignation etc. of health and safety representatives	292
31 Disqualification of health and safety representatives	293
32 Deputy health and safety representatives	294
Subdivision B—Powers of health and safety representatives	295
33 Powers of health and safety representatives	295
34 Assistance by consultant	297
35 Information	298
36 Obligations and liabilities of health and safety representatives	299

<i>Section</i>	<i>Page</i>
37 Provisional improvement notices	300
38 Effect of provisional improvement notice	302
Subdivision C—Duties of the operator and other employers in relation to health and safety representatives	304
39 Duties of the operator and other employers in relation to health and safety representatives	304
Division 4—Health and safety committees	306
40 Health and safety committees	306
41 Functions of health and safety committees	308
42 Duties of the operator and other employers in relation to health and safety committees	309
Division 5—Emergency procedures	310
43 Action by health and safety representatives	310
44 Directions to perform other work	312
Division 6—Exemptions	313
45 Exemptions	313
PART 4—INSPECTIONS	314
Division 1—Introduction	314
46 Simplified outline	314
47 Powers, functions and duties of OHS inspectors	314
Division 2—Inspections	315
48 Inspections	315
Division 3—Powers of OHS inspectors in relation to the conduct of inspections	316
Subdivision A—General powers of entry and search	316
49 Powers of entry and search—facilities	316
50 Powers of entry and search—regulated business premises (other than facilities)	317
51 Powers of entry and search—premises (other than regulated business premises)	318
52 Warrant to enter premises (other than regulated business premises)	320
53 Obstructing or hindering OHS inspector	321
Subdivision B—Other powers	321
54 Power to require assistance and information	321
55 Power to require the answering of questions and the production of documents or articles	323

<i>Section</i>	<i>Page</i>
56 Privilege against self-incrimination	325
57 Power to take possession of plant, take samples of substances etc.	326
58 Power to direct that workplace etc. not be disturbed	327
59 Power to issue prohibition notices	329
60 Compliance with prohibition notice	331
61 Power to issue improvement notices	331
62 Compliance with improvement notice	334
63 Notices not to be tampered with or removed	334
Division 4—Reports on Inspections	335
64 Reports on inspections	335
Division 5—Appeals	337
65 Appeals	337
66 Powers of reviewing authority on appeal	339
PART 5—GENERAL	340
67 Notifying and reporting accidents and dangerous occurrences	340
68 Records of accidents and dangerous occurrences to be kept	341
69 Codes of practice	341
70 Use of codes of practice in proceedings	342
71 Interference etc. with equipment etc.	342
72 Members of workforce not to be levied	343
73 Victimisation	343
74 Institution of prosecutions	344
75 Role of Commonwealth DPP	346
76 Conduct of directors, employees and agents	346
77 Act not to give rise to other liabilities etc.	347
78 Circumstances preventing compliance may be defence to prosecution	348
79 Regulations—general	348
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	350
1. General Information	350
2. Table of Amendments	351
3. Explanatory Details	354

Authorised Version No. 055
Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982

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Act to make provision with respect to the Exploration for and the Exploitation of the Petroleum Resources, and certain other resources, of certain Submerged Lands adjacent to the Coasts of Victoria, to amend the **Petroleum Act 1958** and the **Acts Interpretation Act 1958** and for other purposes.

Preamble

WHEREAS in accordance with international law Australia as a coastal State has sovereign rights over the Continental Shelf beyond the limits of Australian territorial waters for the purpose of exploring it and exploiting its natural resources:

And whereas by the Seas and Submerged Lands Act 1973 of the Commonwealth it is declared and enacted that the sovereignty in respect of the territorial sea of Australia and in respect of the airspace over it and in respect of its sea-bed and subsoil, and the sovereignty in respect of certain internal waters of Australia and in respect of the airspace over those waters and in respect of the sea-bed and subsoil beneath those waters, is vested in and exercisable by the Crown in right of the Commonwealth:

And whereas the Parliaments of the States and the Legislative Assembly of the Northern Territory have certain legislative powers in respect of the sea-bed and subsoil referred to in the last preceding recital and the Parliament of the Commonwealth has vested in the Crown in right of each of the States and the Crown in right of the

Preamble
amended by
No. 91/2001
s. 15.

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982

Preamble

Northern Territory certain proprietary rights in respect of that sea-bed and subsoil:

And whereas it has been agreed between the Commonwealth, the States and the Northern Territory that, in place of the scheme provided for by an Agreement between the Commonwealth and the States dated 16 October 1967—

- (a) legislation of the Parliament of the Commonwealth in respect of the exploration for and the exploitation of the petroleum resources of submerged lands should be limited to the resources of lands beneath waters that are beyond the outer limits of the territorial sea adjacent to the States and the Northern Territory (being outer limits based, unless and until otherwise agreed, on the breadth of that sea being 3 nautical miles), and that the States and the Northern Territory should share in the administration of that legislation;
- (b) legislation of the Parliament of each State should apply in respect of the exploration for and the exploitation of the petroleum resources of such part of the submerged lands in an area adjacent to the State as is on the landward side of the waters referred to in paragraph (a);
- (c) legislation of the Legislative Assembly of the Northern Territory should apply in respect of the exploration for and the exploitation of the petroleum resources of such part of the submerged lands in an area adjacent to the Northern Territory as is on the landward side of the waters referred to in paragraph (a); and
- (d) the Commonwealth, the States and the Northern Territory should endeavour to maintain, as far as practicable, common principles, rules and practices in the regulation and control of the exploration for and the exploitation of the petroleum

resources of all the submerged lands referred to above that are on the seaward side of the inner limits of the territorial sea of Australia.

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in the present Parliament assembled and by the authority of the same as follows (that is to say):

PART I—PRELIMINARY

Division 1—Interpretation, application and construction of Act

1 Short title and commencement

- (1) This Act may be cited as the **Petroleum (Submerged Lands) Act 1982**.
- (2) This Act shall come into operation on the first day on which the following Acts of the Commonwealth, with or without amendments, are in operation, namely, the Seas and Submerged Lands Amendment Act 1980, the Coastal Waters (State Powers) Act 1980, the Coastal Waters (State Title) Act 1980 and the Petroleum (Submerged Lands) Amendment Act 1980.
- (3) The Minister shall as soon as is practicable after the commencement of this Act cause notice of the commencement to be published in the Gazette.

2 Transitional provisions

The First Schedule has effect.

Note

The First Schedule contains transitional provisions as a result of amendments made to this Act.

* * * * *

S. 2
amended by
No. 83/1990
s. 17,
substituted by
No. 91/2001
s. 16.

S. 3
repealed by
No. 12/1990
s. 19(1).

4 Definitions

- (1) In this Act, unless the contrary intention appears—

access authority means an access authority under Part III;

application for a primary licence means an application under section 40(1) or (2) or 40A(1) or (2);

S. 4(1) def. of *application for a primary licence* amended by No. 68/1986 s. 4(1)(a).

application for a secondary licence means an application under section 40(3) or 40A(3);

S. 4(1) def. of *application for a secondary licence* amended by No. 68/1986 s. 4(1)(b).

approved means approved by the Minister;

bank guarantee means a guarantee provided by a body that is permitted to use the expression "bank" under section 66 of the Banking Act 1959 of the Commonwealth;

S. 4(1) def. of *bank guarantee* inserted by No. 91/2001 s. 17(1)(a).

block means a block constituted as provided by section 17;

construct includes ***place*** and ***construction*** has a corresponding meaning;

corresponding law means an Act of another State or a law in force in a Territory of the Commonwealth giving effect to the agreement between the Commonwealth, the States and the Northern Territory referred to in the preamble to this Act;

datum means a reference frame for defining geographic co-ordinates;

Note

If the position on the surface of the Earth of a particular point is identified by a co-ordinate that is determined by reference to a particular datum, the use of a different datum will result in the same point being identified by a different co-ordinate.

S. 4(1) def. of *datum* inserted by No. 91/2001 s. 17(1)(a).

document includes any map, book, record or writing;

facility includes a structure or installation of any kind;

S. 4(1) def. of *facility* inserted by No. 91/2001 s. 4(1)(a).

Gazette means the Government Gazette;

geographic co-ordinate includes—

- (a) a meridian of longitude by itself; and
- (b) a parallel of latitude by itself;

S. 4(1) def. of *geographic co-ordinate* inserted by No. 91/2001 s. 17(1)(a).

good oil-field practice means all those things that are generally accepted as good and safe in the carrying on of exploration for petroleum, or in operations for the recovery of petroleum, as the case may be;

good processing and transport practices means all those things that are generally accepted as good and safe in the processing and storage of petroleum and the preparation of petroleum for transport;

S. 4(1) def. of *good processing and transport practices* inserted by No. 91/2001 s. 4(1)(a).

graticular section means a section referred to in section 17;

S. 4(1) def. of
infrastructure facilities
inserted by
No. 91/2001
s. 4(1)(a).

infrastructure facilities has the meaning given by
section 4A;

S. 4(1) def. of
infrastructure licence
inserted by
No. 91/2001
s. 4(1)(a).

infrastructure licence means an infrastructure
licence under Part III;

S. 4(1) def. of
infrastructure licence area
inserted by
No. 91/2001
s. 4(1)(a).

infrastructure licence area, in relation to an
infrastructure licence, means the place in
respect of which the infrastructure licence is
in force;

S. 4(1) def. of
infrastructure licensee
inserted by
No. 91/2001
s. 4(1)(a).

infrastructure licensee means the registered
holder of an infrastructure licence;

inspector means a person appointed under
section 125;

S. 4(1) def. of
interstate Minister
inserted by
No. 91/2001
s. 17(1)(a),
amended by
No. 11/2004
s. 4(b).

interstate Minister means the Minister of the
Crown in right of a State (other than
Victoria) or of the Northern Territory who is
for the time being authorised under the law
of that State or Territory to perform the
functions of a Designated Authority under
the Commonwealth Act;

S. 4(1) def. of
lease
inserted by
No. 68/1986
s. 4(1)(c).

lease means a retention lease under Part III;

S. 4(1) def. of
lease area
inserted by
No. 68/1986
s. 4(1)(c).

lease area means the area constituted by the
blocks that are the subject of a lease;

lessee means the registered holder of a lease;

S. 4(1) def. of
lessee
inserted by
No. 68/1986
s. 4(1)(c).

licence means a production licence for petroleum
under Part III;

licence area means the area constituted by the
blocks that are the subject of a licence;

licensee means the registered holder of a licence;

listed OHS laws has the meaning given in
section 151ZD;

S. 4(1) def. of
*listed OHS
laws*
inserted by
No. 11/2004
s. 4(a).

location means a block or blocks in respect of
which a declaration under section 37 is in
force;

natural resources has the same meaning as in
paragraph 4 of Article 77 of the United
Nations Convention on the Law of the Sea
done at Montego Bay on 10 December 1982;

S. 4(1) def. of
*natural
resources*
substituted by
No. 91/2001
s. 17(1)(b).

OHS inspector means an OHS inspector
appointed under the Commonwealth Act;

S. 4(1) def. of
*OHS
inspector*
inserted by
No. 11/2004
s. 4(a).

operation means an activity to which Part III
applies;

S. 4(1) def. of
operation
inserted by
No. 91/2001
s. 4(1)(a).

partly cancelled means—

- (a) in relation to a permit or licence—
cancelled as to one or more but not all
of the blocks the subject of the permit
or licence; and

- (b) in relation to a pipeline licence—
cancelled as to a part of the pipeline the
subject of the licence;

S. 4(1) def. of
partly
determined
amended by
No. 68/1986
s. 4(1)(d).

partly determined, in relation to a permit or lease,
means determined as to one or more but not
all of the blocks the subject of the permit or
lease;

permit means an exploration permit for petroleum
under Part III;

permit area means the area constituted by the
blocks that are the subject of a permit;

permittee means the registered holder of a permit;

S. 4(1) def. of
petroleum
amended by
No. 91/2001
s. 17(1)(c).

petroleum means—

- (a) any naturally occurring hydrocarbon,
whether in a gaseous, liquid or solid
state;
- (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
and carbon-dioxide—

and includes any petroleum as defined by
paragraph (a), (b) or (c) of this definition that
has been returned to a natural reservoir;

petroleum pool means a naturally occurring
discrete accumulation of petroleum;

pipeline means a pipe or system of pipes in the adjacent area for conveying petroleum, whether the petroleum is petroleum recovered from the adjacent area or not, but does not include a pipe or system of pipes—

S. 4(1) def of *pipeline* amended by No. 91/2001 s. 17(1)(d)(e).

- (a) for returning petroleum to a natural reservoir;
- (b) for conveying petroleum for use for the purposes of petroleum exploration operations or operations for the recovery of petroleum;
- (c) for conveying petroleum that is to be flared or vented; or
- (d) for conveying petroleum from a well, wherever located, to a terminal station in the adjacent area without passing through another terminal station;

pipeline licence means a licence under Part III to construct and operate a pipeline;

pipeline licensee means the registered holder of a pipeline licence;

prescribed means prescribed by the regulations;

primary entitlement means—

- (a) in relation to a permittee—the number of blocks forming part of a location in the permit area in respect of which that permittee may make an application under section 40(1); and
- (b) in relation to a lessee—the number of blocks in the lease area in respect of which that lessee may make an application under section 40A(1);

S. 4(1) def. of *primary entitlement* substituted by No. 68/1986 s. 4(1)(e).

primary licence means a licence granted on an application under section 40(1) or (2);

pumping station means equipment for pumping petroleum or water and includes any structure associated with that equipment;

register means the register kept in pursuance of Division 5 of Part III;

registered holder, in relation to a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority, means the person whose name is for the time being shown in the register as being the holder of the permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority;

regulations means regulations made under this Act;

royalty period, in relation to a permit, lease or licence, means—

- (a) the period from and including the date from which the permit, lease or licence comes into force to the end of the month of the year during which that date occurs; and
- (b) each month thereafter;

Safety Authority means the National Offshore Petroleum Safety Authority under the Commonwealth Act;';

secondary licence means a licence granted on an application under section 40(3);

S. 4(1) def. of *registered holder* amended by Nos 68/1986 s. 4(1)(f)(6), 91/2001 s. 4(1)(b).

S. 4(1) def. of *royalty period* amended by No. 68/1986 s. 45(a)(i)(ii).

S. 4(1) def. of *Safety Authority* inserted by No. 11/2004 s. 4(a).

secondary line means a pipe or system of pipes for any purpose referred to in paragraphs (a), (b), (c) and (d) of the definition of **pipeline**;

special prospecting authority means a special prospecting authority under Part III;

tank station means a tank or system of tanks for holding or storing petroleum and includes any structure associated with that tank or system of tanks;

terminal station means a pumping station, a tank station or a valve station declared to be a terminal station under section 63 or under the Commonwealth Act or a corresponding law;

the adjacent area means, subject to subsection (2), so much of the area the boundary of which is described in the Third Schedule as is part of the territorial sea of Australia, including the territorial sea adjacent to any island forming part of Victoria, and includes, subject to subsection (3), an area which—

- (a) is within the area the boundary of which is described in the Third Schedule;
- (b) is seaward of the coastline of Victoria at mean low water and landward of the inner limit of the territorial sea of Australia; and
- (c) was, immediately before the commencement of this Act, the subject of an exploration permit for petroleum subsisting under the Commonwealth Act;

S. 4(1) def. of
*the applied
provisions*
amended by
No. 12/1990
s. 19(2).

the applied provisions means the provisions, as modified under section 14, which apply in the adjacent area (within the meaning of this Act) by virtue of section 57 of the **Interpretation of Legislation Act 1984**;

S. 4(1) def. of
the Commonwealth Act
substituted by
No. 11/2004
s. 4(c).

the Commonwealth Act means the Petroleum (Submerged Lands) Act 1967 of the Commonwealth;

S. 4(1) def. of
the Commonwealth Minister
inserted by
No. 91/2001
s. 17(1)(a),
substituted by
No. 11/2004
s. 4(d).

the Commonwealth Minister means the Minister of the Crown in right of the Commonwealth for the time being administering the Commonwealth Act;

S. 4(1) def. of
the Convention
repealed by
No. 91/2001
s. 17(1)(f).

* * * * *

the Joint Authority means the Commonwealth–Victoria Offshore Petroleum Joint Authority established by the Commonwealth Act;

S. 4(1) def. of
the relinquished area
amended by
Nos 68/1986
s. 4(1)(g)–(i),
91/2001
s. 4(1)(c).

the relinquished area means—

- (a) in relation to a permit, lease or licence that has expired—the area constituted by the blocks in respect of which the permit, lease or licence was in force but has not been renewed;
- (b) in relation to a permit or lease that has been wholly determined or partly determined—the area constituted by the blocks as to which the permit or lease was so determined;

-
- (c) in relation to a permit or licence that has been wholly cancelled or partly cancelled—the area constituted by the blocks as to which the permit or licence was so cancelled;
 - (ca) in relation to a lease that has been wholly cancelled—the area constituted by the blocks in respect of which the lease was in force;
 - (cb) in relation to an infrastructure licence that has been surrendered, cancelled or terminated—the place that constituted the infrastructure licence area;
 - (d) in relation to a pipeline licence that is no longer in force—the part of the adjacent area in which the pipeline was constructed;
 - (e) in relation to a pipeline licence that has been wholly cancelled or partly cancelled—the part of the adjacent area in which the pipeline or the part of the pipeline, as the case may be, was constructed; and
 - (f) in relation to a special prospecting authority or access authority that has been surrendered or cancelled, or has expired—the area constituted by the blocks in respect of which that authority was in force;

valve station means equipment for regulating the flow of petroleum and includes any structure associated with that equipment;

vessel means a vessel used in navigation, other than air navigation, and includes a barge, lighter or other floating vessel;

S. 4(1) def. of
*Victorian
Minister*
inserted by
No. 91/2001
s. 17(1)(a).

Victorian Minister means a Minister of the Crown
in right of Victoria;

water line means a pipe or system of pipes for
conveying water in connexion with
petroleum exploration operations or
operations for the recovery of petroleum;

well means a hole in the sea-bed or subsoil made
by drilling, boring or any other means in
connexion with exploration for petroleum or
operations for the recovery of petroleum but
does not include a seismic shot hole;

S. 4(1) def. of
*wholly
cancelled*
amended by
No. 68/1986
s. 4(1)(j).

wholly cancelled, in relation to a permit, lease,
licence or pipeline licence, means cancelled
as to all the blocks, or as to the whole of the
pipeline, the subject of the permit, lease,
licence or pipeline licence;

S. 4(1) def. of
*wholly
determined*
amended by
No. 68/1986
s. 4(1)(k).

wholly determined, in relation to a permit or
lease, means determined as to all the blocks
the subject of the permit or lease.

- (2) If at any time the breadth of the territorial sea of
Australia is determined or declared to be greater
than 3 nautical miles, the definition of *the
adjacent area* in subsection (1) continues to have
effect as if the breadth of the territorial sea of
Australia had continued to be 3 nautical miles.
- (3) Upon an area described in paragraphs (a), (b)
and (c) of the definition of *the adjacent area*
becoming an area which is—
- (a) not the subject of a permit;
 - (b) not the subject of a licence; and

(c) not the subject of an application for a licence—

the area ceases to be part of the adjacent area.

(4) In this Act, a reference to the term of a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority is a reference to the period during which the permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority remains in force and a reference to the date of expiration of a permit, lease, licence, special prospecting authority or access authority is a reference to the day on which the permit, lease, licence, special prospecting authority or access authority ceases to be in force.

S. 4(4)
amended by
Nos 68/1986
s. 4(2)(3),
91/2001
ss 4(2)(a),
17(2)(a).

(5) In this Act, a reference to a year of the term of a permit, lease, licence, infrastructure licence or pipeline licence is a reference to a period of one year commencing on the day on which the permit, lease, licence, infrastructure licence or pipeline licence, as the case may be, comes into force or on any anniversary of that day.

S. 4(5)
amended by
No. 68/1986
s. 4(2),
substituted by
No. 68/1986
s. 4(4),
amended by
No. 91/2001
s. 4(2)(b).

(6) In this Act, a reference to the renewal, or to the grant of a renewal, of a permit is a reference to the grant of a permit in respect of all or some of the blocks specified in the first-mentioned permit to commence on the day after the date of expiration of the first-mentioned permit or on the day after the date of expiration of the permit granted upon a previous renewal of the first-mentioned permit.

(6A) In this Act, a reference to the renewal, or the grant of a renewal, of a lease is a reference to the grant of a lease in respect of the blocks in respect of which the first-mentioned lease was in force to commence on the day after the date of expiration of the first-mentioned lease or on the day after the

S. 4(6A)
inserted by
No. 68/1986
s. 4(5).

s. 4A

date of expiration of the lease granted upon a previous renewal of the first-mentioned lease.

- (7) In this Act, a reference to the renewal, or to the grant of a renewal, of a licence in respect of the blocks specified in the licence is a reference to the grant of a licence in respect of those blocks to commence on the day after the date of expiration of the first-mentioned licence or on the day after the date of expiration of the licence granted upon a previous renewal of the first-mentioned licence.

S. 4(8)
repealed by
No. 91/2001
s. 17(2)(b).

* * * * *

- (9) In this Act, a reference to a pipeline includes a reference to a part of a pipeline.

S. 4(10)
amended by
Nos 68/1986
s. 4(2),
91/2001
s. 4(2)(b).

- (10) In this Act, a reference to a permit, lease, licence, infrastructure licence, pipeline licence or access authority is a reference to the permit, lease, licence, infrastructure licence, pipeline licence or access authority as varied for the time being under this Act.

- (11) The power conferred by this Act to make, grant or issue any instrument shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions, if any, to repeal, rescind, revoke, amend or vary any instrument.

S. 4A
inserted by
No. 91/2001
s. 5.

4A Infrastructure facilities

- (1) In this Act—

infrastructure facilities means facilities for engaging in any of the activities mentioned in subsection (2), being—

- (a) facilities that are resting on the seabed;
or

-
- (b) facilities (including facilities that are floating) that are fixed or connected to the seabed; or
 - (c) facilities that are attached or tethered to facilities referred to in paragraph (a) or (b).
- (2) The activities referred to in subsection (1) are the following—
- (a) remote control of facilities used for the recovery of petroleum in a licence area;
 - (b) processing petroleum recovered in any place, including—
 - (i) converting petroleum into another form by physical or chemical means or both (for example, converting it into liquefied natural gas or methanol); and
 - (ii) partial processing of petroleum (for example, by the removal of water);
 - (c) storing petroleum before it is transported to another place;
 - (d) preparing petroleum (for example, by operations such as pumping or compressing) for transport to another place;
 - (e) activities related to any of the above—
- but, except as mentioned in paragraph (a), do not include engaging in the exploration for, or recovery of, petroleum.

5 Space above or below adjacent area

For the purposes of this Act and the regulations—

- (a) the space above or below the adjacent area shall be deemed to be in that area; and
- (b) the space above or below an area that is part of the adjacent area shall be deemed to be in that part.

6 Application of Act

This Act applies to all natural persons, whether Australian citizens or not and whether resident in Victoria or not, and to all corporations, whether incorporated or carrying on business in Victoria or not.

6A Act to apply subject to international obligations

The provisions of this Act relating to pipelines referred to in section 65(2A) have effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and any other country or countries.

7 Petroleum pool extending into two licence areas

- (1) Where a well-head is situated in a licence area and the well from that well-head is inclined so as to enter a petroleum pool, being a pool that does not extend to that licence area, at a place within an adjoining licence area of the same licensee, any petroleum recovered through that well shall be deemed to have been recovered in that adjoining licence area under the licence in respect of that area.
- (2) Where a petroleum pool is partly in one licence area and partly in an adjoining licence area of the same licensee and petroleum is recovered from that pool through a well or wells in one or both of the licence areas, there shall be deemed to have

S. 6A
inserted by
No. 91/2001
s. 18.

been recovered in each of the licence areas, under the licence in respect of that area, such proportion of all petroleum so recovered as may reasonably be treated as being derived from that area, having regard to the nature and probable extent of the pool, and the respective proportions shall be determined in accordance with subsection (3).

- (3) The proportions to be determined for the purposes of subsection (2) may be determined by agreement between the licensee and the Minister or, in the absence of agreement, may be determined by the Supreme Court on the application of the licensee or the Minister.
- (4) Where a petroleum pool is partly in a licence area and partly in an area (in this subsection referred to as *the Commonwealth licence area*) in which the licensee has authority under the Commonwealth Act to explore for, or recover, petroleum, and petroleum is recovered from that pool through a well or wells in the licence area, the Commonwealth licence area or both, there shall be deemed to have been recovered in the licence area such proportion of all petroleum so recovered as may reasonably be treated as being derived from that area, having regard to the nature and probable extent of the pool, and that proportion shall be determined in accordance with subsection (5).
- (5) The proportion to be determined for the purposes of subsection (4) may be determined by agreement between the licensee, the Joint Authority and the Minister or, in the absence of agreement, may be determined by the Supreme Court on the application of the licensee, the Joint Authority or the Minister.

-
- (6) Where a petroleum pool is partly in a licence area and partly in an area (in this section called *the other State licence area*) in which the licensee has authority, under a corresponding law, to explore for or recover, petroleum, and petroleum is recovered from that pool through a well or wells in the licence area, the other State licence area or both, there shall be deemed to have been recovered in the licence area such proportion of all petroleum so recovered as may reasonably be treated as being derived from that area, having regard to the nature and probable extent of the pool, and that proportion shall be determined in accordance with subsection (7).
- (7) The proportion to be determined for the purposes of subsection (6) may be determined by agreement between the licensee, the Minister and the Minister of the other State administering the corresponding law or, in the absence of agreement, may be determined by the Supreme Court on the application of any of those persons.
- (8) Where—
- (a) a petroleum pool is partly in a licence area and partly in another area, being an area which is outside the adjacent area and in which the licensee has, under the Commonwealth Act or a corresponding law, authority to explore for, or recover, petroleum;
 - (b) petroleum is recovered from that pool; and
 - (c) the Supreme Court of another State makes a determination, under the Commonwealth Act or a corresponding law, of the proportion of the petroleum recovered from that pool that is, for the purposes of the Commonwealth Act or the corresponding

law, to be deemed to have been recovered
from the other area—

the Supreme Court shall not make a determination
under this section that is inconsistent with the
determination of the Supreme Court of the other
State.

(9) Where—

- (a) a petroleum pool is partly in a licence area
and partly in another area, whether in the
adjacent area or not, in respect of which
another person has authority, whether under
this Act, the Commonwealth Act or a
corresponding law, to explore for or recover
petroleum;
- (b) a unit development agreement in accordance
with section 59 is in force between the
licensee and that other person; and
- (c) petroleum is recovered from that pool
through a well or wells in the licence area,
the other area or both—

there shall be deemed to have been recovered in
the licence area such proportion of all petroleum
so recovered as is specified in, or determined in
accordance with, the agreement.

- (10) In this section, a reference to a licence, a licensee
or a licensed area shall be read as including a
reference to a permit and a lease, a permittee and a
lessee or a permit area and a lease area.

S. 7(10)
substituted by
No. 68/1986
s. 4(7).

* * * * *

S. 8
repealed by
No. 91/2001
s. 19.

Division 2—Administration of the Commonwealth adjacent area

9 Commonwealth adjacent area

In this Division *the Commonwealth adjacent area* means the adjacent area in respect of Victoria determined in accordance with section 5A of the Commonwealth Act.

10 Minister as member of Joint Authority

S. 10(1)
amended by
No. 91/2001
s. 20(a).

(1) The Minister may exercise any power which the Commonwealth Act is expressed to authorize the Minister to exercise as a member of the Joint Authority.

S. 10(2)
amended by
No. 91/2001
s. 20(a).

(2) The Minister shall perform any function which the Commonwealth Act is expressed to require the Minister to perform as a member of the Joint Authority.

11 Minister as Designated Authority

The Minister is authorized to perform the functions and exercise the powers which the Commonwealth Act is expressed to require or empower the Designated Authority in respect of the Commonwealth adjacent area to perform or exercise.

S. 12
amended by
No. 46/1998
s. 7(Sch. 1).

12 Delegations under Commonwealth Act

Where, in the exercise of a power which the Commonwealth Act is expressed to confer upon the Designated Authority in respect of the Commonwealth adjacent area, the Minister delegates a power to a person who is an employee in the public service or who holds any office in the service of the State of Victoria, the person may exercise the power.

**13 Public servants performing functions under
Commonwealth Act**

An employee in the public service of Victoria shall perform any function which the Minister, as the Designated Authority in respect of the Commonwealth adjacent area, or as a member of the Joint Authority, requires the employee to perform in relation to the Commonwealth Act.

S. 13
amended by
Nos 46/1998
s. 7(Sch. 1),
91/2001
s. 20(b).

PART II—APPLICATION OF LAWS

14 Modification of the applied provisions

S. 14(1)
amended by
No. 10096
s. 4(4)(Sch.
item 8(a)).

(1) Notwithstanding anything to the contrary in section 57 of the **Interpretation of Legislation Act 1984**, the regulations may provide that such of the provisions which apply in the adjacent area by virtue of section 57 of the **Interpretation of Legislation Act 1984** as are specified in the regulations—

(a) do not apply; or

(b) apply with such modifications as are specified in the regulations—

to or in relation to, acts, omissions, matters, circumstances or things touching, concerning, arising out of or connected with the exploration of the sea-bed or subsoil of the adjacent area for petroleum or the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil.

(2) Without limiting the operation of subsection (1) or of regulations under that subsection, the following shall, for the purposes of that subsection and of any such regulations, be deemed to be acts, omissions, matters, circumstances or things of the kind referred to in that subsection—

(a) any—

(i) act or omission that takes place in, on, above, below or in the vicinity of; or

(ii) matter, circumstance or thing that exists or arises with respect to or in connexion with—

a vessel, aircraft, structure or installation, or equipment or other property, that is in the adjacent area for any reason touching, concerning, arising out of or connected with

the exploration of the sea-bed or subsoil of the adjacent area for petroleum or the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil;

- (b) any act or omission of, or matter or circumstance concerning, a person who—
- (i) is in the adjacent area for a reason of the kind referred to in paragraph (a); or
 - (ii) is in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, that is in the adjacent area for a reason of the kind referred to in paragraph (a); or
- (c) any act or omission of, or matter or circumstance concerning, a person in respect of carrying on any operation or doing any work in the adjacent area for a reason of the kind referred to in paragraph (a).
- (3) For the purposes of this section, *modification* includes the omission or addition of a provision or the substitution of a provision for another provision.

S. 14(2)(c)
amended by
No. 91/2001
s. 20(c).

15 Jurisdiction of State courts

The jurisdiction with which the several courts of Victoria are invested by section 57(4) of the **Interpretation of Legislation Act 1984** extends to all matters arising under any modification of the provisions which apply in the adjacent area by virtue of section 57 of that Act effected by regulations under section 14.

S. 15
amended by
No. 10096
s. 4(4)(Sch.
item 8(b)).

s. 15A

S. 15A
inserted by
No. 11/2004
s. 5.

15A Disapplication of State occupational health and safety laws

- (1) The prescribed occupational health and safety laws do not apply in relation to—
 - (a) a facility; or
 - (b) a person at a facility; or
 - (c) a person near a facility, to the extent to which the person is affected by—
 - (i) a facility; or
 - (ii) activities that take place at a facility; or
 - (d) activities that take place at a facility.
- (2) A reference in subsection (1) to the prescribed occupational health and safety laws is a reference to such of the provisions of those laws that, but for subsection (1), would apply in the adjacent area by virtue of section 57 of the **Interpretation of Legislation Act 1984** or the co-operative scheme within the meaning of the **Crimes at Sea Act 1999**.
- (3) In this section—

facility has the same meaning as in Schedule 7;

prescribed occupational health and safety laws mean any laws of the State relating to occupational health and safety (whether or not they also relate to other matters) that are prescribed by the regulations for the purposes of this section.
- (4) This section applies despite anything to the contrary in section 57 of the **Interpretation of Legislation Act 1984** or the **Crimes at Sea Act 1999**.

S. 15A(2)
amended by
No. 7/2005
s. 173(a).

S. 15A(4)
amended by
No. 7/2005
s. 173(b).

PART III—MINING FOR PETROLEUM

Division 1—Preliminary

16 Delegation

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister delegate to a person any of the Minister's powers or functions under this Act or the regulations other than this power of delegation.
- (2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised or performed by the Minister.
- (3) A delegation under this section may be expressed as a delegation to the person for the time being holding, or performing the duties of, a specified office under the Commonwealth, a State or a Territory.
- (4) A delegation under this section made at any time by a person who is at that time the Minister continues in force notwithstanding that at some subsequent time a different person is the Minister or there is no person who is the Minister, but such a delegation may be revoked or varied by any person who is for the time being the Minister.
- (5) A delegation under this section of a power or function does not prevent the exercise of the power or performance of the function by the Minister.

S. 16(1)
amended by
No. 91/2001
s. 20(d)(i)(ii).

- (6) A copy of each instrument making, varying or revoking a delegation shall be published in the Gazette.

17 Graticulation of Earth's surface

- (1) For the purposes of this Act, the surface of the Earth shall be deemed to be divided—
- (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of five minutes, or a multiple of five minutes, of longitude; and
 - (b) by the equator and by parallels of latitude that are at a distance from the equator of five minutes, or a multiple of five minutes, of latitude—
- into sections, each of which is bounded—
- (c) by portions of two of those meridians that are at a distance from each other of five minutes of longitude; and
 - (d) by portions of two of those parallels of latitude that are at a distance from each other of five minutes of latitude.
- (2) For the purposes of this Act—
- (a) a graticular section that is wholly within the adjacent area constitutes a block; and
 - (b) if a part only of a graticular section is, or parts only of a graticular section are, within the adjacent area, the area of that part, or of those parts, constitutes a block.

(3) In this Act—

- (a) a reference to a block that is constituted by a graticular section includes a reference to a block that is constituted by the area of a part only, or by the areas of parts only, of a graticular section; and
- (b) a reference to a graticular section that constitutes a block includes a reference to a graticular section part only of which constitutes, or parts only of which constitute, a block.

Note

For datum, see section 151S.

**Note to
s. 17(3)
inserted by
No. 91/2001
s. 21.**

18 Reservation of blocks

- (1) The Minister may, by instrument published in the Gazette, declare that a block specified in the instrument (not being a block in respect of which a permit, lease, licence or infrastructure licence is in force or over or in which there is a pipeline) shall not be the subject of a permit, lease, licence, infrastructure licence, special prospecting authority or access authority and that a pipeline licence shall not be granted in respect of a pipeline over or in that block.
- (2) While a declaration under subsection (1) remains in force in respect of a block, a permit, lease, licence, infrastructure licence, special prospecting authority or access authority shall not be granted in respect of that block and a pipeline licence shall not be granted in respect of a pipeline over or in that block.

**S. 18(1)
amended by
Nos 68/1986
s. 49(Sch.
item 1(a)(b)),
91/2001
s. 7(1)(a)(i)(ii).**

**S. 18(2)
amended by
Nos 68/1986
s. 49(Sch.
item 2),
91/2001
s. 7(1)(b).**

s. 19

Division 2—Exploration permits for petroleum

19 Exploration for petroleum

S. 19
amended by
No. 82/1993
s. 4(1).

S. 19(1)
amended by
Nos 91/2001
s. 22(1),
10/2004
s. 16(Sch. 2
item 1.1(a)(b)).

(1) A person shall not explore for petroleum in the adjacent area except—

- (a) under and in accordance with a permit; or
- (b) as otherwise permitted by this Part.

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;
\$165 000, in the case of a body corporate.

S. 19(2)
inserted by
No. 82/1993
s. 4(2).

(2) For the purposes of subsection (1), a person who does anything preparatory to, or knowingly connected with, exploration for petroleum is taken to explore for petroleum.

20 Advertisement of blocks

(1) The Minister may, by instrument published in the Gazette—

- (a) invite applications for the grant of a permit in respect of the block or blocks specified in the instrument; and
- (b) specify a period within which applications may be made.

S. 20(2)
amended by
No. 91/2001
s. 22(2).

(2) The Minister may, for reasons that he or she thinks sufficient, in an instrument under subsection (1), direct that section 21(2) or (3) does not apply, or that both of those subsections do not apply, to or in relation to the applications.

S. 20(3)–(5)
repealed by
No. 12/1990
s. 4.

* * * * *

21 Application for permits

(1) An application under section 20—

- * * * * *
- (b) shall be made in an approved manner;
 - (c) shall be in respect of not more than 400 blocks;
 - (d) shall be accompanied by particulars of—
 - (i) the proposals of the applicant for work and expenditure in respect of the blocks specified in the application;
 - (ii) the technical qualifications of the applicant and of the applicant's employes;
 - (iii) the technical advice available to the applicant; and
 - (iv) the financial resources available to the applicant;
 - (e) may set out other matters that the applicant wishes the Minister to consider; and
 - (f) shall be accompanied by the prescribed fee.

S. 21(1)(a)
repealed by
No. 91/2001
s. 22(3)(a)(i).

S. 21(1)(d)(ii)
amended by
No. 91/2001
s. 22(3)(a)(ii).

S. 21(1)(f)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

(2) The number of blocks specified in the application—

- (a) if sixteen blocks or more are available—shall not be less than sixteen; or
- (b) if less than sixteen blocks are available—shall be the number available.

s. 21A

- (3) The blocks specified in the application shall be blocks that are constituted by graticular sections that—
- (a) constitute a single area; and
 - (b) are such that each graticular section in that area has a side in common with at least one other graticular section in that area.
- (4) The Minister may, at any time, by instrument in writing served on the applicant, require the applicant to furnish, within the time specified in the instrument, further information in writing in connexion with the applicant's application.

S. 21(4)
amended by
No. 91/2001
s. 22(3)(b)(i)(ii).

S. 21(5)
repealed by
No. 83/1990
s. 4(1).

* * * * *

S. 21A
inserted by
No. 91/2001
s. 23.

21A Where 2 or more applications are made in respect of the same block or blocks

- (1) This section applies if 2 or more applications have been made under section 20 for the grant of a permit in respect of the same block or blocks.
- (2) The Minister may grant the permit to whichever applicant, in the Minister's opinion, is most deserving of the grant of the permit having regard to criteria made publicly available by the Minister.
- (3) For the purposes of subsection (2), the Minister may rank the applicants in the order in which they are deserving of the grant, the most deserving applicant being ranked highest.
- (4) The Minister may exclude from the ranking any applicant that, in the Minister's opinion, is not deserving of the grant of the permit.
- (5) If the Minister is of the opinion that, after considering the information accompanying the applications, 2 or more of the applicants are

equally deserving of the grant of the permit, the Minister may, by written notice served on each of those applicants, invite them to give to the Minister, within a period stated in the notice, particulars of the applicant's proposals for additional work and expenditure in respect of the block or blocks specified in the application, being particulars that the Minister considers to be relevant in determining which of the applicants is most deserving of the grant of the permit.

- (6) If any particulars are given by applicants to the Minister in accordance with the invitations contained in the notices served under subsection (5), the Minister must have regard to the particulars in determining whichever of the applicants is most deserving of the grant of the permit.

22 Grant or refusal of permit in relation to application

- (1) Where an application has been made under section 20, the Minister may—
- (a) by instrument in writing served on the applicant, inform the applicant that the Minister is prepared to grant to the applicant a permit in respect of the block or blocks specified in the instrument; or
 - (b) refuse to grant a permit to the applicant.
- (2) An instrument under subsection (1) shall contain—
- (a) a summary of the conditions subject to which the permit is to be granted; and
 - (b) a statement to the effect that the application will lapse if the applicant does not make a request under subsection (3) in respect of the grant of the permit.

S. 22(1)(a)
substituted by
No. 82/1993
s. 9(a)(i).

S. 22(2)(b)
amended by
No. 82/1993
s. 9(a)(ii).

s. 22AA

S. 22(3)
amended by
Nos 82/1993
s. 9(a)(iii),
91/2001 s. 24.

- (3) An applicant on whom there has been served an instrument under subsection (1) may, within a period of one month after the date of service of the instrument on the applicant, or within such further period, not exceeding one month, as the Minister, on application in writing served on the applicant before the expiration of the first-mentioned period of one month, allows, by instrument in writing served on the Minister, request the Minister to grant to the applicant the permit referred to in the first-mentioned instrument.

S. 22(4)
amended by
Nos 82/1993
s. 9(a)(iv),
91/2001 s. 24.

- (4) Where an applicant on whom there has been served an instrument under subsection (1) has made a request under subsection (3) within the period applicable under subsection (3), the Minister shall grant to the applicant an exploration permit for petroleum in respect of the block or blocks specified in the instrument.

S. 22(5)
amended by
No. 82/1993
s. 9(a)(v).

- (5) Where an applicant on whom there has been served an instrument under subsection (1) has not made a request under subsection (3) within the period applicable under subsection (3), the application lapses upon the expiration of that period.

S. 22AA
inserted by
No. 91/2001
s. 25.

22AA Withdrawal by a joint applicant

If—

- (a) an application made under section 20 for the grant of a permit was a joint application; and
(b) all of the joint applicants, by written notice served on the Minister, tell the Minister that one or more, but not all, of them, as specified in the notice, withdraw from the application—

the following paragraphs have effect—

- (c) the application continues in force as if it had been made by the remaining applicant or applicants;
- (d) if the Minister had informed the joint applicants that the Minister was prepared to grant to the applicants a permit in respect of the block or blocks to which the application relates—the Minister is taken not to have so informed the applicants.

22AB Withdrawal of application

S. 22AB
inserted by
No. 91/2001
s. 25.

The person who has made, or all the persons who have jointly made, an application under section 20 for the grant of a permit may, by written notice served on the Minister, withdraw the application at any time before a permit is granted in respect of the application.

22AC Effect of withdrawal or lapse of application

S. 22AC
inserted by
No. 91/2001
s. 25.

If—

- (a) 2 or more applications have been made under section 20 for the grant of a permit in respect of the same block or blocks; and
- (b) one or more, but not all, of the applications are withdrawn or have lapsed—

the following paragraphs have effect—

- (c) the withdrawn or lapsed application or applications are taken not to have been made;
- (d) if the Minister had informed the applicant or one of the applicants whose application had been withdrawn or had lapsed that the Minister was prepared to grant to that applicant a permit in respect of the block or blocks—the Minister is taken not to have so informed the applicant concerned;

- (e) if the applicant or one of the applicants whose application had been withdrawn had requested the Minister under section 22(3) to grant a permit to the applicant concerned—the request is taken not to have been made;
- (f) if the Minister had refused to grant a permit to the remaining applicant or to any of the remaining applicants—the refusal or refusals are taken not to have occurred.

23 Application for permit in respect of surrendered etc. blocks

(1) Where—

S. 23(1)(a) substituted by No. 68/1986 s. 49(Sch. item 3).

- (a) a lease is surrendered, cancelled or determined as to a block or blocks;

S. 23(1)(aa) inserted by No. 68/1986 s. 49(Sch. item 3).

- (aa) a licence is surrendered or cancelled as to a block or blocks; or

- (b) a permit is surrendered, cancelled or determined as to a block or blocks and, at the time of the surrender, cancellation or determination, the block was, or was included in, or the blocks were, or were included in, a location—

the Minister may, at any subsequent time, by instrument published in the Gazette, invite applications for the grant of a permit in respect of that block or such of those blocks as are specified in the instrument and specify a period within which applications may be made.

S. 23(2)(3) repealed by No. 12/1990 s. 5.

* * * * *

(4) An application under this section—

* * * * *

S. 23(4)(a)
repealed by
No. 91/2001
s. 26(1)(a)(i).

(b) shall be made in an approved manner;

(c) shall be accompanied by the particulars referred to in section 21(1)(d);

(d) shall specify an amount that the applicant is prepared to pay to the Minister, in addition to the fee referred to in section 24(1)(a), in respect of the grant of a permit on the application; and

S. 23(4)(d)
amended by
No. 91/2001
s. 26(1)(a)(ii).

(e) may set out any other matters that the applicant wishes the Minister to consider.

(5) The Minister may, at any time, by instrument in writing served on the applicant, require the applicant to furnish, within the time specified in the instrument, further information in writing in connexion with the applicant's application.

S. 23(5)
amended by
No. 91/2001
s. 26(1)(b)(i)(ii).

24 Application fee etc.

(1) An application under section 23 shall be accompanied by—

(a) the prescribed fee; and

S. 24(1)(a)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

(b) a deposit of 10% of the amount specified in the application under section 23(4)(d) or a bank guarantee for the amount of that deposit.

S. 24(1)(b)
substituted by
No. 91/2001
s. 26(2).

s. 25

S. 24(2)
substituted by
Nos 83/1990
s. 4(2),
91/2001
s. 26(3).

- (2) Subject to subsection (3), if a permit is not granted on the application—
- (a) the amount of the deposit must be refunded to the applicant; or
 - (b) the bank guarantee is discharged.

S. 24(3)
amended by
No. 91/2001
s. 26(4)(a)(b).

- (3) Where an applicant on whom there has been served an instrument under section 25 does not request the Minister in accordance with section 26 to grant the permit referred to in the instrument, the deposit shall not be refunded to the applicant.

25 Consideration of applications

S. 25(1)
amended by
No. 91/2001
s. 26(5)(a)(i)(ii).

- (1) Where, at the expiration of the period specified in an instrument under section 23(1), only one application has been made under that subsection in respect of the block or blocks specified in the instrument, the Minister may reject the application or may, by instrument in writing served on the applicant, inform the applicant that the Minister is prepared to grant to the applicant a permit in respect of that block or those blocks.

S. 25(2)
amended by
Nos 91/2001
s. 26(5)(b)(ii),
11/2002
s. 3(Sch. 1
item 52.1).

- (2) Where, at the expiration of the period specified in an instrument under section 23(1), two or more applications have been made under that subsection in respect of the block or blocks specified in the instrument, the Minister may reject any or all of the applications and, if the Minister does not reject all of the applications, may—

S. 25(2)(b)
amended by
No. 91/2001
s. 26(5)(b)(i)
(A)(B).

- (a) if only one application remains unrejected—by instrument in writing served on the applicant; or
- (b) if two or more applications remain unrejected—by instrument in writing served on the applicant, or on one of the applicants, whose application has not been rejected and who has specified as the amount that the applicant is prepared to pay in respect of the

grant of a permit an amount that is not less than the amount specified by any other applicant whose application has not been rejected—

inform the applicant that the Minister is prepared to grant to the applicant a permit in respect of that block or those blocks.

* * * * * S. 25(3)
repealed by
No. 12/1990
s. 6.

* * * * * S. 25(4)
repealed by
No. 82/1993
s. 9(b)(i).

(5) An instrument under this section shall contain—

(a) a summary of the conditions subject to which the permit is to be granted; and

(b) a statement to the effect that the application will lapse if the applicant does not—

(i) make a request under section 26(1); and S. 25(5)(b)(i)
amended by
No. 82/1993
s. 9(b)(ii).

(ii) pay the amount, or the balance of the amount, to be paid in respect of the grant of the permit to the applicant. S. 25(5)(b)(ii)
substituted by
No. 91/2001
s. 26(5)(c).

* * * * * S. 25(5)(b)(iii)
repealed by
No. 82/1993
s. 9(b)(iii).

26 Request by applicant for grant of permit in respect of advertised blocks

S. 26(1)
amended by
No. 91/2001
s. 26(5)(d).

(1) An applicant on whom there has been served an instrument under section 25 may, within a period of three months after the date of service of the instrument on the applicant, or within such further period, not exceeding three months, as the Minister, on application in writing served on the applicant before the expiration of the first-mentioned period of three months, allows—

S. 26(1)(a)
amended by
Nos 82/1993
s. 9(c)(i),
91/2001
s. 26(5)(d).

(a) by instrument in writing served on the Minister, request the Minister to grant to the applicant the permit referred to in the first-mentioned instrument; and

S. 26(1)(b)
substituted by
No. 91/2001
s. 26(5)(e).

(b) pay the amount, or the balance of the amount, to be paid in respect of the grant of the permit to the applicant.

S. 26(1)(c)
repealed by
No. 82/1993
s. 9(c)(ii).

* * * * *

(2) Where an applicant on whom there has been served an instrument under section 25—

S. 26(2)(a)
amended by
No. 82/1993
s. 9(d)(i).

(a) has not made a request under subsection (1);
and

S. 26(2)(b)
substituted by
No. 91/2001
s. 26(5)(f).

(b) has not paid the amount, or the balance of the amount, to be paid in respect of the grant of the permit to the applicant—

S. 26(2)(c)
repealed by
No. 82/1993
s. 9(d)(ii).

* * * * *

within the period applicable under subsection (1), the application lapses upon the expiration of that period.

- (3) Where the application of an applicant on whom there has been served an instrument under section 25(2) lapses as provided by subsection (2), section 25(2) applies in respect of the application or applications, if any, then remaining unrejected.

27 Grant of permit on request

Where a person on whom there has been served an instrument under section 25—

- (a) has made a request under section 26(1); and

S. 27(a)
amended by
No. 82/1993
s. 9(e)(i).

- (b) has paid the amount, or the balance of the amount, to be paid in respect of the grant of a permit to the person—

S. 27(b)
substituted by
No. 91/2001
s. 26(5)(g).

* * * * *

S. 27(c)
repealed by
No. 82/1993
s. 9(e)(ii).

within the period applicable under section 25(1), the Minister shall grant to that person an exploration permit for petroleum in respect of the block or blocks specified in the instrument.

28 Rights conferred by permit

A permit, while it remains in force, authorizes the permittee subject to this Act and the regulations and in accordance with the conditions to which the permit is subject, to explore for petroleum and to carry on such operations and execute such works as are necessary for that purpose in the permit area.

29 Term of permit

S. 29
amended by
No. 91/2001
s. 27 (ILA
s. 39B(1)).

S. 29(1)(a)
amended by
No. 68/1986
s. 5.

S. 29(1)(b)
amended by
No. 68/1986
s. 5.

S. 29(2)
inserted by
No. 91/2001
s. 27.

(1) Subject to this Part, a permit remains in force—

- (a) in the case of a permit granted otherwise than by way of the renewal of a permit—for a period of six years commencing on the day on which the permit is granted or, if a later day is specified in the permit as being the day on which the permit is to come into force, on that later day; and
- (b) in the case of a permit granted by way of the renewal of a permit—for a period of five years commencing on the day on which the permit is granted or, if a later day is specified in the permit as being the day on which the permit is to come into force, on that later day.

(2) If—

- (a) a permit in respect of a block or blocks cannot be renewed or further renewed; and
- (b) before the time when the permit would, apart from this subsection, expire, the permittee has duly made an application to the Minister for the grant of a lease or licence in respect of the block, or one or more of the blocks, being a block or blocks that are included in a location—

the permit continues in force in respect of the block or blocks to which the application relates until—

- (c) if the Minister tells the permittee that the Minister is prepared to grant to the permittee a lease or licence in respect of the block or one or more of the blocks—such a lease or

- licence is granted, the permittee withdraws the application or the application lapses; or
- (d) if the Minister decides not to grant to the permittee such a lease—the end of the period of one year after the day of the service under subsection 38B(2) or (2A) of the instrument of notice refusing to grant the lease; or
- (e) if the Minister decides not to grant to the permittee such a licence—notice of the decision is served on the permittee.

30 Application for renewal of permit

- (1) Subject to section 31, a permittee may, from time to time, make an application to the Minister for the renewal of the permit in respect of such of the blocks the subject of the permit as are specified in the application.

- (2) An application for the renewal of the permit—

* * * * *

S. 30(2)(a)
repealed by
No. 91/2001
s. 28(1)(a).

- (b) subject to subsection (3) shall be made in an approved manner not less than three months before the date of expiration of the permit; and

- (c) shall be accompanied by the prescribed fee.

S. 30(2)(c)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (3) The Minister may, for reasons that he or she thinks sufficient, receive an application for the renewal of the permit less than three months before, but not in any case after, the date of expiration of the permit.

S. 30(3)
amended by
No. 91/2001
s. 28(1)(b).

31 Application for renewal of permit to be in respect of reduced area

S. 31(1)
amended by
No. 91/2001
s. 28(2)(a)(i).

(1) Subject to subsections (3), (4), (5) and (6), the number of blocks in respect of which an application for the renewal of a permit may be made shall not exceed the number calculated as follows—

S. 31(1)(a)
amended by
No. 91/2001
s. 28(2)(a)(ii).

(a) where the number of blocks in respect of which the permit is in force is a number that is divisible by 2 without remainder—
one-half of that number; or

S. 31(1)(b)
amended by
No. 91/2001
s. 28(2)(a)(iii).

(b) where the number of blocks in respect of which the permit is in force is a number that is one less or one more than a number that is divisible by 4 without remainder—one-half of that last-mentioned number.

(2) A block that is, or is included in, a location and in respect of which the permit is in force shall not be regarded as a block in respect of which the permit is in force for the purpose of making a calculation under subsection (1).

S. 31(3)
amended by
No. 91/2001
s. 28(2)(b).

(3) An application for the renewal of a permit may include, in addition to the blocks referred to in subsection (1), a block that is, or is included in, a location and in respect of which the permit is in force, or 2 or more such blocks.

S. 31(4)
substituted by
No. 91/2001
s. 28(3).

(4) An application cannot be made for the renewal of a permit in respect of only one block.

S. 31(5)
substituted by
No. 91/2001
s. 28(3).

(5) If a permit is in force in respect of 5 or 6 blocks, an application may be made for the renewal of the permit in respect of 4 of those blocks.

- (6) If a permit is in force in respect of 2, 3 or 4 blocks, an application may be made for the renewal of the permit in respect of all those blocks. **S. 31(6) substituted by No. 91/2001 s. 28(3).**
- (7) An application may not be made for the further renewal of a permit that was renewed as a result of an application referred to in subsection (6). **S. 31(7) substituted by No. 91/2001 s. 28(3).**

32 Grant or refusal of renewal of permit

- (1) Where an application has been made under section 30 for the renewal of a permit, the Minister—
- S. 32(1) amended by Nos 83/1990 s. 5(1), 82/1993 s. 9(f)(i).**
- (a) must, if the conditions to which the permit is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or
- S. 32(1)(a) substituted by No. 83/1990 s. 5(1).**
- (b) may, if—
- S. 32(1)(b) substituted by No. 83/1990 s. 5(1).**
- (i) any of the conditions to which the permit is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
- (ii) the Minister is, nevertheless, satisfied that special circumstances exist that justify the granting of the renewal of the permit—
- by instrument in writing served on the person who is then the permittee inform the person that the Minister is prepared to grant to the person the renewal of the permit.
- (2) If any of the conditions to which the permit is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with, and if the Minister is not satisfied that special circumstances exist that
- S. 32(2) amended by No. 83/1990 s. 5(2)(a)(b).**

justify the granting of the renewal of the permit, the Minister shall, subject to subsection (3), by instrument in writing served on the person who is then the permittee, refuse to grant the renewal of the permit.

(3) The Minister shall not refuse to grant the renewal of the permit unless—

S. 32(3)(a)
amended by
No. 91/2001
s. 28(4)(a)(i)(ii).

(a) the Minister has, by instrument in writing served on the permittee, given not less than one month's notice of the Minister's intention to refuse to grant the renewal of the permit;

S. 32(3)(b)
amended by
No. 91/2001
s. 28(4)(a)(i).

(b) the Minister has served a copy of the instrument on such other persons, if any, as the Minister thinks fit;

S. 32(3)(c)
amended by
No. 91/2001
s. 28(4)(a)(i).

(c) the Minister has, in the instrument—

(i) given particulars of the reasons for the intention; and

S. 32(3)(c)(ii)
amended by
No. 91/2001
s. 28(4)(a)(iii).

(ii) specified a date on or before which the permittee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that the permittee or person wishes the Minister to consider; and

S. 32(3)(d)
amended by
No. 91/2001
s. 28(4)(a)
(i)(iv).

(d) the Minister has taken into account any matters so submitted to the Minister on or before the specified date by the permittee or by a person on whom a copy of the first-mentioned instrument has been served.

(4) An instrument referred to in subsection (1) shall contain—

(a) a summary of the conditions to which the permit, on the grant of the renewal, is to be subject; and

- (b) a statement to the effect that the application will lapse if the permittee does not make a request under subsection (5). **S. 32(4)(b) amended by No. 82/1993 s. 9(f)(ii).**
- (5) A permittee on whom there has been served an instrument under subsection (1) may, within a period of one month after the date of service of the instrument on the permittee, by instrument in writing served on the Minister, request the Minister to grant to the permittee the renewal of the permit. **S. 32(5) amended by No. 82/1993 s. 9(f)(iii).**
- (6) Where a permittee on whom there has been served an instrument under subsection (1) has made a request under subsection (5) within the period referred to in subsection (5), the Minister shall grant to the permittee the renewal of the permit. **S. 32(6) amended by Nos 82/1993 s. 9(f)(iv), 91/2001 s. 28(4)(b).**
- (7) Where a permittee on whom there has been served an instrument under subsection (1) has not made a request under subsection (5) within the period referred to in subsection (5), the application lapses upon the expiration of that period. **S. 32(7) amended by No. 82/1993 s. 9(f)(v).**
- (8) Where—
- (a) an application for the renewal of a permit has been made; and
 - (b) the permit expires—
 - (i) before the Minister grants, or refuses to grant, the renewal of the permit; or
 - (ii) before the application lapses as provided by subsection (7)—
- the permit shall be deemed to continue in force in all respects—
- (c) until the Minister grants, or refuses to grant, the renewal of the permit; or
 - (d) until the application so lapses—
- whichever first happens.

33 Conditions of permit

- (1) A permit may be granted subject to such conditions as the Minister thinks fit and specifies in the permit.
- (2) The conditions referred to in subsection (1) may include conditions with respect to—
 - (a) work to be carried out by the permittee in or in relation to the permit area during the term of the permit;
 - (b) amounts to be expended by the permittee in the carrying out of such work; or
 - (c) both those matters—and the conditions may require the permittee to comply with directions given in accordance with the permit concerning the matters referred to in paragraphs (a) and (b).

34 Discovery of petroleum to be notified

- (1) Where petroleum is discovered in a permit area, the permittee—
 - (a) shall forthwith inform the Minister of the discovery; and
 - (b) shall, within a period of three days after the date of the discovery, furnish to the Minister particulars in writing of the discovery.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

S. 34(1)
amended by
Nos 91/2001
s. 29(a),
10/2004
s. 16(Sch. 2
item 1.2(a)(b)).

S. 34(2)(3)
repealed by
No. 91/2001
s. 29(b).

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* * * * *

S. 35
repealed by
No. 91/2001
s. 29(c).

36 Nomination of blocks as location¹

S. 36
amended by
No. 68/1986
s. 49
(Sch. item 4),
substituted by
No. 12/1990
s. 7(1).

- (1) Where a petroleum pool is identified in a permit area, the permittee may nominate the block in which the pool is situated, or the blocks (being blocks within the permit area) to which the pool extends, for declaration as a location.
- (2) Where 2 or more petroleum pools are identified in a permit area, the permittee may, instead of making nomination under subsection (1) in relation to each pool, nominate all of the blocks to which the pools extend, or to which any 2 or more of the pools extend, for declaration as a single location.
- (3) A nomination may not be made under subsection (2) unless, in the case of each of the pools to which the nomination relates, at least one of the blocks to which the pool extends immediately adjoins a block to which the other, or another, of those pools extends.
- (4) A nomination by a permittee must be in writing and served on the Minister.
- (5) A nomination may not be made by a permittee unless the permittee or another person has, whether within or outside the permit area, recovered petroleum from the petroleum pool to which the nomination relates or, if the nomination relates to more than one pool, from each of those pools.
- (6) Where—
 - (a) the Minister is of the opinion that a permittee is entitled to nominate a block or blocks under subsection (1) or (2); and

(b) the permittee has not done so—

the Minister may require the permittee to exercise the permittee's right to nominate the block or blocks within 3 months after the date of the making of the requirement.

- (7) A requirement by the Minister under subsection (6) must be by written notice served on the permittee.
- (8) On written request by a permittee within the period fixed by subsection (6), the Minister may extend the time for compliance with a requirement under that subsection by not more than 3 months.
- (9) If a permittee fails to comply with a requirement under subsection (6), the Minister may, by written notice served on the permittee, nominate the block or blocks for declaration as a location.

37 Declaration of location²

(1) Where—

- (a) a permittee has made a nomination under section 36; and
- (b) the Minister is of the opinion that the permittee is entitled under that section to nominate the block or blocks specified in the nomination—

the Minister must, by notice published in the Gazette, declare the block or blocks to which the nomination relates to be a location.

- (2) Where the Minister has made a nomination under section 36(9), the Minister must, by notice published in the Gazette, declare the block or blocks to which the nomination relates to be a location.
- (3) The Minister may, at the request of the permittee, revoke a declaration.

S. 37
amended by
No. 68/1986
s. 6(a)(b),
substituted by
No. 12/1990
s. 7(1).

- (4) The Minister may vary a declaration—
- (a) by adding to the location a block in the permit area to which, in the opinion of the Minister, a petroleum pool within the location extends; or
 - (b) by deleting from the location a block to which, in the opinion of the Minister, no petroleum pool within the location extends.
- (5) The Minister may not vary a declaration unless—
- (a) the Minister has caused to be served on the permittee notice in writing of the proposed variation, identifying the block to be added to, or deleted from, the location; and
 - (b) the period of 30 days after the date of service of the notice has expired; and
 - (c) the Minister has considered any matters submitted to the Minister by the permittee in relation to the proposed variation.
- (6) Subsection (5) does not apply where a variation is made at the request of the permittee.
- (7) The Minister may form an opinion for the purposes of this section if he or she considers that there are reasonable grounds for forming the opinion having regard to any information in his or her possession, whether provided by the permittee or otherwise.

S. 37(7)
inserted by
No. 91/2001
s. 30.

38 Immediately adjoining blocks³

For the purposes of section 36, a block immediately adjoins another block if the graticular section that constitutes or includes that block and the graticular section that constitutes or includes that other block—

- (a) have a side in common; or
- (b) are joined together at one point only.

S. 38
amended by
No. 12/1990
s. 8.

s. 38A

Pt 3 Div. 2A
(Heading and
ss 38A–38K)
inserted by
No. 68/1986
s. 7.

Division 2A—Retention leases for petroleum

S. 38A
inserted by
No. 68/1986
s. 7.

38A Application by permittee for lease

- (1) A permittee whose permit is in force in respect of a block that constitutes, or the blocks that constitute, a location may, within the application period, make an application to the Minister for the grant of a lease in respect of that block, or in respect of one or more of those blocks, as the case may be.

- (2) An application under subsection (1)—

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S. 38A(2)(a)
repealed by
No. 91/2001
s. 31(1).

- (b) shall be made in an approved manner;
- (c) shall be accompanied by particulars of—
- (i) the proposals of the applicant for work and expenditure in respect of the area comprised in the blocks specified in the application; and
 - (ii) the commercial viability of the recovery of petroleum from the area comprised in the blocks specified in the application at the time of the application, and particulars of the possible future commercial viability of the recovery of petroleum from that area;

- (d) may set out any other matters that the applicant wishes to be considered; and
- (e) shall be accompanied by the prescribed fee.

S. 38A(2)(e)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (3) The Minister may, at any time, by instrument in writing served on the applicant, require the applicant to furnish, within the time specified in the instrument, further information in writing in connexion with the application.
- (4) The application period in respect of an application under this section by a permittee is—
 - (a) the period of 2 years after the date on which the block that constitutes the location concerned was, or the blocks that constitute the location concerned were, declared to be a location; or
 - (b) such other period, not less than 2 years or more than 4 years after that date, as the Minister, on application in writing by the permittee, served on the Minister before the end of the first-mentioned period of two years, allows.

38B Grant or refusal of lease in relation to application

S. 38B
inserted by
No. 68/1986
s. 7.

- (1) If—
 - (a) an application has been made under section 38A; and
 - (b) the applicant has furnished any further information as and when required by the Minister under section 38A(3); and

S. 38B(1)
amended by
No. 82/1993
s. 9(g)(i),
substituted by
No. 91/2001
s. 31(2).

(c) the Minister is satisfied that—

- (i) the area comprised in the block, or any one or more of the blocks, specified in the application contains petroleum; and
- (ii) the recovery of petroleum from that area is not, at the time of the application, commercially viable but is likely to become commercially viable within 15 years after that time—

the Minister must, by instrument in writing served on the applicant, tell the applicant that the Minister is prepared to grant to the applicant a lease in respect of the block or blocks as to which the Minister is satisfied as mentioned in paragraph (c).

(2) Where an application has been made under section 38A and—

- (a) the applicant has not furnished any further information as and when required by the Minister under section 38A(3); or
- (b) the Minister is not satisfied as to the matters referred to in paragraph (1)(c) in relation to the block, or all the blocks, specified in the application—

the Minister shall, by instrument in writing served on the applicant, refuse to grant a lease to the applicant.

(2A) If—

- (a) an application has been made under section 38A specifying 2 or more blocks; and

S. 38B(2)(a)
amended by
No. 82/1993
s. 10(1).

S. 38B(2)(b)
amended by
No. 91/2001
s. 31(3).

S. 38B(2A)
inserted by
No. 91/2001
s. 31(4).

- (b) the Minister is not satisfied as to the matters referred to in subsection (1)(c) in relation to one or more, but not all, of the blocks—
the Minister must, by instrument in writing served on the applicant, refuse to grant a lease to the applicant in respect of the block or blocks as to which the Minister is not satisfied as mentioned in subsection (1)(c).
- (3) An instrument under subsection (1) shall contain—
- (a) a summary of the conditions subject to which the lease is to be granted; and
- (b) a statement to the effect that the application will lapse if the applicant does not make a request under subsection (4) in respect of the grant of the lease. **S. 38B(3)(b) amended by No. 82/1993 s. 9(g)(ii).**
- (4) An applicant on whom there has been served an instrument under subsection (1) may, within a period of one month after the date of service of the instrument, or within such further period, not exceeding one month, as the Minister, on application in writing served on the Minister before the end of the first-mentioned period of one month, allows, by instrument in writing served on the Minister, request the Minister to grant the lease to the applicant. **S. 38B(4) amended by No. 82/1993 s. 9(g)(iii).**
- (5) Where an applicant on whom there has been served an instrument under subsection (1) has made a request under subsection (4) within the period applicable under subsection (4), the Minister shall grant to the applicant a retention lease in respect of the block or blocks specified in the instrument. **S. 38B(5) amended by No. 82/1993 s. 9(g)(iv).**

s. 38BA

S. 38B(6)
amended by
No. 82/1993
s. 9(g)(v).

- (6) Where an applicant on whom there has been served an instrument under subsection (1) and has not made a request under subsection (4) within the period applicable under subsection (4), the application lapses upon the expiration of that period.
- (7) On the day on which a lease granted under this section in respect of a block or blocks comes into force, the permit in respect of the block or blocks ceases to be in force in respect of those blocks.

S. 38BA
inserted by
No. 83/1990
s. 6.

38BA Application of sections 38A and 38B where permit is transferred

Where—

- (a) after an application has been made under subsection 38A(1) in relation to a block or blocks in respect of which a permit is in force; and
- (b) before a decision has been made by the Minister under subsection 38B(1) or (2) in relation to the application—

a transfer of the permit is registered under section 78, sections 38A and 38B have effect, after the time of the transfer, as if any reference in those sections to the applicant were a reference to the transferee.

S. 38BB
inserted by
No. 91/2001
s. 32.

38BB Application by licensee for lease

- (1) If—
- (a) a licence is in force under section 53(1)(c) or 53(2) in respect of a block or blocks; and
- (b) no operations for the recovery of petroleum are being carried on under the licence in respect of an area (the *unused area*)—
- (i) that consists of, or consists of part of, the block or blocks; and

- (ii) in which petroleum has been found to exist—

the licensee may, within the application period, apply to the Minister for the grant of a lease in respect of the unused area.

- (2) An application under subsection (1)—
- (a) is to be made in an approved manner; and
 - (b) is to be accompanied by particulars of—
 - (i) the proposals of the applicant for work and expenditure in respect of the unused area; and
 - (ii) the commercial viability of the recovery of petroleum from the unused area at the time of the application, and particulars of the possible future commercial viability of the recovery of petroleum from that area; and
 - (c) may set out any other matters that the applicant wishes to be considered; and
 - (d) is to be accompanied by the prescribed fee.
- (3) The Minister may, at any time, by written notice served on the applicant, require the applicant to give, within the period stated in the notice, further written information in connection with the application.
- (4) The application period in respect of an application under this section by a licensee is the period of 5 years that began on—
- (a) the day on which the licence was granted; or
 - (b) if any operations for the recovery of petroleum have been carried on under the licence in respect of the unused area—the last day on which any such operations were so carried on.

S. 38BC
inserted by
No. 91/2001
s. 32.

38BC Grant or refusal of lease in relation to application by licensee

- (1) If—
- (a) an application has been made under section 38BB; and
 - (b) the applicant has given any further information as and when required by the Minister under section 38BB(3); and
 - (c) the Minister is satisfied that recovery of petroleum from the unused area—
 - (i) is not, at the time of the application, commercially viable; and
 - (ii) is likely to become commercially viable within the period of 15 years after that time—

the Minister must, by written notice served on the applicant, inform the applicant that the Minister is prepared to grant to the applicant a lease in respect of the unused area.

- (2) If an application has been made under section 38BB and—
- (a) the applicant has not given further information as and when required by the Minister under section 38BB(3); or
 - (b) the Minister is not satisfied as to the matters referred to in subsection (1)(c) in relation to the unused area—

the Minister must, by written notice served on the applicant, refuse to grant a lease to the applicant.

- (3) A notice under subsection (1) must contain—
- (a) a summary of the conditions subject to which the lease is to be granted; and

-
- (b) a statement to the effect that the application will lapse if the applicant does not make a request under subsection (4) in respect of the grant of the lease.
- (4) An applicant on whom a notice has been served under subsection (1) may, within one month after the date on which the notice was served, or within such further period, not exceeding one month, as the Minister, on written application made to the Minister before the end of the first-mentioned period of one month, allows, request the Minister in writing to grant the lease to the applicant.
- (5) If an applicant on whom a notice has been served under subsection (1) has made a request under subsection (4) within the period applicable under subsection (4), the Minister must grant to the applicant a retention lease in respect of the unused area.
- (6) If an applicant on whom a notice has been served under subsection (1) has not made a request under subsection (4) within the period applicable under subsection (4), the application lapses at the end of that period.
- (7) On the day on which a lease granted under this section in respect of an unused area comes into force, the licence in respect of the block or blocks of which the area consists or in which the area is included ceases to be in force in respect of the area.

38BD Application of sections 38BB and 38BC where licence is transferred

If—

- (a) after an application has been made under section 38BB(1) in relation to an area consisting of or included in a block or blocks in respect of which a licence is in force; and

S. 38BD
inserted by
No. 91/2001
s. 32.

s. 38C

(b) before a decision has been made by the Minister under section 38BC(1) or (2) in relation to the application—

a transfer of the licence is registered under section 78, sections 38BB and 38BC have effect, after the time of the transfer, as if any reference in those sections to the applicant were a reference to the transferee.

S. 38C
inserted by
No. 68/1986
s. 7.

38C Rights conferred by lease

A lease, while it remains in force, authorizes the lessee, subject to this Act and the regulations and in accordance with the conditions to which the lease is subject, to explore for petroleum, and to carry on such operations and execute such works as are necessary for that purpose, in the lease area.

S. 38D
inserted by
No. 68/1986
s. 7.

38D Term of lease

Subject to this Part, a lease (whether granted by way of renewal of a lease or otherwise) remains in force for a period of 5 years commencing on the day on which the lease was granted or, if a later day is specified in the lease as being the day on which the lease is to come into force, on that later day.

S. 38E
inserted by
No. 68/1986
s. 7.

38E Notice of intention to cancel lease

(1) Where—

S. 38E(1)(a)
amended by
No. 11/2004
s. 15(a).

- (a) a lessee has been given a notice of the kind referred to in section 38H(3) during the term of the lease and has carried out, and has informed the Minister of the results of, the re-evaluation required by the notice;
- (b) the lessee has not made an application for the renewal of the lease; and

-
- (c) after consideration of the results of the re-evaluation referred to in paragraph (a) and such other matters as the Minister thinks fit, the Minister is of the opinion that recovery of petroleum from the lease area is commercially viable—

the Minister may serve on the lessee and on such other persons as the Minister thinks appropriate an instrument in writing—

- (d) informing the lessee or the other person that the Minister has formed that opinion and that the Minister intends to cancel the lease; and
- (e) stating that the lessee or the other person may serve an instrument in writing on the Minister within the period specified in the first-mentioned instrument, not being a period ending earlier than one month after the date of service of the first-mentioned instrument, setting out any matters that the lessee or the other person, as the case may be, wishes to be considered.

(2) Where—

- (a) an instrument under subsection (1) is served on a lessee; and
- (b) the lessee does not, within the period referred to in subsection (1)(e), serve on the Minister an instrument setting out matters that the lessee wishes to be considered or the Minister, after consideration of matters set out in an instrument served on the Minister by the lessee within that period, determines that the lease should be cancelled—

the Minister shall, by instrument in writing served on the lessee, cancel the lease.

s. 38F

- (3) The cancellation of a lease under subsection (2) has effect—
- (a) in a case to which paragraph (b) does not apply—at the end of the period of 12 months commencing on the date of service of the instrument of cancellation; or
 - (b) in a case where the lessee makes an application for a licence in respect of one or more of the blocks comprised in the lease within the period referred to in paragraph (a)—when the Minister grants, or refuses to grant, the licence or when the application lapses, whichever first happens.
- (4) Where a lease is cancelled under subsection (2), the lease shall be deemed to continue in force in all respects until the cancellation has effect in accordance with subsection (3).

S. 38F
inserted by
No. 68/1986
s. 7.

38F Application for renewal of lease

- (1) A lessee may, from time to time, make an application to the Minister for the renewal of the lease.
- (2) An application for the renewal of a lease—

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S. 38F(2)(a)
repealed by
No. 91/2001
s. 33.

- (b) subject to subsection (3), shall be made in an approved manner not less than 6 months or more than 12 months before the day on which the lease ceases to be in force;
- (c) shall be accompanied by particulars of—
 - (i) the proposals of the applicant for work and expenditure in respect of the lease area; and

-
- (ii) particulars of the commercial viability of recovery of petroleum from the lease at the time of the application and particulars of the possible future commercial viability of recovery of petroleum from the lease area; and
- (d) shall be accompanied by the prescribed fee. **S. 38F(2)(d) amended by No. 83/1990 s. 18(1) (Sch. 1).**
- (3) The Minister may, for reasons that the Minister thinks sufficient, receive an application for the renewal of the lease less than 6 months before, but not in any case after, the day on which the lease ceases to be in force.
- (4) Where an application has been made for the renewal of a lease, the Minister may, at any time, by instrument in writing served on the lessee, require the lessee to furnish, within the time specified in the instrument, further information in writing in connexion with the application. **S. 38F(4) amended by No. 83/1990 s. 7.**
- 38G Grant or refusal of renewal of lease** **S. 38G inserted by No. 68/1986 s. 7.**
- (1) Where—
- (a) an application for the renewal of a lease has been made under section 38F; and **S. 38G(1) amended by Nos 83/1990 s. 8(1)(c), 82/1993 s. 9(h)(i). S. 38G(1)(a) substituted by No. 83/1990 s. 8(1)(a).**
- (b) any further information required by the Minister under section 38F(4) has been furnished in accordance with that section; and **S. 38G(1)(b) substituted by No. 83/1990 s. 8(1)(a).**

s. 38G

- (c) the Minister is satisfied that recovery of petroleum from the lease area—
- (i) is not, at the time of the application, commercially viable; and
 - (ii) is likely to become commercially viable within the period of 15 years after that time—

the Minister—

S. 38G(1)(d)
substituted by
No. 83/1990
s. 8(1)(b).

- (d) must, if the conditions to which the lease is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or

S. 38G(1)(e)
substituted by
No. 83/1990
s. 8(1)(b).

- (e) may, if—
- (i) any of the conditions to which the lease is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
 - (ii) the Minister is, nevertheless, satisfied that special circumstances exist that justify the granting of the renewal of the lease—

by instrument in writing served on the person who is then the lessee, inform the person that the Minister is prepared to grant to the person the renewal of the lease.

S. 38G(2)
substituted by
No. 83/1990
s. 8(2).

- (2) Subject to subsection (3), where an application for the renewal of a lease has been made under section 38F and—
- (a) any further information required by the Minister under section 38F(4) has not been furnished in accordance with that section; or
 - (b) the Minister is not satisfied as to the matters referred to in subsection (1)(c); or

-
- (c) any of the conditions to which the permit is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with and the Minister is not satisfied that special circumstances exist that justify the granting of the renewal of the lease—

the Minister must, by instrument in writing served on the person who is then the lessee, refuse to grant the renewal of the lease.

- (3) The Minister shall not refuse to grant the renewal of the lease unless the Minister—
- (a) has, by instrument in writing served on the lessee, given not less than one month's notice of the intention to refuse to grant the renewal of the lease;
 - (b) has served a copy of the instrument on such other persons, if any, as the Minister thinks fit;
 - (c) has, in the instrument—
 - (i) given particulars of the reasons for the intention; and
 - (ii) specified a date on or before which the lessee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that the lessee wishes to be considered; and
 - (d) has taken into account any matters so submitted on or before the specified date by the lessee or by a person on whom a copy of the first-mentioned instrument has been served.

s. 38G

S. 38G(4)(b)
amended by
No. 82/1993
s. 9(h)(ii).

(4) An instrument referred to in subsection (1) shall contain—

(a) a summary of the conditions to which the lease, on the grant of the renewal, is to be subject; and

(b) a statement to the effect that the application will lapse if the lessee does not make a request under subsection (6).

(5) An instrument under subsection (2) shall, where the Minister refuses to grant the renewal of a lease by reason only that the Minister is not satisfied as to the matter referred to in subsection (1)(c)(i), contain a statement to the effect that the lessee may, within the period of 12 months after the date of service of the instrument, make an application for a licence in respect of one or more of the blocks comprised in the lease.

S. 38G(6)
amended by
No. 82/1993
s. 9(h)(iii).

(6) A lessee on whom there has been served an instrument under subsection (1) may, within a period of one month after the date of service of the instrument on the lessee, by instrument in writing served on the Minister, request the Minister to grant the renewal of the lease to the lessee.

S. 38G(7)
amended by
No. 82/1993
s. 9(h)(iv).

(7) Where a lessee on whom there has been served an instrument under subsection (1) has made a request under subsection (6) within the period referred to in subsection (6), the Minister shall grant to the lessee the renewal of the lease.

S. 38G(8)
amended by
No. 82/1993
s. 9(h)(v).

(8) Where a lessee on whom there has been served an instrument under subsection (1) has not made a request under subsection (6) within the period referred to in subsection (6), the application lapses upon the expiration of that period.

(9) Where—

- (a) an application for the renewal of a lease has been made; and
- (b) the lease expires—
 - (i) before the Minister grants, or refuses to grant, the renewal of the lease; or
 - (ii) before the application lapses as provided by subsection (8)—

the lease shall be deemed to continue in force in all respects—

- (c) until the Minister grants, or refuses to grant, the renewal of the lease; or
- (d) until the application so lapses—

whichever first happens.

(10) Where the Minister refuses to grant the renewal of a lease by reason only that the Minister is not satisfied as to the matter referred to in subsection (1)(c)(i), the lease shall be deemed to continue in force in all respects—

- (a) in a case to which paragraph (b) does not apply—until 12 months after the date of service of the instrument under subsection (2); or
- (b) in a case where the lessee makes an application for a licence in respect of one or more of the blocks comprised in the lease within the period of 12 months after the date referred to in paragraph (a)—until the Minister grants, or refuses to grant, the licence or until the application lapses, whichever first happens.

S. 38H
inserted by
No. 68/1986
s. 7.

38H Conditions of lease

- (1) A lease may be granted subject to such conditions as the Minister thinks fit and are specified in the lease.
- (2) The conditions referred to in subsection (1) may include conditions with respect to work to be carried out by the lessee in or in relation to the lease area during the term of the lease, or amounts to be expended by the lessee in the carrying out of such work, or conditions with respect to both of those matters, including conditions requiring the lessee to comply with directions given in accordance with the lease concerning those matters.
- (3) A lease shall be deemed to contain a condition that the lessee will, within the period of 3 months after the receipt of a written notice from the Minister requesting the lessee to do so or within such further period as the Minister, on application in writing served on the Minister before the end of the first-mentioned period, allows, re-evaluate the commercial viability of petroleum production in the lease area (otherwise than by the drilling of wells) and inform the Minister in writing of the results of the re-evaluation.
- (4) Where a lessee has complied with two notices of the kind referred to in subsection (3) during the term of the lease, the Minister shall not give to the lessee during that term a further notice of that kind.

38J Discovery of petroleum to be notified

S. 38J
inserted by
No. 68/1986
s. 7.

(1) Where petroleum is discovered in a lease area, the lessee—

S. 38J(1)
amended by
Nos 91/2001
s. 34(a),
10/2004
s. 16(Sch. 2
item 1.2(a)(b)).

(a) shall forthwith inform the Minister of the discovery; and

(b) shall, within a period of three days after the date of the discovery, furnish to the Minister particulars in writing of the discovery.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

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S. 38J(2)(3)
repealed by
No. 91/2001
s. 34(b).

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S. 38K
inserted by
No. 68/1986
s. 7,
repealed by
No. 91/2001
s. 34(c).

Division 3—Production licences for petroleum

39 Recovery of petroleum in adjacent area

A person shall not carry on operations for the recovery of petroleum in the adjacent area except—

S. 39
amended by
Nos 91/2001
s. 35, 10/2004
s. 16(Sch. 2
item 1.3(a)(b)).

(a) under and in accordance with a licence; or

(b) as otherwise permitted by this Part.

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;
\$165 000, in the case of a body corporate.

40 Application for licence by holder of permit

(1) A permittee whose permit is in force in respect of a block that constitutes, or the blocks that constitute, a location may, within the application period, make an application to the Minister for the grant of a licence⁴—

S. 40(1)(a)
amended by
No. 12/1990
s. 9(1).

- (a) where nine or more blocks constitute the location concerned—in respect of five of those blocks;
- (b) where eight or seven blocks constitute the location concerned—in respect of four of those blocks;
- (c) where six or five blocks constitute the location concerned—in respect of three of those blocks;
- (d) where four or three blocks constitute the location concerned—in respect of two of those blocks;
- (e) where two blocks constitute the location concerned—in respect of one of those blocks; or
- (f) where one block constitutes the location concerned—in respect of that block.

(2) A permittee whose permit is in force in respect of blocks that constitute a location—

S. 40(2)(a)
amended by
No. 91/2001
s. 36(a).

- (a) instead of making an application under subsection (1) in respect of the permittee's primary entitlement, may, within the application period, make an application to

the Minister for the grant of a licence in respect of a number of those blocks that is less than the permittee's primary entitlement; and

- (b) being the holder of a licence referred to in paragraph (a), may, from time to time within that period, make an application to the Minister for the variation of that licence to include in the licence area a number of those blocks that does not exceed the number, if any, by which the permittee's primary entitlement exceeds the number of blocks in respect of which that licence was granted and the number of blocks, if any, included in that licence by reason of any previous variations of that licence.

S. 40(2)(b)
amended by
Nos 83/1990
s. 9(1),
91/2001
s. 36(a).

(3) Where—

- (a) a permittee makes an application under subsection (1) in respect of the permittee's primary entitlement; or
- (b) a permittee who is the holder of a licence in respect of a number of blocks that is less than the permittee's primary entitlement makes an application under subsection (2) for a variation of that licence, and the number of blocks in respect of which that licence was granted, together with the number of blocks included, and sought to be included, in the licence area by reason of applications under that subsection, is the permittee's primary entitlement—

S. 40(3)(a)
amended by
No. 91/2001
s. 36(a).

S. 40(3)(b)
amended by
Nos 83/1990
s. 9(2),
91/2001
s. 36(a).

the permittee may, within the application period, make an application to the Minister for the grant of a licence in respect of any of the other blocks forming part of the location concerned.

s. 40A

S. 40(4)
amended by
No. 68/1986
s. 8(a).

- (4) Subject to subsection (5), the application period in respect of an application under this section by a permittee is—
- (a) the period of two years after the date on which the block that constitutes the location concerned was, or the blocks that constitute the location concerned were, declared to be a location; or
 - (b) such other period, not less than two years or more than four years after that date, as the Minister, on application by the permittee, in writing, served on the Minister before the expiration of the period of two years referred to in paragraph (a), allows.

S. 40(5)
inserted by
No. 68/1986
s. 8(b).

- (5) Where—
- (a) a permittee applies for the grant by the Minister of a licence in respect of a block or blocks in respect of which the permittee has applied for a lease under section 38A; and
 - (b) an instrument refusing to grant the lease is served on the permittee pursuant to section 38B(2)—

the application period is whichever of the following periods last expires—

- (c) the period that is applicable under subsection (4);
- (d) the period of 12 months after the day of service of the instrument.

S. 40A
inserted by
No. 68/1986
s. 9.

40A Application for licence by holder of lease

- (1) A lessee whose lease is in force may make an application to the Minister for the grant of a licence—
- (a) where the lease is in respect of 9 blocks—in respect of 5 of those blocks;

- (b) where the lease is in respect of 8 or 7 blocks—in respect of 4 of those blocks;
 - (c) where the lease is in respect of 6 or 5 blocks—in respect of 3 of those blocks;
 - (d) where the lease is in respect of 4 or 3 blocks—in respect of 2 of those blocks;
 - (e) where the lease is in respect of 2 blocks—in respect of one of those blocks; or
 - (f) where the lease is in respect of one block—in respect of that block.
- (2) At any time while a lease is in force, the lessee may, instead of making an application under subsection (1) in respect of the lessee's primary entitlement, make an application to the Minister for the grant of a licence in respect of a number of blocks that is less than the lessee's primary entitlement.
- (3) Where an application has been made under subsection (1) in respect of the lessee's primary entitlement, the lessee may, at any time while the lease concerned is in force, make an application to the Minister for the grant of a licence in respect of any of the other blocks forming part of the lease.

S. 40A(3)
amended by
No. 83/1990
s. 10.

41 Application for licence

- (1) An application under section 40 or 40A—

S. 41(1)
amended by
No. 68/1986
s. 10.

* * * * *

S. 41(1)(a)
repealed by
No. 91/2001
s. 36(b)(i).

- (b) shall be made in an approved manner;

- (c) shall be accompanied by particulars of the proposals of the applicant for work and expenditure in respect of the area comprised in the blocks specified in the application;
- (d) may set out any other matters that the applicant wishes the Minister to consider; and
- (e) shall in the case of an application for the grant of a licence be accompanied by the prescribed fee.

S. 41(1)(e)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (2) The Minister may, at any time, by instrument in writing served on the applicant, require the applicant to give, within the period specified in the instrument, further information in writing in connexion with the applicant's application.

S. 41(2)
amended by
Nos 91/2001
s. 36(b)(ii),
11/2002
s. 3(Sch. 1
item 52.2).

42 Determination of rate of royalty

- (1) Where an application for a primary licence has been made and, before or after the grant of the primary licence, the applicant makes an application for a secondary licence, the Minister shall determine a rate at which royalty is to be payable in respect of petroleum recovered, whether under the primary licence or under the secondary licence, being a rate that is not less than 11 per centum or more than 12½ per centum of the value at the well-head of that petroleum.
- (2) The Minister shall not, under subsection (1), determine the rate at which royalty is to be payable unless the Minister has given to the applicant an opportunity to confer with the Minister concerning that rate.

S. 42(2)
amended by
No. 91/2001
s. 36(c)(i)(ii).

43 Notification as to grant of licence

S. 43
amended by
Nos 68/1986
s. 11(a)(b),
82/1993
s. 9(i)(i)(ii),
substituted by
No. 91/2001
s. 37.

- (1) If—
- (a) an application has been made under section 40 or 40A; and
 - (b) the applicant has given any further information as and when required by the Minister under section 41(2); and
 - (c) the Minister is satisfied that the area comprised in the block, or any one or more of the blocks, specified in the application contains petroleum—

the Minister must, by instrument in writing served on the applicant, tell the applicant that the Minister is prepared to grant to the applicant a licence in respect of the block or blocks as to which the Minister is satisfied as mentioned in paragraph (c).

- (2) An instrument under subsection (1) must—
- (a) contain a summary of the conditions subject to which the licence is to be granted; and
 - (b) if the instrument relates to a secondary licence—specify the rate of royalty determined by the Minister under section 42(1); and
 - (c) contain a statement to the effect that the application will lapse if the applicant does not make a request under section 44(1) in respect of the grant of the licence.
- (3) If the Minister decides not to grant to the applicant a licence in respect of the block, or any of the blocks, specified in the application because—
- (a) the applicant has failed to comply with a requirement made by the Minister under section 41(2); or

(b) the Minister is not satisfied that the area comprised in the block, or any of the blocks, contains petroleum—

the Minister must, by instrument in writing served on the applicant, tell the applicant of the Minister's decision and the reasons for the decision.

44 Grant of licence

S. 44(1)
amended by
Nos 82/1993
s. 9(j)(i),
91/2001
s. 38(a)(i).

(1) An applicant on whom there has been served an instrument under section 43(1) may, within a period of three months after the date of service of the instrument on the applicant, or within such further period, not exceeding three months, as the Minister, on application in writing served on the applicant before the expiration of the first-mentioned period of three months, allows, by instrument in writing served on the Minister, request the Minister to grant to the applicant the licence referred to in the first-mentioned instrument.

S. 44(2)
amended by
Nos 82/1993
s. 9(j)(ii),
91/2001
s. 38(a)(ii).

(2) Where an applicant on whom there has been served an instrument under section 43(1) has made a request under subsection (1) within the period applicable under subsection (1), the Minister shall grant to the applicant a production licence for petroleum in respect of the block or blocks as to which the Minister is satisfied as mentioned in section 43(1)(c).

S. 44(3)
amended by
No. 68/1986
s. 49(Sch.
item 5(a)).

(3) A secondary licence shall not be granted to a permittee or lessee in respect of any one or more of the blocks that constitute a location unless—
(a) a primary licence has been granted in respect of a block or blocks forming part of that location; and

-
- (b) the number of blocks in respect of which the primary licence was granted, together with the number of blocks included in that licence by reason of variations of the licence under section 45, is the permittee's or lessee's primary entitlement. **S. 44(3)(b) amended by No. 68/1986 s. 49(Sch. item 5(b)).**
- (4) Where an applicant on whom there has been served an instrument under section 43(1) has not made a request under subsection (1) within the period applicable under subsection (1), the application lapses upon the expiration of that period. **S. 44(4) amended by No. 82/1993 s. 9(j)(iii).**
- (5) On the day on which a licence granted under this section comes into force, the permit or lease in respect of the blocks in respect of which the licence was granted ceases to be in force in respect of those blocks. **S. 44(5) amended by No. 68/1986 ss 12, 49(Sch. item 6).**
- 44A Application of sections 41 to 44 where permit etc. transferred** **S. 44A inserted by No. 83/1990 s. 11.**
- Where—
- (a) after an application has been made—
- (i) under section 40 for the grant of a licence in respect of a block in respect of which a permit is in force; or
- (ii) under section 40A for the grant of a licence in respect of a block in respect of which a lease is in force; and
- (b) before a decision has been made by the Minister under section 43(1) in relation to the application—
- a transfer of the permit or lease (as the case may be) is registered under section 78, then, after the time of the transfer, sections 41 to 44 have effect in relation to the application as if any reference in

those sections to the applicant were a reference to the transferee.

45 Variation of licence area

S. 45(1)
amended by
No. 91/2001
s. 38(b).

(1) Where an application is made under section 40(2) for a variation of a licence, the Minister shall, by instrument in writing served on the licensee, vary the licence to include in the licence area such of the blocks specified in the application as are blocks as to which the Minister is satisfied as mentioned in section 43(1)(c).

S. 45(2)
amended by
No. 68/1986
s. 13.

- (2) On and from the day on and from which a variation of a licence under this section has effect—
- (a) the blocks included in the licence area by reason of the variation are, subject to this Part, for the remainder of the term of the licence, blocks in respect of which the licence is in force; and
 - (b) the permit that is in force in respect of the blocks so included ceases to be in force in respect of those blocks.

46 Determination of permit or lease as to block not taken up

- (1) Subject to subsection (2), where—
- (a) a permittee who may make an application under section 40 in respect of a block does not, within the application period, make the application; or
 - (b) all applications made by a permittee under that section in respect of a block have lapsed—

the permit is determined as to that block and the determination has effect—

- (c) in a case referred to in paragraph (a)—
upon the expiration of the application period; and
- (d) in a case referred to in paragraph (b)—
- (i) upon the expiration of the application period; or
 - (ii) upon the lapsing of the last of the applications referred to in that paragraph—

whichever is the later.

- (1A) Subject to subsection (2), where all applications made by a lessee under section 40A in respect of a block have lapsed, the lease is determined as to that block and the determination has effect upon the lapsing of the last of those applications. **S. 46(1A) inserted by No. 68/1986 s. 14(1)(a).**
- (2) Where a permittee or lessee makes an application for a secondary licence— **S. 46(2) amended by No. 68/1986 s. 49(Sch. item 7(a)).**
- (a) the permit or lease is determined as to any blocks forming part of the location concerned that are not the subject of that application or of any application for a primary licence or for the variation of such a licence; and **S. 46(2)(a) amended by No. 68/1986 s. 49(Sch. item 7(b)).**
 - (b) the determination has effect upon the making of the application.
- (3) Subject to subsection (4), where a block or blocks constituting or forming part of a location is or are no longer the subject of a permit or lease, the Minister shall, by instrument published in the Gazette— **S. 46(3) substituted by No. 68/1986 s. 14(1)(b), amended by No. 68/1986 s. 49(Sch. item 8).**

Petroleum (Submerged Lands) Act 1982

No. 9772 of 1982

Part III—Mining for Petroleum

s. 46

S. 46(3)(a)
amended by
No. 12/1990
s. 10.

(a) in a case where that block or those blocks constitutes or constitute that location—
revoke the declaration made under section 37 in respect of that location; or

S. 46(3)(b)
amended by
No. 12/1990
s. 10.

(b) in a case where that block or those blocks form part of that location—revoke the declaration made under section 37 in respect of that location to the extent that it relates to that block or those blocks.

S. 46(4)
inserted by
No. 68/1986
s. 14(1)(b).

(4) Subsection (3) does not apply in relation to a block—

S. 46(4)(a)
amended by
No. 68/1986
s. 49(Sch.
item 9).

(a) in respect of which an application for the grant of a lease or licence has been made, being an application that has not lapsed and in relation to which a decision has not been made by the Minister; or

S. 46(4)(b)
inserted by
No. 68/1986
s. 49(Sch.
item 9).

(b) in respect of which a lease or licence is in force.

S. 46(5)
inserted by
No. 68/1986
s. 14(1)(b),
amended by
No. 12/1990
s. 10.

(5) Where a lease is granted in respect of a block or blocks forming part of a location, the Minister shall, by instrument published in the Gazette, revoke the declaration made under section 37 to the extent that it relates to the block or blocks that is or are not within the lease area.

S. 46(6)
inserted by
No. 68/1986
s. 14(1)(b),
amended by
No. 12/1990
s. 10.

(6) Where—
(a) the Minister refuses to grant a lease in respect of a block or blocks constituting or forming part of a location; and

(b) the reason, or one of the reasons, for the refusal is that the Minister is not satisfied as to the matter referred to in section 38B(1)(c)(ii)—

the Minister shall, by instrument published in the Gazette, revoke the declaration made under section 37 in respect of that location.

47 Application for licence in respect of surrendered etc. blocks

(1) Where—

- (a) a licence is surrendered or cancelled as to a block; or
- (b) a permit or lease is surrendered, cancelled or determined as to a block—
 - (i) that, at the time of the surrender, cancellation or determination, was, or was included in, a location; and
 - (ii) in which, in the opinion of the Minister, there is petroleum—

S. 47(1)(b)
amended by
No. 68/1986
s. 49(Sch.
item 10).

the Minister may, at any subsequent time, by instrument published in the Gazette—

- (c) invite applications for the grant of a licence in respect of that block; and
 - (d) specify a period within which applications may be made.
- (2) The Minister shall, in an instrument under subsection (1), state—
- (a) that an applicant is required to specify an amount that the applicant would be prepared to pay in respect of the grant of a licence on the application; or

S. 47(2)(a)
substituted by
No. 91/2001
s. 39(1)(a).

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 47

S. 47(2)(b)
amended by
No. 91/2001
s. 39(1)(b).

(b) that an applicant is required to specify a rate of royalty that the applicant would be prepared to pay if a licence were granted on the application, in respect of petroleum recovered under the licence, being a rate that exceeds 10 per centum of the value at the well-head of that petroleum.

S. 47(3)
amended by
No. 91/2001
s. 39(1)(c)(i)(ii).

(3) Where the Minister, in an instrument under subsection (1), states that an applicant is required to specify a rate of royalty as mentioned in paragraph (b) of subsection (2), the Minister may, in that instrument, state that an applicant on whose application the Minister is prepared to grant a licence will also be required to pay to the Minister, in respect of the grant of the licence to the applicant, the amount specified in that behalf in that instrument.

S. 47(4)(5)
repealed by
No. 12/1990
s. 11(a).

* * * * *

(6) An application under this section—

S. 47(6)(a)
repealed by
No. 91/2001
s. 39(1)(d).

* * * * *

- (b) shall be made in an approved manner;
- (c) shall be accompanied by the particulars referred to in section 41(1)(c);
- (d) in the case of an application under subsection (1), shall specify, in accordance with the requirement in the instrument by which applications were invited, the amount or the rate of royalty that the applicant would be prepared to pay; and

* * * * *

S. 47(6)(e)
repealed by
No. 12/1990
s. 11(b)(ii).

- (f) may set out any other matters that the applicant wishes the Minister to consider.
- (7) The Minister may, at any time, by instrument in writing served on the applicant, require the applicant to furnish, within the period specified in the instrument, further information in connexion with the application.

S. 47(7)
amended by
No. 91/2001
s. 39(1)(e)(i)(ii).

48 Application fee etc.

- (1) An application under section 47 shall be accompanied by—

(a) the prescribed fee; and

S. 48(1)(a)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

(b) a deposit of 10% of—

- (i) the amount that the applicant has specified as the amount that the applicant would be prepared to pay in respect of the grant of a licence to the applicant on the application; or
- (ii) the amount stated by the Minister, in the instrument by which applications were invited, as the amount that the applicant will be required to pay in respect of the grant of a licence—

S. 48(1)(b)
amended by
No. 12/1990
s. 12(1)(a)(b),
substituted by
No. 91/2001
s. 39(2).

or a bank guarantee for the amount of that deposit.

s. 49

S. 48(2)
substituted by
Nos 83/1990
s. 4(3),
91/2001
s. 39(3).

- (2) Subject to subsection (3), if a licence is not granted on the application—
- (a) the amount of the deposit must be refunded to the applicant; or
 - (b) the bank guarantee is discharged.

S. 48(3)
amended by
Nos 12/1990
s. 12(2),
91/2001
s. 39(4)(a)(b).

- (3) Where an applicant on whom there has been served an instrument under section 49(1) does not request the Minister, under section 49(6), to grant the licence referred to in the instrument, the deposit shall not be refunded to the applicant.

49 Request by applicant for grant of licence

S. 49(1)
amended by
No. 91/2001
s. 39(5)(a)(i)(ii).

- (1) Where, at the expiration of the period specified in an instrument under section 47(1), only one application has been made under that subsection in respect of the block specified in the instrument, the Minister may reject the application or may, by instrument in writing served on the applicant, inform the applicant that the Minister is prepared to grant the applicant a licence in respect of that block.

S. 49(2)
amended by
No. 91/2001
s. 39(5)(b)(i).

- (2) Where, at the expiration of the period specified in an instrument under section 47(1), two or more applications have been made under that subsection in respect of the block specified in the instrument, the Minister may reject any or all of the applications and, if the Minister does not reject all of the applications, may—

S. 49(2)(b)
amended by
No. 91/2001
s. 39(5)(b)(ii)
(c).

- (a) if only one application remains unrejected—by instrument in writing served on the applicant; or
- (b) if two or more applications remain unrejected—by instrument in writing served on the applicant, or on one of the applicants, whose application has not been rejected and who has specified in the application an amount, or a rate of royalty, that the

applicant would be prepared to pay that is not less than the amount, or the rate of royalty, specified in the application of any other applicant whose application has not been rejected—

inform the applicant—

- (c) that the Minister is prepared to grant to the applicant a licence in respect of that block; and
- (d) that the applicant will be required to pay—
 - (i) the amount specified in the application;
 - (ii) royalty at the rate specified in the application; or
 - (iii) royalty at the rate specified in the application and the amount specified in the instrument under section 47(1)—

as the case may be.

* * * * * S. 49(3)
repealed by
No. 12/1990
s. 13(1).

* * * * * S. 49(4)
repealed by
No. 82/1993
s. 9(k)(i).

- (5) An instrument under any of the preceding provisions of this section shall contain—
 - (a) a summary of the conditions subject to which the licence is to be granted;
 - (b) a statement of the amount or the balance of the amount, if any, that the applicant will be required to pay in respect of the grant of the licence; and

S. 49(5)(b)
amended by
No. 91/2001
s. 39(5)(d)(i)(ii).

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 49

S. 49(5)(c)(i)
amended by
No. 82/1993
s. 9(k)(ii).

(c) a statement to the effect that the application will lapse—

(i) if the applicant does not make a request under subsection (6); or

S. 49(5)(c)(ii)
amended by
No. 82/1993
s. 9(k)(iii),
substituted by
No. 91/2001
s. 39(5)(e).

(ii) in a case where the instrument contains a statement referred to in paragraph (b)—if the applicant does not pay the amount, or the balance of the amount, referred to in that statement.

S. 49(5)(c)(iii)
repealed by
No. 82/1993
s. 9(k)(iii).

* * * * *

S. 49(6)
amended by
No. 91/2001
s. 39(5)(f).

(6) An applicant on whom there has been served an instrument under any of the preceding provisions of this section may, within a period of three months after the date of service of the instrument on the applicant, or within such further period, not exceeding three months, as the Minister, on application in writing served on the applicant before the expiration of the first-mentioned period of three months, allows—

S. 49(6)(a)
amended by
Nos 82/1993
s. 9(k)(iv),
91/2001
s. 39(5)(f).

(a) by instrument in writing served on the Minister, request the Minister to grant to the applicant the licence; and

S. 49(6)(b)
amended by
No. 82/1993
s. 9(k)(v),
substituted by
No. 91/2001
s. 39(5)(g).

(b) if the first-mentioned instrument contains a statement of an amount or the balance of an amount that the applicant will be required to pay in respect of the grant of the licence—pay that amount or balance.

S. 49(6)(c)
repealed by
No. 82/1993
s. 9(k)(v).

* * * * *

- (7) Where an applicant on whom there has been served an instrument under subsection (1) or (2)—
- (a) has not made a request under subsection (6); or
 - (b) if the instrument contains a statement of an amount or the balance of an amount that the applicant will be required to pay in respect of the grant of a licence—has not paid that amount or balance—
- * * * * *
- S. 49(7) amended by No. 12/1990 s. 13(2).
- S. 49(7)(a) amended by No. 82/1993 s. 9(k)(vi).
- S. 49(7)(b) amended by No. 82/1993 s. 9(k)(vii), substituted by No. 91/2001 s. 39(5)(h).
- S. 49(7)(c) repealed by No. 82/1993 s. 9(k)(vii).

within the period applicable under subsection (6), the application lapses upon the expiration of that period.

- (8) Where the application of an applicant on whom there has been served an instrument under subsection (2) lapses as provided by subsection (7), subsection (2) applies in respect of the application or applications, if any, then remaining unrejected.

50 Grant of licence on request

- Where an applicant on whom there has been served an instrument under section 49—
- (a) has made a request under section 49(6); and
- S. 50 amended by No. 91/2001 s. 39(5)(j).
- S. 50(a) amended by No. 82/1993 s. 9(l)(i).

s. 51

S. 50(b)
amended by
No. 82/1993
s. 9(l)(ii),
substituted by
No. 91/2001
s. 39(5)(i).

(b) if the instrument contains a statement of an amount or the balance of an amount that the applicant will be required to pay in respect of the grant of a licence—has paid that amount or balance—

S. 50(c)
repealed by
No. 82/1993
s. 9(l)(ii).

* * * * *

within the period applicable under section 49(6), the Minister shall grant to the applicant a production licence for petroleum in respect of the block specified in the instrument.

51 Grant of licences in respect of individual blocks

S. 51(1)
amended by
No. 91/2001
s. 39(5)(k)(i).

(1) Where a licence (in this section called *the original licence*) is in force in respect of two or more blocks (not being blocks that form, or form part of, a location), the licensee may make an application to the Minister for the grant to the licensee of two or more licences in respect of the blocks the subject of the original licence in exchange for the original licence.

(2) An application under subsection (1)—

S. 51(2)(a)
repealed by
No. 91/2001
s. 39(5)(k)(ii).

* * * * *

(b) shall be made in an approved manner;

(c) shall specify the number of licences required;

(d) shall specify the block or blocks the subject of the original licence in respect of which each licence is sought; and

(e) shall be accompanied by the prescribed fee.

S. 51(2)(e)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

* * * * *

S. 51(3)
repealed by
No. 82/1993
s. 9(m)(i).

(4) If a licensee has made an application under this section the Minister must grant to the licensee production licences for petroleum in accordance with the application.

S. 51(4)
substituted by
No. 82/1993
s. 9(m)(ii).

(5) A licence granted on an application under this section—

* * * * *

S. 51(5)(a)
repealed by
No. 91/2001
s. 39(5)(k)(iii).

(b) shall be granted subject to conditions corresponding as nearly as may be to the conditions to which the original licence was subject.

(6) Where licences are granted on an application under this section—

(a) the original licence is, by force of this subsection, determined; and

(b) the determination has effect on and from the day on which those licences come into force.

S. 51(6)(b)
substituted by
No. 68/1986
s. 15.

52 Rights conferred by licence

A licence, while it remains in force, authorizes the licensee, subject to this Act and the regulations and in accordance with the conditions to which the licence is subject—

s. 53

S. 52(a)
amended by
No. 91/2001
s. 39(5)(l).

- (a) to recover petroleum in the licence area and to recover petroleum from the licence area in another area to which the licensee has lawful access for that purpose;
- (b) to explore for petroleum in the licence area; and
- (c) to carry on such operations and execute such works in the licence area as are necessary for those purposes.

S. 53
amended by
No. 68/1986
s. 16,
substituted by
No. 91/2001
s. 40.

53 Term of licence

Subject to this Part, a licence remains in force indefinitely.

S. 53A
inserted by
No. 91/2001
s. 40.

53A Termination of licence if no operations for 5 years

- (1) If no operations for the recovery of petroleum under a licence have been carried on for a continuous period of at least 5 years, the Minister may, by written notice served on the licensee, inform the licensee that the Minister proposes to terminate the licence after the end of one month after the notice is served.
- (2) At any time after the end of one month after the notice referred to in subsection (1) is served on the licensee, the Minister may, by written notice served on the licensee, terminate the licence.
- (3) In working out, for the purposes of subsection (1), the duration of the period in which no operations for the recovery of petroleum were carried on under a licence, any period in which no such operations were carried on because of circumstances beyond the licensee's control is to be disregarded.

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 56

* * * * *

S. 54
amended by
Nos 68/1986
s. 17, 83/1990
s. 18(1)
(Sch. 1),
repealed by
No. 91/2001
s. 41.

* * * * *

S. 55
amended by
Nos 83/1990
s. 12(1)–(3),
82/1993
s. 9(n)(i)–(iii),
repealed by
No. 91/2001
s. 41.

56 Conditions of licence

A licence may be granted subject to such conditions as the Minister thinks fit and specifies in the licence.

* * * * *

S. 57
repealed by
No. 83/1990
s. 13.

58 Directions as to recovery of petroleum

- (1) Where petroleum is not being recovered in a licence area and the Minister is satisfied that there is recoverable petroleum in that area, he or she may, by instrument in writing served on the licensee, direct the licensee to take all necessary and practicable steps to recover that petroleum.
- (2) Where the Minister is not satisfied with the steps taken or being taken by a licensee to whom a direction has been given under subsection (1), the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for or in relation to the recovery of petroleum in the licence area.

S. 58(1)
amended by
No. 91/2001
s. 42(a).

S. 58(3)
amended by
Nos 68/1986
s. 18(1)(a),
91/2001
s. 42(a).

(3) Where petroleum is being recovered in a licence area, the Minister may, for reasons that he or she thinks sufficient, by instrument in writing served on the licensee, direct the licensee to take all necessary and practicable steps to increase or reduce the rate at which petroleum is being recovered in the licence area or from a petroleum pool in the licence area to such rate as the Minister specifies in the instrument.

S. 58(4)
amended by
No. 68/1986
s. 18(1)(b).

(4) Where the Minister is not satisfied with the steps taken or being taken by a licensee to whom a direction has been given under subsection (3), the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for or in relation to the increase or reduction of the rate at which petroleum is being recovered in the licence area or from a petroleum pool in the licence area.

S. 58(5)
inserted by
No. 68/1986
s. 18(1)(c).

(5) Without limiting the matters that may be taken into account by the Minister in determining whether to give a direction under subsection (3) or (4), the Minister may take into account matters relating to the effects on State revenue of the proposed direction, but the Minister shall not give a direction under subsection (3) or (4) if the direction would require action to be taken that is contrary to good oil-field practice.

59 Unit development

- (1) In this section, the expression *unit development*—
- (a) applies in relation to a petroleum pool that is partly in a particular licence area of a licensee and partly in a licence area of another licensee or in an area that is not within the adjacent area but in which a person other than the first-mentioned licensee is lawfully entitled to carry on

operations for the recovery of petroleum from the pool; and

- (b) means the carrying on of operations for the recovery of petroleum from that pool under co-operative arrangements between the persons entitled to carry on such operations in each of those areas.
- (2) A licensee may from time to time enter into an agreement in writing for or in relation to the unit development of a petroleum pool, but nothing in this subsection derogates from the operation of section 81(2).
- (3) The Minister of his or her own motion or on application made to him or her in writing by—
- (a) a licensee in whose licence area there is a part of a particular petroleum pool; or
- (b) a person who is lawfully entitled to carry on operations for the recovery of petroleum in an area outside the adjacent area that includes part of a particular petroleum pool that extends into the adjacent area—

S. 59(2)
amended by
Nos 68/1986
s. 19(a).

S. 59(3)
amended by
Nos 68/1986
s. 19(b)(i)(ii),
91/2001
s. 42(b)(i)(ii).

may, for the purpose of securing the more effective recovery of petroleum from the petroleum pool, by instrument in writing served on the licensee, direct any licensee whose licence area includes part of the petroleum pool, by instrument in writing served on the licensee, to enter into an agreement in writing, within the period specified in the instrument, for or in relation to the unit development of the petroleum pool and to lodge an application in accordance with section 81 for approval of any dealing to which the agreement relates.

S. 59(4)
amended by
No. 91/2001
s. 42(c).

S. 59(4)(b)
substituted by
No. 68/1986
s. 19(c).

(4) Where—

- (a) a licensee who is directed, under subsection (3), to enter into an agreement for or in relation to the unit development of a petroleum pool does not enter into such an agreement within the specified period; or
- (b) the licensee enters into such an agreement but an application for approval of a dealing to which the agreement relates is not lodged with the Minister or, if an application is so lodged, the dealing is not approved under section 81—

the Minister may, by instrument in writing served on the licensee, direct the licensee to submit to the Minister, within the period specified in the instrument, a scheme for or in relation to the unit development of the petroleum pool.

- (5) At any time after the expiration of the period within which a scheme for or in relation to the unit development of a petroleum pool is to be submitted by a licensee under subsection (4), the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for the purpose of securing the more effective recovery of petroleum from the petroleum pool.
- (6) Where a person is the licensee in respect of two or more licence areas in each of which there is part of a particular petroleum pool, the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for the purpose of securing the more effective recovery of petroleum from the petroleum pool.

- (7) Where an agreement under this section is in force or the Minister has given directions under subsection (5) or (6), the Minister may, having regard to additional information that has become available, by instrument in writing served on the licensee or licensees concerned, give to the licensee or licensees such directions, or further directions, as the case may be, as the Minister thinks necessary for the purpose of securing the more effective recovery of petroleum from the petroleum pool. **S. 59(7) amended by No. 91/2001 s. 42(d).**
- (8) The Minister shall not give a direction under subsection (6) or (7) unless he or she has given to the licensee or licensees concerned an opportunity to confer with the Minister concerning the proposed direction. **S. 59(8) amended by No. 91/2001 s. 42(e)(i)(ii).**
- (9) Directions under subsection (5), (6) or (7) may include directions as to the rate at which petroleum is to be recovered.
- (10) In this section, *dealing* means a dealing to which section 81 applies. **S. 59(10) substituted by No. 68/1986 s. 19(d).**
- (11) The Minister shall—
- (a) if a petroleum pool extends, or is reasonably believed by him or her to extend, from the adjacent area into lands to which the laws of another State relating to the exploitation of petroleum resources apply, consult with the appropriate authority of that State concerning the exploitation of the petroleum pool; **S. 59(11)(a) amended by No. 91/2001 s. 42(f).**
- (b) if a petroleum pool extends, or is reasonably believed by him or her to extend, from the adjacent area into the adjacent area in respect of a State other than Victoria, consult with the Designated Authority under the Commonwealth Act in respect of that State **S. 59(11)(b) amended by Nos 11/2002 s. 3(Sch. 1 item 52.3), 11/2004 s. 15(b).**

concerning the exploitation of the petroleum pool; or

(c) if both paragraph (a) and paragraph (b) apply, comply with both of those paragraphs.

(12) Where subsection (11) applies in relation to a petroleum pool, the Minister shall not approve an agreement under this section, or give a direction under this section, in relation to that petroleum pool except with the approval of any other authority or Designated Authority required by that subsection to be consulted.

Pt 3 Div. 3A
(Heading and
ss 59A–59K)
inserted by
No. 91/2001
s. 6.

Division 3A—Infrastructure licences

S. 59A
inserted by
No. 91/2001
s. 6,
amended by
No. 10/2004
s. 16(Sch.
2(item 1.3(a)
(b)).

59A Construction etc. of infrastructure facilities

A person must not, in the adjacent area—

(a) begin or continue the construction, or the alteration or reconstruction, of any infrastructure facilities; or

(b) operate any infrastructure facilities—
except—

(c) under and in accordance with an infrastructure licence; or

(d) as otherwise permitted by this Part.

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;
\$165 000, in the case of a body corporate.

59B Application for infrastructure licence

S. 59B
inserted by
No. 91/2001
s. 6.

- (1) A person may apply to the Minister for the grant of an infrastructure licence.
- (2) The application—
 - (a) is to be made in an approved manner; and
 - (b) is to be accompanied by particulars of the proposals of the applicant for the construction and operation of facilities at a place in the adjacent area, being a place described in the application; and
 - (c) may set out any other matters that the applicant wishes to be considered; and
 - (d) is to be accompanied by the prescribed fee.
- (3) The Minister may, at any time, by written notice served on the applicant, require the applicant to give, within the period stated in the notice, further written information in connection with the application.

59C Notification as to grant of an infrastructure licence

S. 59C
inserted by
No. 91/2001
s. 6.

- (1) If an application for the grant of an infrastructure licence has been made under section 59B and the applicant has given any further information as and when required by the Minister under section 59B(3), then, subject to section 59D, the Minister, by written notice served on the applicant, may inform the applicant that the Minister is prepared to grant to the applicant an infrastructure licence in respect of the place described in the application.
- (2) A notice under subsection (1) must—
 - (a) contain a summary of the conditions subject to which the infrastructure licence is to be granted; and

- (b) contain a statement to the effect that the application will lapse if the applicant does not make a request under section 59E(1) in respect of the grant of the infrastructure licence.

S. 59D
inserted by
No. 91/2001
s. 6.

59D Notices to be given by Minister

- (1) This section applies if the Minister is prepared to grant an infrastructure licence (the *proposed infrastructure licence*) in respect of a place in a block that—
 - (a) is the subject of a permit, lease, licence, infrastructure licence, special prospecting authority or access authority; or
 - (b) is, or is proposed to be, transected by a pipeline in accordance with the provisions of a pipeline licence—

of which the registered holder is a person other than the applicant.
- (2) The Minister must not inform the applicant under section 59C that the Minister is prepared to grant the proposed infrastructure licence unless the Minister—
 - (a) has, by written notice served on the registered holder referred to in subsection (1), given not less than one month's notice that the Minister is prepared to grant the proposed infrastructure licence; and
 - (b) has served a copy of the notice on such other persons (if any) as the Minister thinks fit; and
 - (c) has, in the notice—
 - (i) given particulars of the proposed infrastructure licence; and

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- (ii) specified a date, on or before which a person on whom the notice, or a copy of the notice, is served may, by writing served on the Minister, submit any matters that the person wishes the Minister to consider; and
 - (d) has taken into account any matters so submitted on or before the specified date by a person on whom the first-mentioned notice, or a copy of it, has been served.
- (3) Subsection (2) does not apply—
- (a) in respect of the registered holder of a permit, lease, licence, infrastructure licence or pipeline licence if the registered holder has consented in writing to the grant of the proposed infrastructure licence; or
 - (b) in respect of the registered holder of a special prospecting authority or an access authority if—
 - (i) the registered holder has consented in writing to the grant of the proposed infrastructure licence; or
 - (ii) the special prospecting authority or access authority will expire before any construction or operation of facilities under the proposed infrastructure licence would occur.

59E Grant of infrastructure licence

- (1) An applicant on whom a notice has been served under section 59C(1) (*the applicant*) may, by written notice served on the Minister, request the Minister to grant to the applicant the infrastructure licence referred to in the first-mentioned notice.

S. 59E
inserted by
No. 91/2001
s. 6.

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- (2) The request must be made—
- (a) before the end of 3 months after the date of service of the notice on the applicant under section 59C(1); or
 - (b) if the Minister, on application in writing served on the Minister before the end of that period, allows a further period of not more than 3 months for the making of the request—before the end of that further period.
- (3) If the applicant makes the request within the period applicable under subsection (2), the Minister must grant to the applicant an infrastructure licence in respect of the place described in the application.
- (4) If the applicant does not make the request within the period applicable under subsection (2), the application lapses at the end of that period.

S. 59F
inserted by
No. 91/2001
s. 6.

59F Rights conferred by infrastructure licence

- (1) An infrastructure licence, while it remains in force, authorises the infrastructure licensee, subject to this Act and the regulations and in accordance with the conditions to which the infrastructure licence is subject, to construct and operate infrastructure facilities in the infrastructure licence area.
- (2) To avoid doubt, the grant of an infrastructure licence is not a prerequisite to doing anything that could be authorised to be done by a permit, lease, licence or pipeline licence.

59G Term of infrastructure licence

Subject to this Part, an infrastructure licence remains in force indefinitely.

S. 59G
inserted by
No. 91/2001
s. 6.

59H Termination of infrastructure licence if no operations for 5 years

S. 59H
inserted by
No. 91/2001
s. 6.

- (1) If an infrastructure licensee—
- (a) has not carried out any construction work under the infrastructure licence for a continuous period of at least 5 years; and
 - (b) has not used the facilities constructed under the infrastructure licence for a continuous period of at least 5 years—

the Minister may, by written notice served on the infrastructure licensee, inform the infrastructure licensee that the Minister proposes to terminate the infrastructure licence after the end of one month after the notice is served.

- (2) At any time after the end of one month after the notice referred to in subsection (1) is served on the infrastructure licensee, the Minister may, by written notice served on the infrastructure licensee, terminate the infrastructure licence.
- (3) In working out, for the purposes of subsection (1), the duration of the period in which an infrastructure licensee did not carry out any construction work under the infrastructure licence or did not use the facilities constructed under the infrastructure licence, any period in which construction work was not carried out, or the facilities were not used, because of circumstances beyond the infrastructure licensee's control is to be disregarded.

s. 59J

S. 59J
inserted by
No. 91/2001
s. 6.

59J Conditions of infrastructure licence

An infrastructure licence may be granted subject to such conditions as the Minister thinks fit and are specified in the infrastructure licence.

S. 59K
inserted by
No. 91/2001
s. 6.

59K Variation of infrastructure licence

- (1) An infrastructure licensee may, at any time, make an application to the Minister for the variation of the infrastructure licence.
- (2) An application under this section—
 - (a) is to be made in the approved manner; and
 - (b) is to be accompanied by particulars of the proposed variation; and
 - (c) is to set out the reasons for the proposed variation; and
 - (d) is to be accompanied by the prescribed fee.
- (3) The Minister may, at any time, by written notice served on the applicant, require the applicant to give, within the period stated in the notice, further written information in connection with the application.
- (4) If the infrastructure licence was granted in respect of a place in a block that—
 - (a) is the subject of a permit, lease, licence, infrastructure licence, special prospecting authority or access authority; or
 - (b) is, or is proposed to be, transected by a pipeline in accordance with the provisions of a pipeline licence—

of which the registered holder is a person other than the applicant, the Minister must not vary the infrastructure licence pursuant to the application unless the Minister—

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- (c) has, by written notice served on the registered holder, given not less than one month's notice that the Minister is considering the application; and
 - (d) has served a copy of the notice on such other persons (if any) as the Minister thinks fit; and
 - (e) has, in the notice—
 - (i) given particulars of the proposed variation; and
 - (ii) specified a date on or before which a person on whom the notice, or a copy of the notice, is served may, by writing served on the Minister, submit any matters that the person wishes the Minister to consider.
- (5) Subsection (4) does not apply—
- (a) in respect of the registered holder of a permit, lease, licence, infrastructure licence or pipeline licence if the registered holder has consented in writing to the variation of the infrastructure licence; or
 - (b) in respect of the registered holder of a special prospecting authority or an access authority if—
 - (i) the registered holder has consented in writing to the variation of the infrastructure licence; or
 - (ii) the special prospecting authority or access authority will expire before any construction or operation of facilities under the infrastructure licence as proposed to be varied would occur.

- (6) After considering any matters submitted to the Minister under subsection (4) on or before the date specified in the notice served under that subsection by a person to whom the notice, or a copy of the notice, has been served, the Minister may—
- (a) by written notice served on the applicant, vary the infrastructure licence to such extent as the Minister thinks necessary; or
 - (b) refuse to vary the infrastructure licence.

Division 4—Pipeline licences

60 Construction etc. of pipelines etc.

S. 60(1)
amended by
Nos 91/2001
s. 43(1)(a),
10/2004
s. 16(Sch. 2
item 1.4(a)(b)).

- (1) A person shall not, in the adjacent area—
- (a) commence or continue the construction, or the alteration or reconstruction, of a pipeline;
or
 - (b) operate a pipeline—

except under and in accordance with a pipeline licence.

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;
\$165 000, in the case of a body corporate.

S. 60(2)(3)
repealed by
No. 91/2001
s. 43(1)(b).

* * * * *

S. 60(4)
substituted by
No. 91/2001
s. 43(2),
amended by
No. 10/2004
s. 16(Sch. 2
item 1.4(a)(b)).

- (4) A person must not, in the adjacent area, commence to operate a pipeline unless—
- (a) it has been constructed and tested in accordance with a pipeline licence; and

(b) the Minister has certified in writing that he or she is satisfied that the pipeline has been so constructed and tested and is fit to be operated.

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;
\$165 000, in the case of a body corporate.

(5) A person shall not, in the adjacent area, recommence to operate a pipeline the previous operation of which was discontinued, except with and in accordance with a consent in writing of the Minister.

S. 60(5)
amended by
Nos 91/2001
s. 43(3)(a)(b),
10/2004
s. 16(Sch. 2
item 1.4(a)(b)).

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;
\$165 000, in the case of a body corporate.

(6) The Minister may, for reasons that he or she thinks sufficient, refuse to give a consent or certificate for the purposes of this section and, where he or she gives a consent, may attach conditions to it.

S. 60(6)
amended by
No. 91/2001
s. 43(3)(c)(d).

61 Acts done in an emergency etc.

It is not an offence against section 60—

(a) if, in an emergency in which there is a likelihood of loss or injury, or for the purpose of maintaining a pipeline in good order or repair, a person does an act to avoid the loss or injury or to maintain the pipeline in good order and repair and—

S. 61(a)
amended by
No. 91/2001
s. 43(4)(a)(i).

(i) as soon as practicable notifies the Minister of the act done; and

(ii) complies with any directions given to the person by the Minister; or

S. 61(a)(ii)
amended by
No. 91/2001
s. 43(4)(a)(ii).

- (b) if a person does an act in compliance with a direction under this Act or the regulations.

62 Removal of pipeline etc. constructed in contravention of Act

S. 62(1)
amended by
No. 91/2001
s. 43(4)(b)(ii).

- (1) Where—

S. 62(1)(a)
amended by
No. 91/2001
s. 43(4)(b)(i).

- (a) the construction of a pipeline is commenced, continued or completed in contravention of this Act; or

S. 62(1)(b)
amended by
No. 91/2001
s. 43(4)(b)(i).

- (b) a pipeline is altered or reconstructed in contravention of this Act—

the Minister may, by instrument in writing served on the appropriate person, direct that person—

S. 62(1)(c)
amended by
No. 91/2001
s. 43(4)(b)(i).

- (c) to make such alterations to the pipeline as are specified in the instrument; or

S. 62(1)(d)
amended by
No. 91/2001
s. 43(4)(b)(i).

- (d) to move the pipeline to a specified place in, or to remove it from, the adjacent area—

within the period specified in the instrument.

- (2) For the purpose of subsection (1), the appropriate person is—

S. 62(2)(a)
amended by
No. 91/2001
s. 43(4)(c).

- (a) if the construction of the pipeline has been completed—the owner of the pipeline; or

S. 62(2)(b)
amended by
No. 91/2001
s. 43(4)(c).

- (b) if the construction of the pipeline has not been completed—the person for whom the pipeline is being constructed.

- (3) Where a person on whom there has been served an instrument under subsection (1) does not, within the period specified in the instrument or within such further period, if any, as the Minister, on application in writing served on the person before the expiration of the first-mentioned period, allows, comply with the direction, the Minister may do all or any of the things required by the direction to be done.
- (4) Costs and expenses incurred by the Minister under subsection (3) are a debt due by the person referred to in that subsection to the State and are recoverable in a court of competent jurisdiction.

S. 62(3)
amended by
No. 91/2001
s. 43(4)(d).

63 Terminal station

The Minister may, by instrument published in the Gazette, declare a pumping station, a tank station or a valve station in the adjacent area to be a terminal station.

64 Application for pipeline licence

- (1) An application for a pipeline licence, whether or not that licence is for the conveyance of petroleum recovered from an area within the adjacent area—

S. 64(1)
amended by
No. 91/2001
s. 43(5)(a)(i).

* * * * *

S. 64(1)(a)
repealed by
No. 91/2001
s. 43(5)(a)(ii).

- (b) shall be made in an approved manner;
- (c) shall be accompanied by particulars of—
- (i) the proposed design and construction of the pipeline;
 - (ii) the proposed size and capacity of the pipeline;

S. 64(1)(c)(iv)
amended by
No. 91/2001
s. 43(5)(a)(iii).

- (iii) the proposals of the applicant for work and expenditure in respect of the construction of the pipeline;
 - (iv) the technical qualifications of the applicant and of the applicant's employés;
 - (v) the technical advice available to the applicant;
 - (vi) the financial resources available to the applicant; and
 - (vii) any agreements entered into, or proposed to be entered into, by the applicant for or in relation to the supply or conveyance of petroleum by means of the pipeline;
- (d) shall be accompanied by a plan, drawn to an approved scale, showing—
- (i) the route to be followed by the pipeline;
 - (ii) the sites of pumping stations, tank stations, and valve stations to be used in connexion with the pipeline; and
 - (iii) the site of any pumping station, tank station or valve station that the applicant desires to be declared under section 63 to be a terminal station in connexion with the pipeline;
- (e) may set out any other matters that the applicant wishes the Minister to consider; and
- (f) shall be accompanied by the prescribed fee.

S. 64(1)(f)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

(2) Where a notice is published in the Gazette—

S. 64(2)
amended by
No. 91/2001
s. 43(5)(b)(ii).

(a) of an application by a person other than the registered holder of the production licence for that area (*the licensee*) for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered in a licence area; or

S. 64(2)(a)
amended by
No. 91/2001
s. 43(5)(b)(i).

(b) of an application by a person other than the pipeline operator under the Commonwealth Act or a corresponding law for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered in a licence area of a production licence under the Commonwealth Act or a corresponding law—

S. 64(2)(b)
amended by
No. 11/2004
s. 15(c).

the licensee or, as the case may be, the pipeline operator under the Commonwealth Act or a corresponding law may, within a period of three months after the date of publication of the notice, or within such further period, not exceeding three months, as the Minister, on application in writing served on the licensee or pipeline operator before the expiration of the first-mentioned period of three months, allows, make an application for a pipeline licence referred to in paragraph (a) or (b), as the case requires, and in the application request that the application referred to in the notice be rejected.

(3) Where—

(a) a notice is published in the Gazette of an application by a person other than the registered holder of the production licence for a licence area for a pipeline licence in respect of the construction of the pipeline for

S. 64(3)(a)
substituted by
No. 91/2001
s. 43(5)(c).

the conveyance of petroleum recovered in that area; and

- (b) a pipeline licence is granted to the licensee or to the pipeline operator under the Commonwealth Act or a corresponding law on an application under subsection (2)—

the Minister shall, by instrument in writing served on the applicant, reject the application referred to in the notice.

S. 64(4)
amended by
No. 91/2001
s. 43(5)(d)(i)(ii).

- (4) The Minister may, at any time, by instrument in writing served on a person who has made an application under subsection (1), require the person to furnish, within the time specified in the instrument, further information in writing in connexion with the application.
- (5) In this section, *pipeline operator under the Commonwealth Act or a corresponding law* has the same meaning as in section 65.

65 Grant or refusal of pipeline licence

S. 65(1)
substituted by
Nos 83/1990
s. 14(1),
91/2001
s. 43(6).

- (1) Where a person makes an application in accordance with section 64 for a pipeline licence in respect of the construction in the adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area, the Minister may, if—
- (a) that person is not the registered holder of the production licence for that licence area; and
- (b) the application has not been rejected under section 64(3)—

inform the person, by instrument in writing served on the person, that the Minister is prepared to grant the person a pipeline licence.

(2) Where an application for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area is made in accordance with section 64 by the registered holder of the production licence for that licence area (*the licensee*), the Minister—

S. 65(2) substituted by No. 83/1990 s. 14(1), amended by No. 91/2001 s. 43(7)(a).

(a) must, if the conditions to which the production licence for that licence area is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or

S. 65(2)(a) amended by No. 91/2001 s. 43(7)(b).

(b) may, if—

(i) any of the conditions to which the production licence for that licence area is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and

S. 65(2)(b)(i) amended by No. 91/2001 s. 43(7)(b).

(ii) the Minister is, nevertheless, satisfied that special circumstances exist that justify the granting of a pipeline licence—

by instrument in writing served on the person who is then the registered holder of the production licence for that licence area (*the licensee*), inform the person that the Minister is prepared to grant to the person a pipeline licence.

(2A) If a person makes an application in accordance with section 64 for a pipeline licence in respect of the construction in the adjacent area of a pipeline for the conveyance of petroleum recovered from a place beyond the outer limits of the adjacent area, the Minister may inform the person, by instrument in writing served on the person, that the Minister is prepared to grant the person a pipeline licence.

S. 65(2A) inserted by No. 91/2001 s. 43(8).

s. 65

S. 65(3)
substituted by
No. 83/1990
s. 14(1),
amended by
No. 91/2001
s. 43(9)(a)(i).

(3) Where an application for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area is made in accordance with section 64 by the registered holder of the production licence for that licence area (*the licensee*), the Minister must, if—

S. 65(3)(a)
amended by
No. 91/2001
s. 43(9)(a)(ii).

- (a) any of the conditions to which the production licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
- (b) the Minister is not satisfied that special circumstances exist that justify the granting of a pipeline licence—

by instrument in writing served on the person who is then the registered holder of the production licence for that licence area (*the licensee*), refuse to grant a pipeline licence.

S. 65(4)
amended by
No. 91/2001
s. 43(9)(b)(i).

(4) The Minister shall not, under subsection (3), refuse to grant a pipeline licence for the conveyance of petroleum recovered in a licence area to the registered holder of the production licence for that licence area (*the licensee*) unless—

S. 65(4)(a)
amended by
No. 91/2001
s. 43(9)(b)(ii)
(iii).

(a) the Minister has, by instrument in writing served on the licensee, given not less than one month's notice of the Minister's intention to refuse to grant the pipeline licence;

S. 65(4)(b)
amended by
No. 91/2001
s. 43(9)(b)(ii).

(b) the Minister has served a copy of the instrument on such other persons, if any, as the Minister thinks fit;

S. 65(4)(c)
amended by
No. 91/2001
s. 43(9)(b)(ii).

(c) the Minister has, in the instrument—

- (i) given particulars of the reasons for the intention; and

- (ii) specified a date on or before which the licensee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that the licensee or person wishes the Minister to consider; and
- (d) the Minister has taken into account any matters so submitted to the Minister on or before the specified date by the licensee or by a person on whom a copy of the first-mentioned instrument has been served.
- (5) Where a person other than the registered holder of the production licence for a licence area or the pipeline operator under the Commonwealth Act or a corresponding law makes an application in accordance with section 64 for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered in that licence area or, as the case may be, a licence area of a production licence under the Commonwealth Act or a corresponding law, the Minister may, by instrument in writing served on the applicant, refuse to grant a pipeline licence.
- * * * * *
- (7) An instrument under subsection (1), (2) or (2A)—
- (a) shall specify the route to be followed by the pipeline;
- (b) shall contain a summary of the conditions subject to which the pipeline licence is to be granted; and
- (c) shall contain a statement to the effect that the application will lapse if the applicant does not make a request under subsection (9).

S. 65(4)(c)(ii)
amended by
No. 91/2001
s. 43(9)(b)(iv).

S. 65(4)(d)
amended by
No. 91/2001
s. 43(9)(b)(ii)
(v).

S. 65(5)
amended by
Nos 91/2001
s. 43(9)(c)(i)(ii),
11/2004
s. 15(d).

S. 65(6)
repealed by
No. 82/1993
s. 9(o)(i).

S. 65(7)
amended by
No. 91/2001
s. 43(9)(d).

S. 65(7)(c)
amended by
No. 82/1993
s. 9(o)(ii).

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 65

S. 65(8)
amended by
No. 91/2001
s. 43(9)(d).

- (8) The route to be specified in an instrument under subsection (1), (2) or (2A) shall be—
- (a) the route shown in the plan accompanying the application; or
 - (b) if the Minister is of the opinion that, for any reason, that route is not appropriate—a route that, in the opinion of the Minister, is appropriate.

S. 65(9)
amended by
Nos 82/1993
s. 9(o)(iii),
91/2001
s. 43(9)(d)(e).

- (9) A person on whom there has been served an instrument under subsection (1), (2) or (2A) may, within a period of three months after the date of service of the instrument on the person, or within such further period, not exceeding three months, as the Minister, on application in writing served on the person before the expiration of the first-mentioned period of three months, allows, by instrument in writing served on the Minister, request the Minister to grant to the person the pipeline licence.

S. 65(10)
amended by
Nos 82/1993
s. 9(o)(iv),
91/2001
s. 43(9)(d).

- (10) Where a person on whom there has been served an instrument under subsection (1), (2) or (2A) has made a request under subsection (9) within the period applicable under subsection (9), the Minister shall grant to that person a licence to construct and operate a pipeline in respect of the pipeline specified in the instrument.

S. 65(11)
substituted by
Nos 82/1993
s. 9(o)(v),
91/2001
s. 43(9)(d).

- (11) If a person on whom there has been served an instrument under subsection (1), (2) or (2A) has not made a request under subsection (9) within the period applicable under subsection (9), the application lapses upon the expiration of that period.

S. 65(12)
repealed by
No. 83/1990
s. 14(2).

* * * * *

- (13) In this section, *pipeline operator under the Commonwealth Act or a corresponding law* means a person who is entitled under the Commonwealth Act or a corresponding law to carry on operations for the recovery of petroleum in an area outside the adjacent area and who the Minister is satisfied is or will be entitled to construct a pipeline from the first-mentioned area to the boundary of the adjacent area.

66 Rights conferred by pipeline licence

A pipeline licence, while it remains in force, authorizes the pipeline licensee, subject to this Act and the regulations and in accordance with the conditions to which the pipeline licence is subject—

- (a) to construct in the adjacent area—
 - (i) a pipeline of the design, construction, size and capacity specified in the pipeline licence along the route, and in the position in relation to the sea-bed in the adjacent area, so specified; and
 - (ii) the pumping stations, tank stations, and valve stations so specified in the positions so specified;
- (b) to operate that pipeline and those pumping stations, tank stations and valve stations; and
- (c) to carry on such operations, to execute such works and to do all such other things in the adjacent area as are necessary for or incidental to the construction and operation of that pipeline and of those pumping stations, tank stations and valve stations.

67 Term of pipeline licence

S. 67(1)
substituted by
No. 91/2001
s. 44.

- (1) Subject to this Part, a pipeline licence remains in force indefinitely.

S. 67(2)
substituted by
No. 68/1986
s. 20.

- (2) A pipeline licence comes into force on the day on which the pipeline licence is granted or, if a later day is specified in the pipeline licence as being the day on which the pipeline licence is to come into force, on that later day.

S. 67A
inserted by
No. 91/2001
s. 45.

67A Termination of pipeline licence if no operations for 5 years

- (1) If a pipeline licensee—
- (a) has not carried out any construction work under the pipeline licence for a continuous period of at least 5 years; and
 - (b) has not used the pipeline or part of the pipeline for a continuous period of at least 5 years—

the Minister may, by written notice served on the pipeline licensee, inform the pipeline licensee that the Minister proposes to terminate the pipeline licence, or to terminate the pipeline licence in respect of the part of the pipeline, as the case may be, after the end of one month after the notice is served.

- (2) At any time after the end of one month after the notice referred to in subsection (1) is served on the pipeline licensee, the Minister may, by written notice served on the pipeline licensee, terminate the pipeline licence or terminate the pipeline licence in respect of the part of the pipeline, as the case may be.
- (3) In working out, for the purposes of subsection (1), the duration of the period in which a pipeline licensee did not carry out any construction work

under the pipeline licence or did not use the pipeline or a part of the pipeline, any period in which construction work was not carried out, or the pipeline or part of the pipeline was not used, because of circumstances beyond the pipeline licensee's control is to be disregarded.

* * * * *

S. 68
amended by
Nos 68/1986
s. 21, 83/1990
s. 18(1)
(Sch. 1),
repealed by
No. 91/2001
s. 46(a).

* * * * *

S. 69
amended by
Nos 83/1990
s. 15(1)(2),
82/1993
s. 9(p)(i)-(iv),
repealed by
No. 91/2001
s. 46(a).

70 Conditions of pipeline licence

- (1) A pipeline licence may be granted subject to such conditions as the Minister thinks fit and specifies in the pipeline licence.
- (2) The conditions referred to in subsection (1) may include a condition that the pipeline licensee shall complete the construction of the pipeline within the period specified in the pipeline licence.

* * * * *

S. 70(3)
repealed by
No. 91/2001
s. 46(b).

71 Variation of pipeline licence on application by pipeline licensee

- (1) A pipeline licensee may, at any time, make an application to the Minister for the variation of the pipeline licence.

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 71

(2) An application under this section—

* * * * *

S. 71(2)(a)
repealed by
No. 91/2001
s. 46(c).

- (b) shall be made in an approved manner;
- (c) shall be accompanied by particulars of the proposed variation;
- (d) shall specify the reasons for the proposed variation; and
- (e) shall be accompanied by the prescribed fee.

S. 71(2)(e)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (3) The Minister may, at any time, by instrument in writing served on a person who has made an application under this section require the person to furnish, within the period specified in the instrument, further information in writing in connexion with the application.

S. 71(3)
amended by
No. 91/2001
s. 46(d)(i)(ii).

- (4) The Minister shall, in a notice published in the Gazette of an application under this section, specify a period within which a person may submit to the Minister, in writing, any matters that the person wishes the Minister to consider in connexion with the application.

S. 71(4)
amended by
No. 91/2001
s. 46(e).

- (5) After considering any matters submitted to the Minister under subsection (4) the Minister may, by instrument in writing, vary the pipeline licence to such extent as he or she thinks necessary or may refuse to vary the pipeline licence.

S. 71(5)
amended by
No. 91/2001
s. 46(f)(i)(ii).

72 Variation of pipeline licence by Minister

- (1) The Minister may—
- (a) at the request of—
- (i) a Minister or a Minister of State of the Commonwealth; or
- (ii) a body established by a law of the Commonwealth or of the State; and
- (b) if, in the Minister's opinion, it is in the public interest so to do—

S. 72(1)
amended by
No. 91/2001
s. 46(g)(ii).

S. 72(1)(b)
amended by
No. 91/2001
s. 46(g)(i).

by instrument in writing served on a person who is a pipeline licensee or the holder of an instrument of consent under section 60 direct that person to make such changes in the design, construction, route or position of the pipeline to which the pipeline licence or instrument of consent relates, as are specified in the first-mentioned instrument, within the period specified in the first-mentioned instrument, and, if the person so directed is a pipeline licensee, shall vary the pipeline licence accordingly.

- (2) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;

\$165 000, in the case of a body corporate.

S. 72(2)
amended by
Nos 91/2001
s. 46(h),
10/2004
s. 16(Sch. 2
item 1.4(a)(b)).

- (3) Where the Minister gives a direction under subsection (1), and the person to whom the direction was given has complied with the direction, that person may bring an action in the Supreme Court against the Minister or Minister of State of the Commonwealth or body making the request.

- (4) The Supreme Court shall hear the action, without a jury, and shall determine whether it is just that the whole or a portion of the reasonable cost of complying with the direction ought to be paid to the plaintiff by the defendant.
- (5) If the Supreme Court determines that it is just that such a payment ought to be made, the Supreme Court shall determine the amount of the payment and give judgment accordingly.

73 Common carrier

The Minister may, by instrument in writing served on a pipeline licensee, direct the pipeline licensee to be a common carrier of petroleum in respect of the pipeline and thereupon the pipeline licensee is a common carrier of petroleum in respect of the pipeline.

74 Ceasing to operate pipeline

- (1) Except with the consent in writing of the Minister and subject to compliance with such conditions, if any, as are specified in the instrument of consent, a pipeline licensee shall not cease to operate the pipeline.

Penalty: \$33 000 or imprisonment for 5 years or both, in the case of a natural person;
\$165 000, in the case of a body corporate.

- (2) It is not an offence against subsection (1) if the failure of the pipeline licensee to operate the pipeline—
 - (a) was in the ordinary course of operating the pipeline;
 - (b) was for the purpose of repairing or maintaining the pipeline; or

S. 74(1)
amended by
Nos 91/2001
s. 46(i),
10/2004
s. 16(Sch. 2
item 1.4(a)(b)).

- (c) was in an emergency in which there was a likelihood of loss or injury.

Division 5—Registration of instruments

75AA Definition

In this Division *title* means a permit, lease, licence, infrastructure licence, pipeline licence or access authority.

S. 75AA
inserted by
No. 68/1986
s. 22,
amended by
No. 91/2001
s. 7(2)(a).

75 Register of certain instruments to be kept

For the purposes of this Part, the Minister shall keep a Register of titles and special prospecting authorities granted by him or her.

S. 75
amended by
Nos 68/1986
s. 23, 91/2001
s. 47(a).

76 Particulars to be entered in Register

- (1) The Minister shall enter in the Register a memorial in respect of each title or special prospecting authority—
- (a) specifying the name of the holder of the title or special prospecting authority; and
- (b) in the case of a permit, lease or licence, setting out an accurate description (including, where convenient, a map) of the permit area, lease area or licence area; and
- (ba) in the case of an infrastructure licence, setting out particulars of the infrastructure licence area; and

S. 76(1)
amended by
No. 68/1986
s. 24(a).

S. 76(1)(a)
amended by
Nos 68/1986
s. 24(a),
91/2001
s. 7(2)(b).

S. 76(1)(b)
amended by
Nos 68/1986
s. 49(Sch.
item 11(a)(b))
(as amended
by No.
12/1990
s. 19(6)(a)),
91/2001
s. 7(2)(b).

S. 76(1)(ba)
inserted by
No. 91/2001
s. 7(2)(c).

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 76

S. 76(1)(c)
amended by
Nos 68/1986
s. 24(b)(c),
91/2001
s. 7(2)(b).

(c) in the case of a special prospecting authority or an access authority, setting out an accurate description (including, where convenient, a map) of the area in respect of which the special prospecting authority or access authority is in force; and

S. 76(1)(d)
amended by
No. 91/2001
s. 7(2)(b).

(d) in the case of a pipeline licence, setting out a description of the route of the pipeline; and

S. 76(1)(e)
amended by
Nos 68/1986
s. 24(a),
91/2001
s. 7(2)(b).

(e) specifying the term of the title or special prospecting authority; and

(f) setting out such other matters and things as are required by this Part to be entered in the Register; and

S. 76(1)(g)
amended by
No. 68/1986
s. 24(a).

(g) setting out such further matters relating to the registered holder or to the terms and conditions of the title or special prospecting authority as the Minister deems proper and expedient in the public interest.

(2) The Minister shall enter in the Register a memorial of—

S. 76(2)(a)
amended by
No. 68/1986
s. 24(d).

(a) any instrument varying, cancelling, surrendering or otherwise affecting a title or prospecting authority;

(b) any instrument under section 59(5), (6), or (7);

S. 76(2)(c)
repealed by
No. 91/2001
s. 47(b).

* * * * *

(d) any instrument varying or revoking an instrument referred to in paragraph (a) or (b).

(3) It is a sufficient compliance with the requirements of subsection (1) or (2) if the Minister enters a copy of the title, special prospecting authority or instrument in the Register.

S. 76(3)
amended by
No. 68/1986
s. 24(e).

* * * * *

S. 76(4)
repealed by
No. 68/1986
s. 24(f).

(5) The Minister shall endorse on the memorial or copy of the title, special prospecting authority or instrument a memorandum of the date upon which the memorial or copy was entered in the Register.

S. 76(5)
amended by
No. 68/1986
s. 24(e).

**77 Memorials to be entered on permits etc.
determined etc.**

Where—

(a) a permit or lease ceases to be in force in respect of a block in respect of which a licence is granted;

S. 77(a)
amended by
No. 68/1986
s. 49(Sch.
item 12(a)).

(aa) a permit ceases to be in force in respect of a block in respect of which a lease is granted;

S. 77(aa)
inserted by
No. 68/1986
s. 25(a).

(b) a permit or lease has been wholly determined or partly determined; or

S. 77(b)
amended by
No. 68/1986
s. 49(Sch.
item 12(a)).

(c) a title or special prospecting authority has expired—

S. 77(c)
substituted by
No. 68/1986
s. 25(b).

the Minister shall enter in the Register a memorial of the fact.

S. 78
substituted by
No. 68/1986
s. 26(1).

78 Approval and registration of transfers

- (1) A transfer of a title is of no force until it has been approved by the Minister and an instrument of transfer is registered as provided by this section.
- (2) Where it is desired that a 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 title shall be accompanied by—
 - (a) an instrument of transfer in the prescribed form executed by the registered holder or, if there are two or more registered holders, by each registered holder and by the transferee or, if there are two or more transferees, by each transferee;
 - (b) in a case where the transferee or one or more of the transferees is not a registered holder or are not registered holders of the title, an instrument setting out—
 - (i) the technical qualifications of that transferee or those transferees;
 - (ii) details of the technical advice that is or will be available to that transferee or those transferees; and
 - (iii) details of the financial resources that are or will be available to that transferee or those transferees; and
 - (c) two copies of the application and of the instruments referred to in paragraphs (a) and (b).
- (4) The Minister shall not approve the transfer of a title unless the application was lodged with the Minister within three months after the day on which the party who last executed the instrument

of transfer so executed the instrument of transfer or within such longer period as the Minister, in special circumstances, allows.

- (5) Where an application for approval of a transfer is made in accordance with this section, the Minister shall enter a memorandum in the Register of the date on which the application was lodged and may make such other notation in the Register as the Minister considers appropriate.
- (6) The Minister must consider each application for approval of the transfer of a title and determine whether to approve the transfer.
- (7) Where an application for approval of the transfer of a title is made in accordance with this section, the Minister shall, by notice in writing served on the person who made the application, inform the person of the decision of the Minister.

S. 78(6)
substituted by
No. 82/1993
s. 9(q)(f).

S. 78(7)
amended by
No. 82/1993
s. 9(q)(ii).

* * * * *

S. 78(8)
repealed by
No. 82/1993
s. 9(q)(iii).

- (9) Where the Minister approves the transfer of a title, the Minister shall forthwith endorse on the instrument of transfer and on one copy of the instrument a memorandum of approval and shall, on payment of the fee provided by section 92, enter in the Register a memorandum of the transfer and the name of the transferee or of each transferee.
- (10) Upon the entry in the Register of a memorandum of the transfer of a title and of the name of the transferee or each transferee in accordance with subsection (9)—
- (a) the transfer shall be deemed to be registered; and

- (b) the transferee becomes the registered holder, or the transferees become the registered holders, of the title.
- (11) Where the Minister refuses to approve the transfer of a title, the Minister shall make a notation of the refusal in the Register.
- (12) Where a transfer is registered—
- (a) the copy of the instrument of transfer endorsed with the memorandum of approval shall be retained by the Minister and made available for inspection in accordance with this Division; and
- (b) the instrument of transfer endorsed with the memorandum of approval shall be returned to the person who lodged the application for approval of the transfer.
- (13) The mere execution of an instrument of transfer of a title creates no interest in the title.

79 Entries in Register on devolution of title

S. 79(1)
amended by
Nos 68/1986
s. 27(a)(i)(ii),
91/2001
s. 47(c)(i).

- (1) A person upon whom the rights of a registered holder of a particular title have devolved by operation of law may apply in writing to the Minister to have the person's name entered in the Register as the holder of the title.

S. 79(2)
amended by
Nos 68/1986
s. 27(b),
83/1990
s. 18(1)
(Sch. 1),
91/2001
s. 47(c)(ii).

- (2) The Minister shall, if he or she is satisfied that the rights of the holder have devolved upon the applicant by operation of law and on payment of the prescribed fee enter the name of the applicant in the Register as the holder of the title and, upon that entry being so made, the applicant becomes the registered holder of the title.

S. 79(3)
inserted by
No. 68/1986
s. 27(c).

- (3) Where a company that is the registered holder of a particular title has changed its name, it may apply in writing to the Minister to have its new name

substituted for its previous name in the Register in relation to that title and, if—

- (a) the Minister is satisfied that the company has so changed its name; and
- (b) the company has paid the prescribed fee—

S. 79(3)(b)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

the Minister shall make the necessary alterations in the Register.

* * * * *

S. 80
repealed by
No. 68/1986
s. 28(1).

81 Approval of dealings creating etc. interests etc. in existing titles

S. 81
substituted by
No. 68/1986
s. 28(1).

- (1) This section applies to a dealing that would, but for subsection (2), have one or more of the following effects—
 - (a) the creation or assignment of an interest in an existing title;
 - (b) the creation or assignment of a right (conditional or otherwise) to the assignment of an interest in an existing title;
 - (c) the determining of the manner in which persons may exercise the rights conferred by, or comply with the obligations imposed by or the conditions of, an existing title (including the exercise of those rights or the compliance with those obligations or conditions under co-operative arrangements for the recovery of petroleum);

-
- (d) the creation or assignment of—
- (i) an interest in relation to an existing permit, lease or licence, being an interest known as an overriding royalty interest, a production payment, a net profits interest or a carried interest; or
 - (ii) any other interest that is similar to an interest referred to in subparagraph (i), being an interest relating to petroleum produced from operations authorized by an existing permit, lease or licence or relating to revenue derived as a result of the carrying out of operations of that kind;
- (e) the creation or assignment of an option (conditional or otherwise) to enter into a dealing, being a dealing that has one or more of the effects referred to in paragraphs (a), (b), (c) and (d);
- (f) the creation or assignment of a right (conditional or otherwise) to enter into a dealing, being a dealing that has one or more of the effects referred to in paragraphs (a), (b), (c) and (d);
- (g) the alteration or termination of a dealing, being a dealing that has one or more of the effects referred to in paragraphs (a), (b), (c), (d), (e) and (f)—

but this section does not apply to a transfer to which section 78 applies.

- (2) A dealing to which this section applies is of no force in so far as the dealing would, but for this subsection, have an effect of a kind referred to in subsection (1) in relation to a particular title until—

-
- (a) the dealing, in so far as it relates to that title, has been approved by the Minister; and
- (b) an entry has been made in the Register in relation to the dealing by the Minister in accordance with subsection (12).
- (3) A party to a dealing to which this section applies may lodge with the Minister—
- (a) in a case where the dealing relates to only one title, an application in writing for approval by the Minister of the dealing; or
- (b) in any other case, a separate application in writing for approval by the Minister of the dealing in relation to each title to which the dealing relates.
- (4) An application under subsection (3) for approval of a dealing⁵—
- (a) must be accompanied by the instrument evidencing the dealing or, if that instrument has already been lodged with the Minister for the purposes of another application, a copy of that instrument; and
- (b) may be accompanied by an instrument setting out such particulars (if any) as are prescribed for the purposes of an application for approval of a dealing of that kind.
- (4A) An application under subsection (3) for approval of a dealing must be accompanied by 2 copies of—
- (a) the application; and
- (b) the instrument referred to in subsection (4)(a); and

S. 81(4)
substituted by
No. 12/1990
s. 14(a).

S. 81(4A)
inserted by
No. 12/1990
s. 14(a).

- (c) any instrument lodged for the purposes of subsection (4)(b).
- (5) Subject to subsection (6), the Minister shall not approve a dealing unless the application for approval of the dealing is lodged with the Minister within three months after the day on which the party who last executed the instrument evidencing the dealing so executed the instrument or such longer period as the Minister, in special circumstances, allows.
- (6) Where a dealing relating to a title was, immediately before the title came into existence, a dealing referred to in section 81A(1), the Minister shall not approve the dealing unless—
- (a) a provisional application for approval of the dealing was lodged in accordance with section 81A(1); or
 - (b) an application for approval of the dealing is lodged with the Minister in accordance with this section within three months after the day on which the title came into existence or such longer period as the Minister, in special circumstances, allows.
- (7) Where a dealing to which this section applies forms a part of the issue of a series of debentures, all of the dealings constituting the issue of that series of debentures shall, for the purposes of this section, be taken to be one dealing.
- (8) Where a dealing to which this section applies (including a dealing referred to in subsection (7)) creates a charge over some or all of the assets of a body corporate, the person lodging the application for approval of the dealing shall be deemed to have complied with subsection (4)(a), and with subsection (4A) in so far as that subsection requires two copies of the document referred to in

S. 81(8)
amended by
Nos 12/1990
s. 14(b),
44/2001
s. 3(Sch.
item 90.1(a))

subsection (4)(a) to accompany the application, if the person lodges with the application three copies of each document required to be lodged with the Australian Securities and Investments Commission relating to the creation of that charge under section 263 of the Corporations Act or pursuant to the corresponding provision of a law of another State or of a Territory.

- (9) On receipt of an application made under this section, the Minister shall enter a memorandum in the Register of the date on which the application was lodged and may make such other notation in the Register as the Minister considers appropriate.
- (10) The Minister may approve or refuse to approve a dealing to which this section applies in so far as the dealing relates to a particular title.
- (11) The Minister shall, by notice in writing served on the person who made an application for approval of a dealing, inform the person of the decision of the Minister.
- (12) If the Minister approves a dealing, the Minister shall endorse on the original instrument evidencing the dealing and on one copy of that instrument or, if the original instrument was not lodged with the application, on two of the copies of that instrument a memorandum of approval and, on payment of the fee provided by section 92, make an entry of the approval of the dealing in the Register on the memorial relating to, or on the copy of, the title in respect of which the approval is sought.
- (13) Where an entry is made in the Register in relation to a dealing in accordance with subsection (12)⁶—
- (a) if the dealing was approved before 11 December 1987 or the application for approval of the dealing was not accompanied

S. 81(13)
substituted by
No. 12/1990
s. 14(c).

by an instrument for the purpose of subsection (4)(b), one copy of the instrument evidencing the dealing endorsed with a memorandum of approval must be retained by the Minister and made available for inspection in accordance with this Division; and

- (b) if the application for approval of the dealing was accompanied by an instrument for the purpose of subsection (4)(b), a copy of that instrument endorsed with a copy of the memorandum of approval of the dealing must be retained by the Minister and made available for inspection in accordance with this Division but a copy of the instrument evidencing the dealing must not be so made available; and
- (c) the original instrument evidencing the dealing, or a copy of the original instrument, as the case requires, endorsed with a memorandum of approval and the instrument (if any) lodged for the purpose of subsection (4)(b) must be returned to the person who made the application for approval.

S. 81(13A)
inserted by
No. 12/1990
s. 14(c).

- (13A) The approval of a dealing or the making of an entry in the Register in relation to a dealing is not rendered ineffective by any failure to comply, in relation to the application for approval of the dealing, with the requirements of this section.
- (14) Where the Minister refuses to approve a dealing, the Minister shall make a notation of the refusal in the Register.

- (15) In this section, *charge* and *debenture* have the same respective meanings as they have for the purposes of section 263 of the Corporations Act.

S. 81(15)
amended by
No. 44/2001
s. 3(Sch.
item 90.1(b)).

81A Approval of dealings in future interests etc.

S. 81A
inserted by
No. 68/1986
s. 28(1).

- (1) Where two or more persons enter into a dealing relating to a title that may come into existence in the future and that dealing would, if the title came into existence, become a dealing to which section 81 applies, a person who is a party to the dealing may, during the prescribed period in relation to the title, lodge with the Minister—
- (a) in a case where the dealing relates to only one title that may come into existence in the future a provisional application in writing for approval by the Minister of the dealing; or
 - (b) in any other case, a separate provisional application in writing for approval by the Minister of the dealing in relation to each title that may come into existence in the future and to which the dealing relates.
- (2) Section 81(4), (7) and (8) applies to a provisional application lodged under subsection (1) of this section as if that provisional application were an application lodged under section 81(3).
- (3) Where—
- (a) the title to which a dealing referred to in subsection (1) relates comes into existence; and
 - (b) upon that title coming into existence, the dealing becomes a dealing to which section 81 applies—

the provisional application lodged under subsection (1) in relation to the dealing shall be treated as if it were an application lodged under

section 81(3) on the day on which that title came into existence.

(4) A reference in subsection (1) to the prescribed period, in relation to a title, is a reference to the period—

(a) commencing—

(i) in the case of a permit, lease, licence, infrastructure licence or pipeline licence—on the day of service of an instrument informing the applicant for the permit, lease, licence, infrastructure licence or pipeline licence that the Minister is prepared to grant the permit, lease, licence, infrastructure licence or pipeline licence; or

(ii) in the case of an access authority—on the day on which the application for the grant of the access authority is made; and

(b) ending on the day on which the title comes into existence.

S. 81A(4)(a)(i)
amended by
No. 91/2001
s. 7(2)(d).

82 True consideration to be shown

(1) A person who is a party to a transfer referred to in section 78, a dealing to which section 81 applies or a dealing referred to in section 81A(1) shall not lodge with the Minister—

(a) an instrument of transfer;

(b) an instrument evidencing the dealing; or

(c) an instrument of the kind referred to in section 81(4)(b)—

that contains a statement relating to the consideration for the transfer or dealing, or to any other fact or circumstance affecting the amount of the fee payable in respect of the transfer or dealing

S. 82(1)
substituted by
No. 68/1986
s. 29(a),
amended by
Nos 91/2001
s. 47(d),
10/2004
s. 16(Sch. 2
item 1.5(a)(b)).

under section 92, being a statement that is, to the knowledge of the person, false or misleading in a material particular.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

- (2) Where a person is convicted of an offence against subsection (1), the Minister may make a fresh determination of the amount of the fee payable under section 92 in respect of the memorandum relating to the transfer or dealing.
- (3) Subsections (2) and (3) of section 91 apply in relation to a determination under subsection (2) as they apply in relation to a determination under section 91(1).

S. 82(2)
amended by
No. 68/1986
s. 29(b).

83 Minister not concerned with certain matters

Neither the Minister nor a person acting under his or her direction or authority is concerned with the effect in law of any instrument lodged in pursuance of this Division nor does the approval of a transfer or dealing give to the transfer or dealing any force, effect or validity that the transfer or dealing would not have had if this Division had not been enacted.

S. 83
amended by
Nos 68/1986
s. 30(a)(b),
91/2001
s. 47(e)(i)(ii).

84 Power of Minister to require information as to dealings

- (1) The Minister may require the person lodging an application for approval of a transfer or dealing or a provisional application for approval of a dealing under this Division to furnish to the Minister in writing such information concerning the transfer or dealing as the Minister considers necessary or advisable.

S. 84(1)
amended by
Nos 68/1986
s. 31(a)(i)(ii),
91/2001
s. 47(f).

s. 85

S. 84(1A)
inserted by
No. 68/1986
s. 31(b).

(1A) The Minister may require a person who is a party to a dealing approved by the Minister under section 81 to furnish to the Minister a statement in writing setting out such information concerning alterations in the interests or rights existing in relation to the title to which the approved dealing relates as the Minister considers necessary or advisable.

S. 84(1B)
inserted by
No. 68/1986
s. 31(b).

(1B) The Minister may require a person making an application under section 79(1) or (3) or 87A(2) to furnish to the Minister in writing such information concerning the matter to which the application relates as the Minister considers necessary or advisable.

S. 84(1C)
inserted by
No. 68/1986
s. 31(b).

(1C) A person shall not fail or refuse to comply with a requirement given to the person under subsection (1), (1A) or (1B).

S. 84(2)
amended by
Nos 82/1993
s. 5, 91/2001
s. 47(g),
10/2004
s. 16(Sch. 2
item 1.6(a)(b)).

(2) A person who is so required to furnish information shall not knowingly furnish information that is false or misleading in a material particular.

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body
corporate.

85 Production and inspection of documents

S. 85(1)
amended by
Nos 68/1986
s. 32(a),
91/2001
s. 47(h)(i).

(1) The Minister may require any person to produce to the Minister or to make available for inspection by the Minister any documents in the possession or under the control of that person and relating to a transfer or dealing in relation to which approval is sought under this Division.

S. 85(1A)
inserted by
No. 68/1986
s. 32(b).

(1A) The Minister may require any person to produce to the Minister or to make available for inspection by the Minister any documents in the possession or under the control of that person and relating to

an application made to the Minister under section 79(1) or (3) or 87A(2).

- (2) A person shall not fail or refuse to comply with a requirement given to the person under subsection (1) or (1A).

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.

S. 85(2)
amended by
Nos 68/1986
s. 32(c),
91/2001
s. 47(h)(ii)(i),
10/2004
s. 16(Sch. 2
item 1.6(a)(b)).

86 Inspection of Register and documents

A Register and all instruments or copies of instruments subject to inspection under this Division shall at all convenient times be open for inspection by any person upon payment of a fee calculated in accordance with the regulations.

* * * * *

S. 86
amended by
Nos 68/1986
s. 33(a)(b),
12/1990
s. 15(a)(b),
83/1990
s. 18(1)
(Sch. 1).

S. 86(2)
repealed by
No. 68/1986
s. 33(c).

87 Evidentiary provisions

- (1) The Register shall be received by all courts as evidence of all matters required or authorized by this Division to be entered in the Register.
- (2) The Minister may, on payment of a fee calculated in accordance with the regulations, supply copies of or extracts from the Register or of or from any instrument lodged under this Division certified by writing under his or her hand, and such a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.
- (3) The Minister may, on payment of a fee calculated in accordance with the regulations, by instrument in writing under his or her hand certify that an entry, matter or thing required or permitted by or under this Division to be made or done or not to

S. 87(2)
amended by
Nos 83/1990
s. 18(1)
(Sch. 1),
91/2001
s. 47(j)(i)(ii).

S. 87(3)
amended by
Nos 83/1990
s. 18(1)
(Sch. 1),
91/2001
s. 47(j)(ii).

be made or done has or has not, as the case may be, been made or done and such a certificate is evidence in all courts and proceedings of the statements contained in the certificate.

S. 87A
inserted by
No. 68/1986
s. 34.

87A Minister may make corrections to Register

- (1) The Minister may alter the Register for the purposes of correcting a clerical error or an obvious defect in the Register.
- (2) Subject to subsection (3), the Minister may, on application being made in writing to the Minister by a person or of the Minister's own motion, make such entries in the Register as the Minister considers appropriate for the purposes of ensuring that the Register accurately records the interests and rights existing in relation to a title.
- (3) Where the Minister proposes to make an entry in the Register in accordance with subsection (2), the Minister shall cause to be published in the Gazette a notice—
 - (a) setting out the terms of the entry that the Minister proposes to make in the Register; and
 - (b) inviting interested persons 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, submissions in writing relating to the making of the entry.
- (4) Where submissions are, in accordance with a notice under subsection (3), given to the Minister in relation to the proposed making of an entry in the Register, the Minister shall—
 - (a) take those submissions into account before making an entry in the Register; and

- (b) after making an entry in the Register, cause to be published in the Gazette a notice setting out the terms of the entry.

88 Appeals

- (1) The Supreme Court may on the application of a person aggrieved by—
- (a) the omission of an entry from the Register;
 - (b) an entry made in the Register without sufficient cause;
 - (c) an entry wrongly existing in the Register; or
 - (d) an error or defect in an entry in the Register—

make such order as it thinks fit directing the rectification of the Register.

- (2) The Supreme Court may, in proceedings under this section, decide any question that it is necessary or expedient to decide in connection with the rectification of the Register.
- (3) Notice of an application under this section shall be given to the Minister, who may appear and be heard and shall appear if so directed by the Supreme Court.
- (4) An office copy of an order made by the Supreme Court may be served on the Minister and the Minister shall, upon receipt of the order, rectify the Register accordingly.

89 Minister not liable to certain actions

Subject to section 88 neither the Minister, his or her delegate, nor a person acting under the direction or authority of the Minister or his or her delegate is liable to an action suit or proceeding for or in respect of an act or matter bona fide done or omitted to be done in exercise or purported

S. 89
amended by
No. 91/2001
s. 47(k).

exercise of any power or authority conferred by this Division.

S. 90
amended by
Nos 91/2001
s. 47(l),
10/2004
s. 16(Sch. 2
item 1.6(a)(b)).

90 Offences

A person who wilfully—

- (a) makes, causes to be made or concurs in making a false entry in the Register; or
- (b) produces or tenders in evidence a document falsely purporting to be a copy of or extract from an entry in the Register or of or from an instrument lodged with the Minister under this Division—

is guilty of an offence.

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body
corporate.

91 Assessment of fee

- (1) The Minister may determine the amount of the fee payable under section 92 in respect of any memorandum.
- (2) A person dissatisfied with a determination of the Minister under subsection (1) may appeal to the Supreme Court against the determination.
- (3) Upon the hearing of the appeal, the Supreme Court may affirm, reverse or modify the determination of the Minister.

S. 92
substituted by
No. 68/1986
s. 35(1).

92 Imposition of registration fees⁷

- (1) In this section, *title* means a permit, lease, licence, pipeline licence or access authority.
- (2) Subject to this section, there is payable to the Minister in respect of an entry in the Register of a memorandum of the transfer of a title under section 78 a fee at the rate of 1.5 per centum of—

S. 92(2)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

(a) the value of the consideration for the transfer; or

(b) the value of the title transferred—

whichever is the greater or, if the amount of that fee is less than the prescribed amount, a fee of the prescribed amount.

(3) Where—

(a) a fee imposed by subsection (5) in respect of an entry of approval of a dealing, being a dealing pursuant to which the transfer of a title is agreed to, has been paid; and

S. 92(3)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

(b) but for this subsection, the amount of the fee imposed by subsection (2) in respect of the entry of a memorandum of the transfer of the title, being a transfer executed for the purpose of giving effect to the dealing referred to in paragraph (a), would be greater than the prescribed amount—

S. 92(3)(b)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

the amount of the fee imposed by subsection (2) in respect of the entry of the memorandum of the transfer is the prescribed amount.

(4) Where—

(a) the parties to a transfer of a title lodged for approval under section 78 satisfy the Minister that—

(i) those parties are related bodies corporate within the meaning of the Corporations Act;

S. 92(4)(a)(i)
substituted by
No. 44/2001
s. 3(Sch.
item 90.2).

(ii) the transfer was executed solely for the purpose of a reorganization of the corporations concerned or any of them or solely for the purpose of securing the better administration of the

corporations concerned or any of them;
and

- (iii) the transfer was not executed substantially for the purpose of avoiding or refusing the registration fees that would, but for this subsection, be payable under subsection (2) in respect of the entry of a memorandum of the transfer; and

S. 92(4)(b)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (b) but for this subsection, the amount of the fee imposed by subsection (2) in respect of the entry of the memorandum of the transfer of the title would be more than the prescribed amount, the amount of the fee imposed by subsection (2) in respect of the entry of the memorandum of the transfer is the prescribed amount.
- (5) Subject to this section, there is payable to the Minister in respect of an entry in the Register of the approval of a dealing under section 81 a fee at the rate of 1·5 per centum of—
- (a) the value of the consideration for the dealing or, if the Minister approves the dealing in relation to another title or titles, an amount equal to the value of the consideration for the dealing divided by the number of titles in relation to which the dealing is approved; or
 - (b) in a case where—
 - (i) the entry of approval relates to an interest in a licence or pipeline licence;
 - (ii) the value of the interest is greater than the amount applicable under paragraph (a);
 - (iii) the dealing has an effect of the kind referred to in section 81(1)(a), (b) or (d); and

- (iv) the Minister is satisfied that the dealing was not made pursuant to another dealing, being a dealing that relates to that title and in respect of an entry of approval of which a fee imposed by this subsection has been paid—

the value of the interest.

- (6) Where—

S. 92(6)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (a) but for this subsection, the amount of the fee imposed by subsection (5) in relation to an entry of approval of a dealing would be less than the prescribed amount; or

S. 92(6)(a)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (b) an approval under section 81 is given in respect of a dealing that is a dealing to which that section applies by reason only that the dealing creates, varies or terminates a charge over some or all of the assets of a body corporate—

the amount of the fee imposed by subsection (5) in respect of the entry of that approval is the prescribed amount.

- (7) Where—

S. 92(7)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (a) the parties to a dealing lodged for approval under section 81 satisfy the Minister that—

- (i) those parties are related bodies corporate within the meaning of the Corporations Act;

S. 92(7)(a)(i)
substituted by
No. 44/2001
s. 3(Sch.
item 90.2).

- (ii) the dealing was entered into solely for the purpose of a reorganization of the corporations concerned or any of them or solely for the purpose of securing the

better administration of the corporations concerned or any of them; and

- (iii) the dealing was not entered into substantially for the purpose of avoiding or reducing the registration fees that would, but for this subsection, be payable under subsection (5) in respect of the entry of approval of the dealing; and

S. 92(7)(b)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

- (b) but for this subsection, the amount of the fee imposed by subsection (5) in relation to the entry of approval of the dealing would be more than the prescribed amount—

the amount of the fee imposed by subsection (5) in respect of the entry of approval of that dealing is the prescribed amount.

- (8) For the purposes of calculating the amount of the fee imposed by subsection (5) in respect of an entry of approval of a dealing, the value, as determined by the Minister, of any exploration works to be carried out pursuant to the dealing, being works that were, at the time when the application for approval of the dealing was lodged, required or permitted to be carried out by or under the relevant title, shall be deducted from the value of the consideration for the dealing or from the value of the interest in the relevant licence as the case requires.

S. 93
amended by
No. 91/2001
s. 48.

93 Exemption from duty⁸

Duty under the **Duties Act 2000** shall not be chargeable—

S. 93(a)
amended by
Nos 68/1986
s. 35(2),
91/2001
s. 7(2)(e).

- (a) on a permit, lease, licence, infrastructure licence, pipeline licence or access authority;

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- (b) on a transfer of a permit, lease, licence, infrastructure licence, pipeline licence or access authority to which section 78 applies; or
- (c) on any other instrument in so far as it relates to a legal or equitable interest in or affecting a permit, lease, licence, infrastructure licence, pipeline licence or access authority.

S. 93(b) amended by Nos 68/1986 s. 35(2), 91/2001 s. 7(2)(e).

S. 93(c) amended by Nos 68/1986 s. 35(2), 91/2001 s. 7(2)(e).

Division 6—General

94 Notice of grants of permits etc. to be published

The Minister shall cause notice of, and such particulars as he or she thinks fit of—

S. 94 amended by No. 91/2001 s. 49(a).

- (a) the grant of a permit, lease, licence, infrastructure licence or pipeline licence; and
- (aa) the renewal of a permit or lease; and
- (b) the variation of a licence, infrastructure licence or pipeline licence; and

S. 94(a) amended by No. 68/1986 s. 49(Sch. item 13) (as amended by No. 12/1990 s. 19(6)(c)), substituted by No. 91/2001 s. 49(b), amended by No. 91/2001 s. 7(2)(f)(i).

S. 94(aa) inserted by No. 91/2001 s. 49(b).

S. 94(b) amended by No. 91/2001 ss 7(2)(f)(ii), 49(c).

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 95

S. 94(c)
amended by
Nos 68/1986
s. 49(Sch.
item 14(a)(b)),
91/2001
s. 49(c).

(c) the surrender or cancellation of a permit,
lease or licence as to all or some of the
blocks in the permit area, lease area or
licence area; and

S. 94(ca)
inserted by
No. 91/2001
s. 7(2)(g).

(ca) the surrender or cancellation of an
infrastructure licence; and

S. 94(d)
amended by
Nos 68/1986
s. 49(Sch.
item 15),
91/2001
s. 49(c).

(d) the determination of a permit or lease as to a
block or blocks; and

S. 94(e)
substituted by
No. 91/2001
s. 49(d).

(e) an application for a pipeline licence or for a
variation of a pipeline licence; and

(f) the surrender or cancellation of a pipeline
licence as to the whole or a part of the
pipeline; and

S. 94(g)
amended by
No. 68/1986
s. 49(Sch.
item 16),
substituted by
No. 91/2001
s. 49(e),
amended by
No. 91/2001
s. 7(2)(h).

(g) the expiry of a permit or lease, or the
termination of a licence, infrastructure
licence or pipeline licence—

under this Part to be published in the Gazette.

95 Date of effect of surrender etc. and of permits etc.

S. 95(1)
repealed by
No. 68/1986
s. 36(a).

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- (2) The surrender or cancellation of a permit, lease or licence as to all or some of the blocks in the permit area, lease area or licence area has effect on and from the day on which notice of the surrender or cancellation is published in the Gazette. **S. 95(2) amended by No. 68/1986 ss 36(b), 49(Sch. item 17(a)(b)).**
- (2A) The surrender or cancellation of an infrastructure licence has effect on and from the day on which notice of the surrender or cancellation is published in the Gazette. **S. 95(2A) inserted by No. 91/2001 s. 7(3).**
- (3) The surrender or cancellation of a pipeline licence as to the whole or a part of the pipeline has effect on and from the day of which notice of the surrender or cancellation is published in the Gazette. **S. 95(3) amended by No. 68/1986 s. 36(b).**
- (4) A variation of a licence, infrastructure licence or pipeline licence has effect on and from the day on which notice of the variation is published in the Gazette. **S. 95(4) amended by Nos 68/1986 s. 36(b), 91/2001 s. 7(4)(a).**

96 Commencement of works

- (1) Where a permit, lease, licence, infrastructure licence or pipeline licence is granted subject to a condition that works or operations specified in the permit, lease, licence, infrastructure licence or pipeline licence are to be carried out, the permittee, lessee, licensee, infrastructure licensee or pipeline licensee, as the case may be, shall commence to carry out those works or operations within a period of six months after the day on which the permit, lease, licence, infrastructure licence or pipeline licence, as the case may be, comes into force. **S. 96(1) amended by Nos 68/1986 ss 37, 49(Sch. item 18(a)(b)), 91/2001 s. 7(4)(b)(i)(ii).**

S. 96(2)
amended by
Nos 68/1986
s. 49(Sch.
item 19(a)),
91/2001
ss 7(4)(b)(ii),
50(a)(i).

- (2) The Minister may, for reasons that he or she thinks sufficient, by instrument in writing served on a permittee, lessee, licensee, infrastructure licensee or pipeline licensee—

S. 96(2)(a)
amended by
No. 91/2001
ss 7(4)(b)(ii),
50(a)(ii).

- (a) exempt the permittee, lessee, licensee, infrastructure licensee or pipeline licensee from compliance with the requirements of subsection (1); and

S. 96(2)(b)
amended by
Nos 68/1986
ss 37, 49(Sch.
item 19(b)),
91/2001
ss 7(4)(b)(i)(ii),
50(a)(ii).

- (b) direct the permittee, lessee, licensee, infrastructure licensee or pipeline licensee to commence to carry out the works or operations specified in the permit, lease, licence, infrastructure licence or pipeline licence, as the case may be, within such period after the day on which the permit, lease, licence, infrastructure licence or pipeline licence, as the case may be, comes into force as is specified in the instrument.

S. 96(3)
amended by
Nos 91/2001
s. 50(b),
10/2004
s. 16(Sch. 2
item 1.7(a)(b)).

- (3) A person to whom a direction is given under subsection (2) shall comply with the direction.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

97 Work practices

S. 97(1)
amended by
No. 68/1986
s. 49(Sch.
item 20(a)(b)).

- (1) A permittee, lessee or licensee shall carry out all petroleum exploration operations and operations for the recovery of petroleum in the permit area, lease area or licence area in a proper and workmanlike manner and in accordance with good oil-field practice and shall secure the safety, health and welfare of persons engaged in those operations in or about the permit area, lease area or licence area.

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- (2) In particular, and without limiting the generality of subsection (1), but subject to any authorization or requirement given or made by or under this Act or regulations or directions under this Act, a permittee, lessee or licensee shall—
- (a) control the flow and prevent the waste or escape in the permit area, lease area or licence area of petroleum or water; **S. 97(2) amended by No. 68/1986 s. 49(Sch. item 21(a)).**
 - (b) prevent the escape in the permit area, lease area or licence area of any mixture of water or drilling fluid with petroleum or any other matter; **S. 97(2)(b) amended by No. 68/1986 s. 49(Sch. item 21(b)).**
 - (c) prevent damage to petroleum-bearing strata in an area, whether in the adjacent area or not, in respect of which the permit, lease or licence is not in force; **S. 97(2)(c) amended by No. 68/1986 s. 49(Sch. item 21(c)).**
 - (d) keep separate—
 - (i) each petroleum pool discovered in the permit area, lease area or licence area; and **S. 97(2)(d)(i) amended by No. 68/1986 s. 49(Sch. item 21(b)).**
 - (ii) such of the sources of water, if any, discovered in that area as the Minister, by instrument in writing served on that person, directs; and
 - (e) prevent water or any other matter entering any petroleum pool through wells in the permit area, lease area or licence area except when required by, and in accordance with, good oil-field practice. **S. 97(2)(e) amended by No. 68/1986 s. 49(Sch. item 21(b)).**
- (2A) An infrastructure licensee must carry out operations authorised by the infrastructure licence in a safe manner and in accordance with good oil-field and good processing and transport practices. **S. 97(2A) inserted by No. 91/2001 s. 7(5).**

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 97

S. 97(2B)
inserted by
No. 91/2001
s. 7(5).

- (2B) In particular and without limiting the generality of subsection (2A), but subject to any authorisation given, or requirement made, under this Act or the regulations or under any direction given under this Act, an infrastructure licensee must control the flow, and prevent the waste or escape, from a facility constructed under the infrastructure licence of water, petroleum or any product derived by processing petroleum.
- (3) A pipeline licensee shall operate the pipeline in a proper and workmanlike manner and shall secure the safety, health and welfare of persons engaged in operations in connexion with the pipeline.
- (4) In particular and without limiting the generality of subsection (3), a pipeline licensee shall prevent the waste or escape of petroleum or water from the pipeline or from any secondary line, pumping station, tank station, valve station or water line.
- (5) A person who is the holder of a special prospecting authority or an access authority shall carry out all petroleum exploration operations in the area in respect of which the special prospecting authority or access authority is in force in a proper and workmanlike manner and in accordance with good oil-field practice and shall secure the safety, health and welfare of persons engaged in those operations in or about that area.

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S. 97(6)
amended by
No. 68/1986
s. 49(Sch.
item 22),
repealed by
No. 82/1993
s. 6(2).

S. 97(7)
amended by
Nos 91/2001
s. 50(c)(d),
10/2004
s. 16(Sch. 2
item 1.7(a)(b)).

- (7) It is a defence if a person charged with failing to comply with a provision of this section, or a defendant in an action arising out of a failure by the defendant to comply with a provision of this

section, proves that the person or defendant took all reasonable steps to comply with that provision.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

97A Conditions relating to insurance

S. 97A
inserted by
No. 82/1993
s. 6(1).

- (1) The holder of a permit, lease, licence, infrastructure licence or pipeline licence must maintain, as directed by the Minister from time to time, insurance against expenses or liabilities or specified things arising in connection with, or as a result of, the carrying out of work, or the doing of any other thing, under the permit, lease, licence, infrastructure licence or pipeline licence, including expenses of complying with directions with respect to the clean-up or other remedying of the effects of the escape of petroleum.
- (2) The conditions subject to which a special prospecting authority or access authority is granted may include a condition that the holder maintain, as directed by the Minister from time to time, insurance against expenses or liabilities or specified things arising in connection with, or as a result of, the carrying out of work, or the doing of any other thing, under the authority, including expenses of complying with directions with respect to the clean-up or other remedying of the effects of the escape of petroleum.
- (3) If—
 - (a) a permit, lease, licence or pipeline licence was in force immediately before the commencement of section 6 of the

S. 97A(1)
amended by
No. 91/2001
s. 7(6)(a).

**Petroleum (Submerged Lands)
(Amendment) Act 1993; and**

- (b) the Minister has required the holder to maintain insurance as a condition of the permit, lease, licence or pipeline licence; and
- (c) the Minister is satisfied that the required insurance is in effect—

the Minister must issue a certificate that he or she is so satisfied.

- (4) If the Minister issues a certificate under subsection (3), any security in force in relation to the permit, lease, licence or pipeline licence, being a security that was required under this Act before the commencement referred to in subsection (3), is discharged.
- (5) The discharge of a security under subsection (4) has no effect on any liability arising under or in relation to the security before its discharge.

98 Maintenance etc. of property

- (1) In this section—

operator means a permittee, lessee, licensee, infrastructure licensee, pipeline licensee or holder of a special prospecting authority or access authority;

the operations area—

- (a) in relation to an operator who is permittee, lessee or licensee—means the permit area, lease area or licence area as the case may be; and
- (aa) in relation to an operator who is an infrastructure licensee—means the infrastructure licence area; and

S. 98(1) def. of *operator* amended by Nos 68/1986 s. 49(Sch. item 23), 91/2001 s. 7(6)(b).

S. 98(1) def. of *the operations area* amended by Nos 68/1986 s. 49(Sch. item 24(a)(b)), 91/2001 s. 7(6)(c).

- (b) in relation to an operator who is a pipeline licensee—means the part of the adjacent area in which the pipeline is constructed; and
- (c) in relation to an operator who is the holder of a special prospecting authority or access authority—means the area in respect of which that authority is in force.
- (2) An operator shall maintain in good condition and repair all structures, equipment and other property in the operations area and used in connexion with the operations in which the operator is engaged. **S. 98(2) amended by Nos 91/2001 s. 50(e)(f), 10/2004 s. 16(Sch. 2 item 1.7(a)(b)).**
- Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body corporate.
- (3) An operator shall remove from the operations area all structures, equipment and other property that are not either used or to be used in connexion with the operations in which the operator is engaged. **S. 98(3) amended by Nos 91/2001 s. 50(g)(h), 10/2004 s. 16(Sch. 2 item 1.7(a)(b)).**
- Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body corporate.
- (4) Subsections (2) and (3) do not apply in relation to any structure, equipment or other property that was not brought into the operations area by or with the authority of the operator. **S. 98(4) amended by No. 91/2001 s. 50(i).**

99 Sections 97 and 98 to have effect subject to this Act etc.

Sections 97 and 98 have effect subject to—

- (a) any other provisions of this Act;
(b) the regulations;

s. 101

- (c) a direction under section 101; and
- (d) any other law.

S. 100
amended by
No. 68/1986
s. 49(Sch.
items 25(a)(b),
26),
repealed by
No. 91/2001
s. 51.

* * * * *

101 Directions⁹

S. 101(1)
substituted by
No. 68/1986
s. 38(1),
amended by
No. 91/2001
s. 7(6)(d).

(1) The Minister may, by instrument in writing served on the registered holder of a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority, give to the registered holder a direction as to any matter with respect to which regulations may be made.

S. 101(2)
amended by
No. 9902
s. 2(1)(Sch.
item 199),
substituted by
No. 68/1986
s. 38(1).

(2) A direction given under this section to a registered holder applies to the registered holder and may also be expressed to apply to—

- (a) a specified class of persons, being a class constituted by or included in one or both of the following classes of persons—
 - (i) servants or agents of, or persons acting on behalf of, the registered holder;
 - (ii) persons performing work or services, whether directly or indirectly, for the registered holder; or
- (b) any person (not being a person to whom the direction applies otherwise than in accordance with this paragraph) who is in the adjacent area for any reason touching, concerning, arising out of or connected with the exploration of the sea-bed or subsoil of the adjacent area for petroleum or the exploitation of the natural resources, being

petroleum, of that sea-bed or subsoil or is in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, that is in the adjacent area for a reason of that kind—

and where a direction so expressed is given, the direction shall be deemed to apply to each person included in that specified class or to each person who is in the adjacent area as mentioned in paragraph (b), as the case may be.

- (2A) Where a direction under this section applies to a registered holder and to a person referred to in subsection (2)(a), the registered holder shall cause a copy of the instrument by which the direction was given to be given to that other person or to be exhibited at a prominent position at a place in the adjacent area frequented by that other person.

S. 101(2A) inserted by No. 68/1986 s. 38(1), amended by Nos 91/2001 s. 52(1)(a), 10/2004 s. 16(Sch. 2 item 1.8(a)(b)).

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.

- (2B) Where a direction under this section applies to a registered holder and to a person referred to in subsection (2)(b), the registered holder shall cause a copy of the instrument by which the direction was given to be exhibited at a prominent position at a place in the adjacent area.

S. 101(2B) inserted by No. 68/1986 s. 38(1), amended by Nos 91/2001 s. 52(1)(a), 10/2004 s. 16(Sch. 2 item 1.8(a)(b)).

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.

- (2C) Where a direction under this section applies to a registered holder and to a person referred to in subsection (2)(b) the Minister may, by notice in writing given to the registered holder, require the registered holder to cause to be displayed at such places in the adjacent area, and in such manner, as are specified in the notice, copies of the

S. 101(2C) inserted by No. 68/1986 s. 38(1), amended by Nos 91/2001 s. 52(1)(a), 10/2004 s. 16(Sch. 2 item 1.8(a)(b)).

instrument by which the direction was given, and the registered holder shall comply with that requirement.

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.

- (3) The Minister shall not give a direction of a standing or permanent nature except after consultation with the Minister of State for the time being administering the Commonwealth Act, but the validity of a direction of the Minister shall not be called in question by reason only of a failure to comply with this subsection.
- (4) A direction under this section has effect and shall be complied with notwithstanding any previous direction under this section.
- (5) A direction under this section has effect and shall be complied with notwithstanding anything in the regulations or the applied provisions.
- (6) Sections 152(2A) and (2B) apply in relation to directions made under this section in like manner as those subsections apply to the regulations.
- (7) A person who fails to comply with a direction in force under subsection (1) that applies to the person is guilty of an offence and liable to a penalty not exceeding \$11 000, in the case of a natural person and not exceeding \$55 000, in the case of a body corporate.
- (8) Where—
 - (a) a direction given under this section applies to a registered holder and another person and that other person is prosecuted for an offence

S. 101(6)
substituted by
No. 68/1986
s. 38(2),
amended by
No. 91/2001
s. 52(1)(b).

S. 101(7)
substituted by
No. 68/1986
s. 38(3),
amended by
Nos 91/2001
s. 52(1)(c),
10/2004
s. 16(Sch. 2
item 1.9(a)(b)).

S. 101(8)
inserted by
No. 68/1986
s. 38(4).

against subsection (7) in relation to the direction; and

- (b) the person adduces evidence that the person did not know, and could not reasonably be expected to have known, of the existence of the direction—

the person shall not be convicted of the offence unless the prosecutor proves that the person knew, or could reasonably be expected to have known, of the existence of the direction.

102 Compliance with directions

- (1) Where a person does not comply with a direction given or applicable to the person under this Part or the regulations the Minister may do all or any of the things required by the direction to be done.

S. 102(1)
amended by
No. 68/1986
s. 39(a).

- (2) Costs and expenses incurred by the Minister under subsection (1) in relation to a direction are a debt due by the person to whom the direction was given or was applicable to the State and are recoverable in a court of competent jurisdiction.

S. 102(2)
amended by
No. 68/1986
s. 39(b).

(2A) Where—

S. 102(2A)
inserted by
No. 68/1986
s. 39(c).

- (a) a direction given under section 101 applies to a permittee, lessee, licensee, infrastructure licensee, pipeline licensee or the holder of a special prospecting authority or access authority and another person and an action under subsection (2) relating to the direction is brought against that other person; and
- (b) the person adduces evidence that the person did not know, and could not reasonably be expected to have known, of the existence of the direction—

S. 102(2A)(a)
amended by
No. 91/2001
s. 7(6)(e).

the person is not liable under subsection (2) unless the plaintiff proves that the person knew, or could reasonably be expected to have known, of the existence of the direction.

S. 102(3)
amended by
Nos 68/1986
s. 39(a),
91/2001
s. 52(2).

- (3) It is a defence if a person charged with failing to comply with a direction given or applicable to the person under this Part or under the regulations or a defendant in an action under subsection (2) proves that the person or defendant took all reasonable steps to comply with the direction.

103 Exemption

S. 103(1)
amended by
No. 68/1986
s. 49
(Sch. item
27(a)(b)(d)),
substituted by
No. 12/1990
s. 16(1),
amended by
No. 91/2001
s. 7(6)(f)(i)(ii).

- (1) Where¹⁰—

S. 103(1)(a)
substituted by
No. 91/2001
s. 52(3)(a).

- (a) a permit or lease is, under this Part, to be taken to continue in force until the Minister grants, or refuses to grant, the renewal of the permit or lease; or
- (b) a licence is varied under section 45; or
- (c) a licensee enters into an agreement under section 59, or a direction is given to a licensee under that section; or
- (d) a permit, lease or licence is partly cancelled, partly determined or surrendered as to one or more but not all of the blocks in respect of which it is in force; or
- (e) a pipeline licence is varied under section 71 or 72; or
- (f) a direction is given to a pipeline licensee under section 73; or

- (g) a pipeline licence is partly cancelled; or
- (h) a permittee, lessee or licensee consents to the making of a determination under section 149; or

- (j) a permittee, lessee, licensee, infrastructure licensee, pipeline licensee applies, by written instrument served on the Minister—

S. 103(1)(j)
amended by
No. 91/2001
s. 7(6)(f)(i)(ii).

- (i) for a variation or suspension of; or

- (ii) for exemption from compliance with—
any of the conditions to which the permit,
lease, licence, infrastructure licence or
pipeline licence is subject; or

- (k) the Minister, under this Part or the regulations, gives a direction or consent to a permittee, lessee, licensee, infrastructure licensee or pipeline licensee—

S. 103(1)(k)
amended by
No. 91/2001
s. 7(6)(f)(i).

the Minister may, at any time, by instrument served on the permittee, lessee, licensee, infrastructure licensee or pipeline licensee—

- (l) vary or suspend; or

- (m) exempt the permittee, lessee, licensee, infrastructure licensee or pipeline licensee from compliance with—

S. 103(1)(m)
amended by
No. 91/2001
s. 7(6)(f)(i).

any of the conditions to which the permit, lease, licence, infrastructure licence or pipeline licence is subject, on such conditions, if any, as the Minister determines and specifies in the instrument.

(1A) Where—

S. 103(1A)
inserted by
No. 12/1990
s. 16(1).

- (a) an access authority is granted in respect of a block the subject of a permit, lease or licence, or an access authority as in force in respect of such a block is varied; or

- (b) the holder of a special prospecting authority or access authority applies, by written instrument served on the Minister—
- (i) for a variation or suspension of; or
 - (ii) for exemption from compliance with—
- any of the conditions to which the special prospecting authority or access authority is subject; or
- (c) the Minister, under this Part or the regulations, gives a direction or consent to the holder of a special prospecting authority or access authority—

the Minister may, at any time, by written instrument served on the holder of the special prospecting authority or access authority—

- (d) vary or suspend; or
- (e) exempt the holder of the special prospecting authority or access authority from compliance with—

any of the conditions to which the special prospecting authority or access authority is subject, upon such conditions, if any, as the Minister determines and specifies in the instrument.

- (2) Subsection (1) does not authorize the making of an instrument to the extent that it would affect the term of a permit, lease, licence, infrastructure licence or pipeline licence.

- (3) Notwithstanding subsection (2), where, in pursuance of subsection (1), the Minister suspends, or exempts the permittee or lessee from compliance with, any of the conditions to which a permit or lease is subject, the Minister may, if he

S. 103(2)
amended by
Nos 68/1986
s. 49(Sch.
item 28),
91/2001
s. 7(6)(g).

S. 103(3)
amended by
Nos 68/1986
s. 49(Sch.
items 29, 30),
91/2001
s. 52(3)(b).

or she considers that circumstances make it reasonable to do so, in the instrument of suspension or exemption or by a later instrument in writing served on the permittee or lessee, extend the term of the permit or lease by a period not exceeding the period of suspension or exemption.

103A Suspension of rights conferred by permit or lease

S. 103A
inserted by
No. 91/2001
s. 53.

- (1) Where the Minister is satisfied that it is necessary to do so in the interest of the State, he or she shall, by instrument in writing served on the permittee or lessee, suspend, either for a specified period or indefinitely, all or any of the rights conferred by the permit or lease.
- (2) Where any rights are suspended in accordance with subsection (1), any conditions required to be complied with in the exercise of those rights are also suspended.
- (3) The Minister may, by instrument in writing served on the permittee or lessee, terminate a suspension of rights under subsection (1).
- (4) Where rights conferred by a permit or lease are suspended in accordance with subsection (1), the Minister may, by the instrument of suspension or by a later instrument in writing served on the permittee or lessee, extend the term of the permit or lease by a period not exceeding the period of suspension.

104 Surrender of permits etc.

- (1) The registered holder of an instrument, being a permit, lease, licence, infrastructure licence or pipeline licence, may by application in writing served on the Minister, apply for consent to surrender the instrument—

S. 104(1)
amended by
Nos 68/1986
s. 49(Sch.
item 31),
91/2001
ss 7(6)(g),
54(1)(a).

Petroleum (Submerged Lands) Act 1982

No. 9772 of 1982

Part III—Mining for Petroleum

s. 104

S. 104(1)(a)
amended by
No. 12/1990
s. 19(3).

(a) in the case of a permit or licence—as to all or some of the blocks in respect of which it is in force; or

S. 104(1)(aaa)
inserted by
No. 91/2001
s. 7(6)(h).

(aaa) in the case of an infrastructure licence—as to the infrastructure licence area; or

S. 104(1)(aa)
inserted by
No. 68/1986
s. 49(Sch.
item 32).

(aa) in the case of a lease—as to all of the blocks in respect of which it is in force; or

(b) in the case of a pipeline licence—as to the whole or a part of the pipeline in respect of which it is in force.

S. 104(2)
amended by
No. 91/2001
s. 54(1)(b)(i).

(2) Subject to subsection (3), the Minister shall not give his or her consent to a surrender of an instrument under subsection (1) unless the registered holder—

S. 104(2)(a)
amended by
No. 91/2001
s. 54(1)(b)(ii).

(a) has paid all fees and amounts payable by the registered holder under this Act, or has made arrangements that are satisfactory to the Minister for the payment of those fees and amounts;

(b) has complied with the conditions to which the instrument is subject and with the provisions of this Part and of the regulations;

(c) has, to the satisfaction of the Minister, removed or caused to be removed from the area to which the surrender relates all property brought into that area by any person engaged or concerned in the operations authorized by the instrument, or has made arrangements that are satisfactory to the Minister with respect to that property;

(d) has, to the satisfaction of the Minister, plugged or closed off all wells made in that area by any person engaged or

concerned in the operations authorized by the instrument;

- (e) subject to this Part and to the regulations, has made provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area; and
- (f) has, to the satisfaction of the Minister, made good any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in the operations authorized by the instrument—

but if the registered holder has complied with those requirements the Minister shall not unreasonably refuse to consent to the surrender.

- (3) Where the registered holder of an instrument, being a permit, lease, licence, infrastructure licence or pipeline licence, has not complied with the conditions to which the instrument is subject and with the provisions of this Part and of the regulations, the Minister may give his or her consent to a surrender of the instrument under subsection (1) if the Minister is satisfied that, although the registered holder has not so complied, special circumstances exist that justify the giving of consent to the surrender.

S. 104(3) amended by Nos 68/1986 s. 49(Sch. item 33), 91/2001 ss 7(6)(i), 54(1)(c)(i)(ii).

(3A) If—

- (a) an application for consent to surrender an instrument relates to a permit granted under section 22 or such a permit renewed under section 32; and
- (b) a condition of the permit requires the registered holder to carry out specified work during a period specified in the permit; and

S. 104(3A) inserted by No. 91/2001 s. 54(2).

(c) the application is made during such a period—

the registered holder of the permit has not complied with the condition, for the purposes of this section, unless the registered holder has completed the work specified for the period during which the application was made.

Example

A permit granted under section 22 has a 6 year term and is subject to—

- (a) a condition that requires the registered holder, during each year of the term of the permit, to carry out the work specified in the permit for the year concerned; and
- (b) a condition that requires the registered holder to carry out the work specified for the first 3 years of the term of the permit before the end of the third year.

If the registered holder of the permit applies for consent to surrender the permit during the second year of the term of the permit and the holder has completed the specified work for the first and second years of the permit, but has not completed the work specified for the third year, the holder has not complied with the condition mentioned in paragraph (b).

If the registered holder of the permit applies for consent to surrender the permit during the fourth year of the term of the permit and the registered holder has not completed the work specified for the fourth year, the holder has not complied with the condition mentioned in paragraph (a).

- (4) Where the Minister consents to an application under subsection (1), the applicant may, by instrument in writing served on the Minister, surrender the instrument accordingly.

(5) In this section, *the area to which the surrender relates* means—

- (a) in relation to a surrender of a permit, lease or licence—the area constituted by the blocks as to which the permit, lease or licence is proposed to be surrendered; and **S. 104(5)(a) amended by No. 68/1986 s. 49(Sch. item 34).**
- (aa) in relation to a surrender of an infrastructure licence—the infrastructure licence area; and **S. 104(5)(aa) inserted by No. 91/2001 s. 7(6)(j).**
- (b) in relation to a surrender of a pipeline licence—the part of the adjacent area in which the pipeline, or the part of the pipeline, as to which the pipeline licence is proposed to be surrendered is constructed.

105 Cancellation of permits etc.

- (1) Where a permittee, lessee, licensee, infrastructure licensee or pipeline licensee— **S. 105(1) amended by Nos 68/1986 s. 49(Sch. item 35(a)), 91/2001 s. 7(6)(k)(i).**
- (a) has not complied with a condition to which the permit, lease, licence, infrastructure licence or pipeline licence is subject; **S. 105(1)(a) amended by Nos 68/1986 s. 49(Sch. item 35(b)), 91/2001 s. 7(6)(k)(ii).**
- (b) has not complied with a direction given to the permittee, lessee, licensee, infrastructure licensee or pipeline licensee under this Part by the Minister; **S. 105(1)(b) amended by No. 91/2001 ss 7(6)(k)(i), 54(3).**
- (c) has not complied with a provision of this Part or of the regulations; or
- (d) has not paid any amount payable by the permittee, lessee, licensee, infrastructure licensee or pipeline licensee under this Act, **S. 105(1)(d) amended by No. 91/2001 ss 7(6)(k)(i), 54(3).**

s. 105

within a period of three months after the day on which the amount became payable—

the Minister may, on that ground, by instrument in writing served on the permittee, lessee, licensee, infrastructure licensee or pipeline licensee, as the case may be—

(e) in the case of a permit or licence—cancel the permit or licence as to all or some of the blocks in respect of which it is in force; or

S. 105(1)(eaa)
inserted by
No. 91/2001
s. 7(6)(l).

(eaa) in the case of an infrastructure licence—cancel the infrastructure licence; or

S. 105(1)(ea)
inserted by
No. 68/1986
s. 49(Sch.
item 36).

(ea) in the case of a lease—cancel the lease as to all of the blocks in respect of which it is in force; or

(f) in the case of a pipeline licence—cancel the pipeline licence as to the whole or a part of the pipeline in respect of which it is in force.

S. 105(2)
amended by
Nos 68/1986
s. 49(Sch.
item 37),
91/2001
s. 7(6)(m)(i).

(2) The Minister shall not, under subsection (1), cancel a permit, licence or pipeline licence as to all or some of the blocks, or as to the whole or a part of the pipeline, in respect of which it is in force, or cancel an infrastructure licence, or cancel a lease as to all of the blocks in respect of which it is in force, on a ground referred to in that subsection unless—

S. 105(2)(a)
amended by
Nos 68/1986
s. 49(Sch.
item 38(a)(b)),
91/2001
ss 7(6)(m)
(ii)(iii),
54(4)(a)(i)(ii).

(a) the Minister has, by instrument in writing served on the permittee, lessee, licensee, infrastructure licensee or pipeline licensee, as the case may be, given not less than one month's notice of the Minister's intention so to cancel the permit, lease, licence, infrastructure licence or pipeline licence on that ground;

- (b) the Minister has served a copy of the instrument on such other persons, if any, as the Minister thinks fit; S. 105(2)(b) amended by No. 91/2001 s. 54(4)(b).
- (c) the Minister has, in the instrument, specified a date on or before which the permittee, lessee, licensee, infrastructure licensee or pipeline licensee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that the permittee, lessee, licensee, infrastructure licensee, pipeline licensee or person wishes the Minister to consider; and S. 105(2)(c) amended by Nos 68/1986 s. 49(Sch. item 39), 91/2001 ss 7(6)(m)(ii), 54(4)(c)(i)(ii).
- (d) the Minister has taken into account— S. 105(2)(d) amended by No. 91/2001 s. 54(4)(d)(i).
- (i) any action taken by the permittee, lessee, licensee, infrastructure licensee or pipeline licensee, as the case may be, to remove that ground or to prevent the recurrence of similar grounds; and S. 105(2)(d)(i) amended by Nos 68/1986 s. 49(Sch. item 40), 91/2001 s. 7(6)(m)(ii).
- (ii) any matters so submitted to him or her on or before the specified date by the permittee, lessee, licensee, infrastructure licensee or pipeline licensee or by a person on whom a copy of the first-mentioned instrument has been served. S. 105(2)(d)(ii) amended by Nos 68/1986 s. 49(Sch. item 40), 91/2001 ss 7(6)(m)(ii), 54(4)(d)(ii).
- 106 Cancellation of permit etc. not affected by other provisions** S. 106 amended by No. 68/1986 s. 49(Sch. items 41–44), substituted by No. 91/2001 s. 8.
- (1) A permit, licence or pipeline licence may be wholly cancelled or partly cancelled, a lease may be wholly cancelled, and an infrastructure licence may be cancelled, on the ground that the registered holder of the permit, licence, pipeline licence, lease or infrastructure licence has not

complied with a provision of this Part or of the regulations even though the holder has been convicted of an offence because of the holder's failure to comply with the provision.

- (2) A person who was the registered holder of a permit, lease, licence or pipeline licence that has been wholly cancelled, is the registered holder of a permit, licence or pipeline licence that has been partly cancelled, or was the registered holder of an infrastructure licence that has been cancelled, on the ground that the person has not complied with a provision of this Part or of the regulations may be convicted of an offence because of the person's failure to comply with the provision, even though the permit, lease, licence, pipeline licence or infrastructure licence has been so cancelled.
- (3) A permit, licence or pipeline licence may be wholly cancelled or partly cancelled, a lease may be wholly cancelled, and an infrastructure licence may be cancelled, on the ground that the registered holder of the permit, licence, pipeline licence, lease or infrastructure licence has not paid an amount payable by the holder under this Act within 3 months after the day on which the amount became payable, even though judgment for the amount has been obtained or the amount, or any part of the amount, has been paid or recovered.
- (4) A person who was the registered holder of a permit, lease, licence or pipeline licence that has been wholly cancelled, is the registered holder of a permit, licence or pipeline licence that has been partly cancelled, or was the registered holder of an infrastructure licence that has been cancelled, on the ground that the person has not paid an amount payable by the person under this Act within 3 months after the day on which the amount became payable continues to be liable to pay that

amount, together with any additional amount payable because of late payment of that amount, even though the permit, lease, licence, pipeline licence or infrastructure licence has been so cancelled.

107 Removal of property etc. by permittee etc.

(1) If—

- (a) a permit has been wholly or partly determined or wholly or partly cancelled, or has expired; or
- (b) a lease has been wholly or partly determined or wholly cancelled, or has expired; or
- (c) a licence has been wholly or partly determined or wholly or partly cancelled, has been terminated or has expired; or
- (d) an infrastructure licence has been cancelled or has been terminated; or
- (e) a pipeline licence has been wholly or partly determined or wholly or partly cancelled, or has been terminated—

S. 107(1)
amended by
No. 68/1986
s. 49(Sch.
items
45, 46),
substituted by
No. 91/2001
s. 9(1).

the Minister may, by written notice served on the person who was, or is, as the case may be, the permittee, lessee, licensee, infrastructure licensee or pipeline licensee, direct the person to do any one or more of the following—

- (f) to remove or cause to be removed from the relinquished area all property brought into that area by any person engaged or concerned in the operations authorised by the permit, lease, licence, infrastructure licence or pipeline licence or to make arrangements that are satisfactory to the Minister with respect to the property;

- (g) to plug or close off, to the satisfaction of the Minister, all wells made in that area by any person engaged or concerned in those operations;
- (h) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area;
- (i) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in those operations.

(2) The Minister may, by instrument in writing served on a permittee, lessee, licensee, infrastructure licensee or pipeline licensee, direct the permittee, lessee, licensee, infrastructure licensee or pipeline licensee to do any one or more of the following things—

- (a) to remove or cause to be removed from the permit area, lease area, licence area, infrastructure licence area or part of the adjacent area in which the pipeline is constructed, as the case may be, all property brought into that area or part by any person engaged or concerned in the operations authorized by the permit, lease, licence, infrastructure licence or pipeline licence or to make arrangements that are satisfactory to the Minister with respect to that property;
- (b) to plug or close off, to the satisfaction of the Minister, all wells made in that area or part by any person engaged or concerned in those operations;
- (c) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection

S. 107(2)
amended by
Nos 68/1986
s. 49(Sch.
item 47(a)),
91/2001
ss 9(2)(a)(i),
55(1).

S. 107(2)(a)
amended by
Nos 68/1986
s. 49(Sch.
item 47(b)(c)),
91/2001
s. 9(2)(a)(ii)(iii).

of the natural resources in that area or part;
and

- (d) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area or part caused by any person engaged or concerned in those operations.

- (3) A person to whom a direction is given under subsection (1) or (2) shall comply with the direction—

- (a) in the case of a direction given under subsection (1)—within the period specified in the instrument by which the direction was given; or

- (b) in the case of a direction given under subsection (2) in respect of—

(i) a permit; or

(ii) a lease—

on or before the date of expiration of the permit or lease; or

- (c) in the case of a direction given under subsection (2) in respect of—

(i) a licence; or

(ii) an infrastructure licence; or

(iii) a pipeline licence—

on or before the first date on which the licence, infrastructure licence or pipeline licence can be terminated under this Part.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

S. 107(3)
amended by
No. 68/1986
s. 49(Sch.
item 48),
substituted by
No. 91/2001
s. 55(2),
amended by
No. 10/2004
s. 16(Sch. 2
item 1.10(a)
(b)).

S. 107(3)(c)
substituted by
No. 91/2001
s. 9(2)(b).

S. 108
amended by
No. 68/1986
s. 49(Sch.
items 49, 50),
substituted by
No. 91/2001
s. 10.

108 Removal of property etc. by Minister

- (1) This section applies if—
 - (a) a permit has been wholly or partly determined or wholly or partly cancelled, or has expired; or
 - (b) a lease has been wholly or partly determined or wholly cancelled, or has expired; or
 - (c) a licence has been wholly or partly determined or wholly or partly cancelled, has been terminated or has expired; or
 - (d) an infrastructure licence has been cancelled or has been terminated; or
 - (e) a pipeline licence has been wholly or partly determined or wholly or partly cancelled, or has been terminated.
- (2) If a direction under section 107 has not been complied with, or an arrangement under that section has not been carried out, in relation to the relinquished area—
 - (a) the Minister may do all or any of the things required by the direction or arrangement to be done; and
 - (b) if any property brought into that area by any person engaged or concerned in the operations authorised by the permit, lease, licence, infrastructure licence or pipeline licence has not been removed in accordance with the direction or arrangement the Minister may, by instrument published in the Gazette, direct that the owner or owners of that property remove it from that area, or dispose of it to the satisfaction of the Minister, within the period specified in the instrument.

- (3) The Minister must serve a copy of an instrument published under subsection (2)(b) on each person whom he or she believes to be an owner of the property or any part of it.

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Ss 109, 110
repealed by
No. 91/2001
s. 56.

111 Special prospecting authorities

- (1) A person may make an application to the Minister for the grant of a special prospecting authority in respect of a block or blocks in respect of which a permit, lease or licence is not in force.

S. 111(1)
substituted by
No. 68/1986
s. 40(a).

- (2) An application under this section—

S. 111(2)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

* * * * *

S. 111(2)(a)
repealed by
No. 91/2001
s. 57(1)(a).

(b) shall be made in an approved manner; and

(c) shall specify the operations that the applicant proposes to carry on and the block or blocks in respect of which the applicant proposes to carry on those operations; and

S. 111(2)(c)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

(d) must be accompanied by the prescribed fee.

S. 111(2)(d)
inserted by
No. 83/1990
s. 18(1)
(Sch. 1).

- (3) The Minister—

(a) may grant to the applicant a special prospecting authority subject to such conditions as the Minister thinks fit and specifies in the authority; or

(b) may refuse to grant the application.

s. 111

- (4) A special prospecting authority, while it remains in force, authorizes the holder, subject to this Act and the regulations and in accordance with the conditions to which the special prospecting authority is subject, to carry on in the blocks specified in the special prospecting authority the petroleum exploration operations so specified.
- (5) Nothing in a special prospecting authority authorizes the holder to make a well.
- (6) A special prospecting authority comes into force on the day specified for the purpose in the authority and, unless surrendered or cancelled, remains in force for such period, not exceeding six months, as is so specified.
- (6A) A special prospecting authority is not capable of being transferred.
- (6B) Where—
- (a) a person holds a special prospecting authority in respect of a block; and
 - (b) another special prospecting authority is granted to another person in respect of the block—
- the Minister shall, by notice in writing served on each of those persons, inform each of them of—
- (c) the petroleum exploration operations authorized by the special prospecting authority granted to the other person; and
 - (d) the conditions to which the special prospecting authority granted to the other person is subject.

S. 111(6)
amended by
No. 68/1986
s. 40(b).

S. 111(6A)
inserted by
No. 68/1986
s. 40(c).

S. 111(6B)
inserted by
No. 68/1986
s. 40(c).

- (7) A special prospecting authority—
- (a) may be surrendered by the holder at any time by instrument in writing served on the Minister; and
 - (b) may, if the holder has not complied with a condition to which the authority is subject, be cancelled by the Minister by instrument in writing served on the holder.
- (8) Where a special prospecting authority has been surrendered or cancelled, or has expired, the Minister may, by instrument in writing served on the person who was the holder of the special prospecting authority, direct that person to do any one or more of the following things—
- (a) to remove or cause to be removed from the relinquished area all property brought into that area by any person engaged or concerned in the operations authorized by the special prospecting authority or to make arrangements that are satisfactory to the Minister with respect to that property;
 - (b) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area; and
 - (c) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in those operations.
- (9) A person to whom a direction is given under subsection (8) shall comply with the direction.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body corporate.

S. 111(9)
amended by
Nos 91/2001
s. 57(1)(b),
10/2004
s. 16(Sch. 2
item 1.10(a)
(b)).

- (10) Section 108 applies to and in relation to a special prospecting authority as if—
- (a) a reference in that section to a permit were a reference to a special prospecting authority; and
 - (b) a reference in that section to a direction or an arrangement under section 107 were a reference to a direction or an arrangement under subsection (8).

112 Access authorities

S. 112(1)
amended by
Nos 68/1986
s. 49(Sch.
item 51(a)(b)),
91/2001
s. 57(1)(c)(i).

- (1) A permittee, lessee or licensee may make an application to the Minister for the grant of an access authority to enable the permittee, lessee or licensee to carry on in an area, being part of the adjacent area that is not part of the permit area, lease area or licence area, petroleum exploration operations or operations related to the recovery of petroleum in or from the permit area, lease area or licence area.

S. 112(1A)
inserted by
No. 68/1986
s. 41(a).

- (1A) A holder of a State or Commonwealth title may make an application to the Minister for the grant of an access authority to enable the holder to carry on, in a part of the adjacent area, petroleum exploration operations or operations related to the recovery of petroleum in or from the area to which that State or Commonwealth title relates.

S. 112(1B)
inserted by
No. 83/1990
s. 16(1).

- (1B) The holder of a special prospecting authority may make an application to the Minister for the grant of an access authority to enable the applicant to carry on petroleum exploration operations in an area, being part of the adjacent area not included in any block that is the subject of the special prospecting authority.

(1C) The holder of a permit, lease, licence or special prospecting authority in respect of a block or blocks within an adjacent area may make an application to the Minister for the grant of an access authority to enable the applicant to carry on, in a block or blocks in an adjacent area adjoining the first-mentioned adjacent area—

S. 112(1C)
inserted by
No. 83/1990
s. 16(1).

- (a) petroleum exploration operations; or
- (b) where the applicant is the holder of a permit, lease or licence, operations related to the recovery of petroleum in or from any block that is the subject of the permit, lease or licence.

(2) An application under this section—

* * * * *

S. 112(2)(a)
repealed by
No. 91/2001
s. 57(1)(c)(ii).

- (b) shall be made in an approved manner;
- (c) shall specify the operations that the applicant proposes to carry on and the area in which the applicant proposes to carry on those operations; and
- (d) may set out any other matters that the applicant wishes the Minister to consider.

(3) The Minister may—

- (a) if he or she is satisfied that it is necessary or desirable to do so for the more effective exercise of the rights, or for the proper performance of the duties, of a permittee, lessee, licensee, holder of a special prospecting authority or holder of a State or Commonwealth title who has made an application under this section, grant to the permittee, lessee, licensee or holder an

S. 112(3)(a)
amended by
Nos 68/1986
ss 41(b),
49(Sch.
item 52),
83/1990
s. 16(2),
91/2001
s. 57(1)(d)(i)(ii).

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 112

access authority subject to such conditions as the Minister thinks fit and specifies in the access authority; and

(b) at any time, by instrument in writing served on the registered holder of an access authority so granted, vary the access authority.

S. 112(4)
amended by
Nos 68/1986
s. 49(Sch.
item 53),
83/1990
s. 16(3)(a)–(c),
91/2001
s. 57(1)(e)(i).

(4) Subject to subsection (4AA), the Minister shall not grant an access authority on an application under a provision of this section other than subsection (1C) in respect of a block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the applicant, or vary such an access authority as in force in respect of a block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the registered holder of the access authority, unless—

S. 112(4)(a)
amended by
No. 91/2001
s. 57(1)(e)(ii)
(iii).

(a) the Minister has, by instrument in writing served on that person, given not less than one month's notice of the Minister's intention to grant or vary, as the case may be, the access authority;

S. 112(4)(b)
amended by
No. 91/2001
s. 57(1)(e)(ii).

(b) the Minister has served a copy of the instrument—

S. 112(4)(b)(i)
amended by
No. 91/2001
s. 57(1)(e)(ii).

(i) on such other persons, if any, as the Minister thinks fit; and

S. 112(4)(b)(ii)
amended by
No. 91/2001
s. 57(1)(e)(ii).

(ii) in a case where the Minister intends to vary an access authority—on the registered holder of the access authority;

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- (c) the Minister has, in the instrument—
- (i) given particulars of the access authority proposed to be granted, or of the variation proposed to be made, as the case may be; and
 - (ii) specified a date on or before which a person on whom the instrument, or a copy of the instrument, is served may, by instrument in writing served on the Minister submit any matters that the person wishes the Minister to consider; and
- (d) the Minister has taken into account any matters so submitted to the Minister on or before the specified date by a person on whom the first-mentioned instrument, or a copy of that instrument, has been served.
- (4AA) Subsection (4) does not apply if the holder of the permit, lease, licence or special prospecting authority has consented in writing to the grant of the access authority.
- (4A) Where—
- (a) an application under subsection (1C) for the grant of an access authority is in respect of the block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the applicant; or
 - (b) a proposal to vary an access authority granted on an application under that subsection is in respect of a block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the registered holder of the access authority—

S. 112(4)(c)
amended by
No. 91/2001
s. 57(1)(e)(ii).

S. 112(4)(c)(ii)
amended by
No. 11/2002
s. 3(Sch. 1
item 52.4).¹¹

S. 112(4)(d)
amended by
No. 91/2001
s. 57(1)(e)(ii)
(v).

S. 112(4AA)
inserted by
No. 91/2001
s. 57(2).

S. 112(4A)
inserted by
No. 83/1990
s. 16(4).

the Minister must not approve the grant or the variation unless—

- (c) the Minister has, by instrument in writing served on that person, given not less than one month's notice of the intention to grant, or vary, as the case may be, the access authority; and
 - (d) a copy of the instrument has been served—
 - (i) on such other persons, if any, as the Minister thinks fit; and
 - (ii) where it is proposed to vary an access authority—on the registered holder of the access authority; and
 - (e) the instrument gives—
 - (i) particulars of the access authority that it is proposed to grant or vary, as the case may be; and
 - (ii) notice that a person on whom the instrument, or a copy of the instrument, has been served may, by instrument in writing served on the Minister on or before the date specified in the instrument, submit any matters that the person wishes the Minister to consider; and
 - (f) the Minister has taken into account any matters submitted in accordance with the notice referred to in paragraph (e)(ii).
- (5) An access authority, while it remains in force, authorizes the holder, subject to this Act and the regulations and in accordance with the conditions to which the access authority is subject, to carry on, in the area specified in the access authority, the operations so specified.

- (6) Nothing in an access authority authorizes the holder to make a well.
- (7) An access authority comes into force on the day specified for the purpose in the access authority and, unless surrendered or cancelled, remains in force for such period as is so specified but may be extended by the Minister for a further period.
- (8) An access authority—
- (a) may be surrendered by the holder at any time by instrument in writing served on the Minister; and
 - (b) may be cancelled by the Minister at any time by instrument in writing served on the holder and on any person in whose permit area lease area or licence area operations may be carried on in pursuance of the access authority.
- (9) Where an access authority has been surrendered or cancelled or has expired, the Minister may, by instrument in writing served on the person who was the holder of the access authority, direct that person to do any one or more of the following things—
- (a) to remove or cause to be removed from the relinquished area all property brought into that area by any person engaged or concerned in the operations authorized by the access authority or to make arrangements that are satisfactory to the Minister with respect to that property;
 - (b) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area; and

S. 112(7)
amended by
No. 68/1986
s. 41(c).

S. 112(8)(b)
amended by
No. 68/1986
s. 49(Sch.
item 54).

(c) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in those operations.

S. 112(10)
amended by
Nos 91/2001
s. 57(3)(a),
10/2004
s. 16(Sch. 2
item 1.10(a)
(b)).

(10) A person to whom a direction is given under subsection (9) shall comply with the direction.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

S. 112(11)
amended by
Nos 68/1986
s. 49(Sch.
item 55),
82/1993 s. 7,
91/2001
s. 57(3)(b)(c),
10/2004
s. 16(Sch. 2
item 1.11(a)
(b)).

(11) The holder of an access authority shall, if the access authority is in force in respect of an area that consists of, or includes, a block that is the subject of a permit, lease or licence of which the holder is not the registered holder, furnish to the registered holder of that permit, lease or licence, within twenty-eight days after the end of each month during which the access authority is in force in respect of that block, a full report, in writing, of the operations carried on in that block during that month and a summary of the facts ascertained from those operations.

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body
corporate.

(12) Section 108 applies to and in relation to an access authority as if—

- (a) a reference in that section to a permit were a reference to an access authority; and
- (b) a reference in that section to a direction or an arrangement under section 107 were a reference to a direction or an arrangement under subsection (9).

- (13) In this section, *State or Commonwealth title* means an authority, however described, under a law of Victoria, New South Wales, South Australia or the Commonwealth, to explore for, or to recover, petroleum.

S. 112(13)
inserted by
No. 68/1986
s. 41(d).

113 Sale of property

- (1) Where a direction under section 108 has not been complied with in relation to any property, the Minister may do all or any of the following things—

(a) remove, in such manner as the Minister thinks fit, all or any of that property from the relinquished area concerned;

S. 113(1)(a)
amended by
No. 91/2001
s. 57(4)(a).

(b) dispose of, in such manner as the Minister thinks fit, all or any of that property; and

S. 113(1)(b)
amended by
No. 91/2001
s. 57(4)(a).

(c) if the Minister has served a copy of the instrument by which the direction was given on a person whom the Minister believed to be an owner of that property or part of that property, sell, by public auction or otherwise, as the Minister thinks fit, all or any of that property that belongs, or that the Minister believes to belong, to that person.

S. 113(1)(c)
amended by
No. 91/2001
s. 57(4)(a).

- (2) The Minister may deduct from the proceeds of a sale under subsection (1) of property that belongs, or that the Minister believes to belong, to a particular person—

S. 113(2)
amended by
No. 91/2001
s. 57(4)(a).

(a) all or any part of any costs and expenses incurred by the Minister under that subsection in relation to that property;

S. 113(2)(a)
amended by
No. 91/2001
s. 57(4)(b).

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982
Part III—Mining for Petroleum

s. 113

S. 113(2)(b)
amended by
No. 91/2001
s. 57(4)(b).

- (b) all or any part of any costs and expenses incurred by the Minister in relation to the doing of any thing required by a direction under section 107, 111 or 112, as the case may be, to be done by that person; and
 - (c) all or any part of any fees or amounts due and payable under this Act by that person.
- (3) Costs and expenses incurred by the Minister under subsection (1)—

S. 113(3)(b)
amended by
Nos 68/1986
s. 49(Sch.
item 56),
91/2001
s. 11(a).

- (a) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the State; or
- (b) if incurred in relation to the doing of any thing required by a direction under section 107, 111 or 112, as the case may be, to be done by a person who is or was a permittee, lessee, licensee, infrastructure licensee, pipeline licensee or holder of a special prospecting authority or access authority, are a debt due by that person to the State—

and, to the extent to which they are not recovered under subsection (2), are recoverable in a court of competent jurisdiction.

- (4) Subject to subsection (3), no action lies in respect of the removal, disposal or sale of property under this section.

S. 114
amended by
Nos 68/1986
s. 49(Sch.
item 57),
83/1990
s. 18(1)
(Sch. 1),
repealed by
No. 82/1993
s. 9(r).

* * * * *

115 Minister etc. may require information to be furnished etc.

- (1) Where the Minister or an inspector has reason to believe that a person is capable of giving information or producing documents relating to petroleum exploration operations, operations for the recovery of petroleum, operations relating to the processing or storage of petroleum or the preparation of petroleum for transport or operations connected with the construction or operation of a pipeline in the adjacent area, the Minister may, by instrument in writing served on that person, require that person—
- (a) to furnish to the Minister in writing, within the period and in the manner specified in the instrument, any such information; or
- (b) to attend before the Minister or a person specified in the instrument, at such time and place as is so specified and there to answer questions relating to those operations and to produce such documents relating to those operations as are so specified.
- (2) A person is not excused from furnishing information, answering a question or producing a document when required to do so under this section on the ground that the information so furnished, the answer to the question or the production of the document might tend to incriminate the person or make the person liable to a penalty.
- (3) However, any information furnished, answer given or document produced pursuant to the requirement, and any information or thing (including any document) obtained as a direct or indirect consequence of the furnishing of the information, the answering of the question or the production of the document, as the case may be, is

S. 115(1) amended by No. 91/2001 ss 11(b), 58(1)(a).

S. 115(1)(a) amended by No. 91/2001 s. 58(1)(b).

S. 115(1)(b) amended by No. 91/2001 s. 58(1)(b).

S. 115(2) amended by No. 91/2001 s. 58(2)(a)(b).

S. 115(3) inserted by No. 91/2001 s. 58(3).

not admissible in evidence against the person in any civil proceedings or in any criminal proceedings other than proceedings for an offence against section 117.

116 Power to examine on oath

S. 116(1)
amended by
No. 91/2001
s. 58(4)(a).

(1) The Minister or an inspector may administer an oath to a person required to attend before the Minister or inspector in pursuance of section 115 and may examine that person on oath.

S. 116(2)
amended by
No. 91/2001
s. 58(4)(b)
(i)–(iii).

(2) Where a person attending before the Minister or an inspector in pursuance of section 115 conscientiously objects to take an oath, the person may make an affirmation that he or she conscientiously objects to take an oath and that he or she will state the truth, the whole truth and nothing but the truth to all questions asked him or her.

(3) An affirmation made under subsection (2) is of the same force and effect, and entails the same penalties, as an oath.

S. 117
amended by
Nos 91/2001
s. 58(6),
10/2004
s. 16(Sch. 2
item 1.12(a)
(b)).

117 Failing to furnish information etc.

A person shall not—

S. 117(a)
amended by
No. 91/2001
s. 58(5)(a).

(a) refuse or fail to comply with a requirement in an instrument under section 115 to the extent to which the person is capable of complying with it;

S. 117(b)
amended by
No. 91/2001
s. 58(5)(b).

(b) in purported compliance with such a requirement, furnish information that is to the person's knowledge false or misleading in a material particular; or

- (c) when attending before the Minister or an inspector in pursuance of such a requirement, make a statement or produce a document that is to the person's knowledge false or misleading in a material particular.

S. 117(c)
amended by
No. 91/2001
s. 58(5)(b).

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

* * * * *

S. 118
amended by
Nos 68/1986
ss 42(a)–(l),
49(Sch. items
58, 59(a)(b)),
12/1990
ss 17(a)(b),
19(4)(a)–(c),
83/1990
s. 18(1)
(Sch. 1),
82/1993 s. 8,
repealed by
No. 91/2001
s. 59.

119 Safety zones

- (1) For the purpose of protecting a well or structure, or any equipment, in the adjacent area, the Minister may, by instrument published in the Gazette, prohibit—
- (a) all vessels;
 - (b) all vessels other than specified vessels; or
 - (c) all vessels other than the vessels included in specified classes of vessels—

from entering or remaining in a specified area (in this section called a *safety zone*) surrounding the well, structure or equipment without the consent in writing of the Minister.

s. 120

- (2) A safety zone specified in an instrument under subsection (1) may extend to a distance of 500 metres around the well, structure or equipment specified in the instrument measured from each point of the outer edge of the well, structure or equipment.
- (3) Where a vessel enters or remains in a safety zone specified in an instrument under subsection (1) in contravention of the instrument, the owner and the person in command or in charge of the vessel are each guilty of an offence against this section and are punishable, upon conviction, by a penalty of a fine not exceeding \$66 000 or imprisonment for a term not exceeding 10 years, or both, in the case of a natural person or a fine not exceeding \$330 000 in the case of a body corporate.

S. 119(3)
amended by
Nos 91/2001
s. 60, 10/2004
s. 16(Sch. 2
item 1.13(a)
(b)).

S. 120
amended by
Nos 68/1986
s. 49(Sch.
item 60),
91/2001
s. 61(a),
10/2004
s. 16(Sch. 2
item 1.14(a)
(b)).

120 Discovery and use of water

Where water is discovered in a permit area, a lease area or a licence area, the permittee, lessee or licensee, as the case may be, shall, within a period of one month after the date of the discovery, furnish to the Minister in writing particulars of the discovery.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

S. 121
amended by
No. 68/1986
s. 49(Sch.
item 61),
repealed by
No. 91/2001
s. 61(b).

* * * * *

122 Records etc. to be kept

- (1) The Minister may by instrument in writing served on a person carrying on operations in the adjacent area under a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority, access authority or instrument of consent under section 123, direct that person to do any one or more of the following things—
- (a) to keep such accounts, records and other documents in connexion with those operations as are specified in the instrument;
 - (b) to collect and retain such cores, cuttings and samples in connexion with those operations as are so specified; and
 - (c) to furnish to the Minister, or to such person as is so specified, in the manner so specified, such reports, returns, other documents, cores, cuttings and samples in connexion with those operations as are so specified.

S. 122(1)
amended by
Nos 68/1986
s. 49(Sch.
item 62),
91/2001
s. 11(c).

- (2) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

S. 122(2)
amended by
Nos 91/2001
s. 61(c),
10/2004
s. 16(Sch. 2
item 1.15(a)
(b)).

122A Regulations about data management

- (1) The regulations may make provision for and in relation to—
- (a) the keeping of accounts, records and other documents in connection with operations under—
 - (i) a permit; or
 - (ii) a lease; or
 - (iii) a licence; or

S. 122A
inserted by
No. 11/2004
s. 6.

-
- (iv) an infrastructure licence; or
 - (v) a pipeline licence; or
 - (vi) a special prospecting authority; or
 - (vii) an access authority; or
 - (viii) a consent under section 123; and
- (b) the collection and retention of cores, cuttings and samples in connection with those operations; and
 - (c) the giving to the Minister, or a specified person, of reports, returns, other documents, cores, cuttings and samples in connection with those operations.
- (2) In particular, the regulations may establish a scheme that—
- (a) applies in relation to operations under—
 - (i) a permit; or
 - (ii) a lease; or
 - (iii) a licence; or
 - (iv) an infrastructure licence; or
 - (v) a pipeline licence; or
 - (vi) a special prospecting authority; or
 - (vii) an access authority; or
 - (viii) a consent under section 123—
held by a person (the *holder*); and
 - (b) requires the holder to prepare and submit a plan (a *data management plan*) that deals with any or all of the following—
 - (i) the keeping of accounts, records and other documents in connection with those operations;

- (ii) the collection and retention of cores, cuttings and samples in connection with those operations;
 - (iii) the giving to the Minister, or to a person specified in the data management plan, of reports, returns, other documents, cores, cuttings and samples in connection with those operations; and
- (c) empowers the Minister to make decisions about the approval of—
- (i) a data management plan; and
 - (ii) variations of a data management plan; and
- (d) requires the holder to comply with an approved data management plan submitted by the holder.
- (3) A scheme referred to in subsection (2) may provide that the holder must not commence the relevant operations unless—
- (a) an approved data management plan is in force; or
 - (b) the Minister gives consent to the commencement of those operations.
- (4) Subsections (2) and (3) do not limit subsection (1).
- (5) A requirement under section 122 is in addition to a requirement under regulations made for the purposes of this section.

123 Scientific investigations

- (1) The Minister may, by instrument in writing, consent to the carrying on in the adjacent area by any person of petroleum exploration operations in the course of a scientific investigation.

- (2) An instrument of consent under subsection (1) may be made subject to such conditions, if any, as are specified in the instrument.
- (3) An instrument of consent in force under subsection (1) authorizes the person specified in the instrument, subject to section 124 and in accordance with the conditions, if any, to which the instrument is subject, to carry on, in the adjacent area, petroleum exploration operations so specified in the course of the scientific investigation so specified.

S. 124
amended by
Nos 68/1986
s. 49(Sch.
item 63),
91/2001
ss 11(c), 62,
10/2004
s. 16(Sch. 2
item 1.16(a)
(b)).

124 Interference with other rights

A person carrying on operations in the adjacent area under a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority, access authority or instrument of consent under section 60(2) or (3) or 123 shall carry on those operations in a manner that does not interfere with—

- (a) navigation;
- (b) fishing;
- (c) the conservation of the resources of the sea and sea-bed; or
- (d) any operations of another person being lawfully carried on by way of exploration for, recovery of or conveyance of a mineral, whether petroleum or not, or by way of construction or operation of a pipeline—

to a greater extent than is necessary for the reasonable exercise of the rights and performance of the duties of that first-mentioned person.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

124A Interfering with offshore petroleum installation or operations

S. 124A
inserted by
No. 91/2001
s. 63.

- (1) A person must not intentionally or recklessly—
- (a) cause damage to, or interfere with, any structure or vessel in the adjacent area that is, or is to be, used in exploring for, recovering, processing, storing, preparing for transport, or transporting, petroleum; or
 - (b) interfere with any operations or activities being carried out, or any works being executed, on, or by means of, or in connection with, such a structure or vessel.

S. 124A(1)
amended by
No. 10/2004
s. 16(Sch. 2
item 1.17(a)
(b)).

Penalty: \$66 000 or imprisonment for 10 years or both, in the case of a natural person;
\$330 000, in the case of a body corporate.

- (2) In this section—

structure means any fixed, moveable or floating structure or installation and includes a pipeline, pumping station, tank station or valve station.

125 Inspectors

- (1) The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act and the regulations.
- (2) The Minister may furnish to an inspector a certificate stating that the inspector is an inspector for the purposes of this Act and the regulations.

S. 125(2)
amended by
No. 91/2001
s. 64(1)(a).

s. 126

S. 125(3)
amended by
Nos 91/2001
s. 64(1)(b)(c),
10/2004
s. 16(Sch. 2
item 1.18).

- (3) Where the appointment of a person under this section expires or is revoked, that person shall forthwith surrender the certificate furnished to him or her under this section to the Minister or, if the Minister, by instrument in writing served on that person, specifies another person to whom the certificate is to be surrendered, to that other person.

Penalty: \$550.

126 Powers of inspectors

S. 126(1)
amended by
No. 91/2001
s. 64(2)(a)(i).

- (1) For the purposes of this Act and the regulations, an inspector, at all reasonable times and on production of the certificate furnished to him or her under section 125—

S. 126(1)(a)
amended by
No. 91/2001
s. 64(2)(a)(ii)
(iii).

- (a) shall have access to any part of the adjacent area and to any structure, ship, aircraft or building in that area that, in his or her opinion, has been, is being or is to be used in connexion with petroleum exploration operations, operations for the recovery of petroleum, operations relating to the processing or storage of petroleum, or the preparation of petroleum for transport or operations connected with the construction or operation of a pipeline in that area;

S. 126(1)(b)
amended by
No. 91/2001
s. 64(2)(a)(ii).

- (b) may inspect and test any equipment that, in his or her opinion, has been, is being or is to be used in that area in connexion with any of those operations; and

S. 126(1)(c)
amended by
No. 91/2001
s. 64(2)(a)(ii).

- (c) may enter any structure, ship, aircraft, building or place in that area or in the State, in which, in his or her opinion, there are any documents relating to any of those operations and may inspect, take extracts from and make copies of any of those documents.

(2) A person who is the occupier or person in charge of any building, structure or place, or is the person in charge of any ship, aircraft or equipment referred to in subsection (1), shall provide an inspector with all reasonable facilities and assistance for the effective exercise of the inspector's powers under this section.

S. 126(2)
amended by
No. 91/2001
s. 64(2)(b).

(3) A person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of the inspector's powers under this section.

S. 126(3)
amended by
Nos 91/2001
s. 64(2)(b)(c),
10/2004
s. 16(Sch.
item 1.19).

Penalty: \$55 000.

127 Property in petroleum

Subject to this Act and to any rights of other persons, upon recovery of any petroleum by a permittee, lessee or licensee in the permit area, lease area or licence area, the petroleum becomes the property of the permittee, lessee or licensee.

S. 127
amended by
No. 68/1986
s. 49(Sch.
item 64(a)(b)).

128 Suspension of rights conferred by permit

(1) Where the Minister is satisfied that it is necessary to do so in the public interest, he or she shall, by instrument in writing served on the permittee, suspend, either for a specified period or indefinitely, all or any of the rights conferred by the permit.

S. 128(1)
amended by
No. 91/2001
s. 65(a).

(2) Where any rights are suspended in accordance with subsection (1), any conditions required to be complied with in the exercise of those rights are also suspended.

(3) The Minister may, by instrument in writing served on the permittee, terminate a suspension of rights under subsection (1).

- (4) Where rights conferred by a permit are suspended in accordance with subsection (1), the Minister may, by the instrument of suspension or by a later instrument in writing served on the permittee, extend the term of the permit by a period not exceeding the period of the suspension.

S. 129
amended by
No. 68/1986
s. 49(Sch.
item 65(a)(b)).

129 Certain payments to be made by State to Commonwealth

The Treasurer shall, not later than the last day of each month of the year, pay to the Commonwealth amounts ascertained in accordance with the formula—

$\frac{4A}{B}$

B

where—

A is the amount of royalty payable under this Act, together with the amount, if any, payable under this Act by reason of late payment of that royalty, by a permittee, lessee or licensee in respect of petroleum recovered in the adjacent area under the permit, lease or licence and received by the Minister during the preceding month; and

B is the percentage rate at which royalty is payable under this Act by the permittee, lessee or licensee in respect of that petroleum—

and the Consolidated Fund is hereby, to the necessary extent, appropriated accordingly.

130 Determination to be disregarded in certain cases

Where a determination has been made by the Minister under section 144 in relation to a well, that determination shall be disregarded in ascertaining the value of B for the purposes of section 129.

131 Continuing offences

- (1) Where an offence is committed by a person by reason of the person's failure to comply, within the period specified in a direction given to the person under this Act or the regulations, with the requirements specified in the direction, the offence, for the purposes of subsection (3), shall be deemed to continue so long as any requirement specified in the direction remains undone, notwithstanding that the period has elapsed.
- (2) Where an offence is committed by a person by reason of the person's failure to comply with a requirement made by this Act or the regulations, the offence, for the purposes of subsection (3), shall be deemed to continue so long as that failure continues, notwithstanding that any period within which the requirement was to be complied with has elapsed.
- (3) Where, under subsection (1) or (2), an offence is to be deemed to continue, the person who committed the offence commits an additional offence against this Act on each day during which the offence is to be deemed to continue and is liable, upon conviction for such an additional offence, to a fine not exceeding \$11 000.

S. 131(1)
amended by
Nos 91/2001
s. 65(b)(i),
11/2002
s. 3(Sch. 1
item 52.5).

S. 131(2)
amended by
No. 91/2001
s. 65(b)(i).

S. 131(3)
amended by
Nos 91/2001
s. 65(b)(ii),
10/2004
s. 16(Sch. 2
item 1.20).

132 Persons concerned in commission of offences

A person who by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of any offence against this Act or the regulations shall be deemed to have committed that offence and shall be punishable accordingly.

133 Prosecution of offences

- (1) In this section—
- (a) a reference to an offence against this Act shall be read as including a reference to—
 - (i) an offence against the regulations; and
 - (ii) an offence arising under section 323 of the **Crimes Act 1958** or section 52 of the **Magistrates' Court Act 1989** in relation to an offence against this Act or the regulations; and
 - (b) a reference to a prescribed offence shall be read as a reference to an offence against this Act the penalty in respect of which may include a term of imprisonment.
- (2) Prescribed offences are indictable offences.
- (3) Notwithstanding that prescribed offences are indictable offences, a court of summary jurisdiction may hear and determine proceedings for a prescribed offence if the court is satisfied that it is appropriate to do so and the accused and the prosecutor consent.
- (4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of a prescribed offence, the penalty that the court may impose in respect of the offence is a fine not exceeding \$10 000 or imprisonment for a period not exceeding two years, or both.
- (5) An offence against this Act other than a prescribed offence is, unless the contrary intention appears, punishable summarily.

S. 133(1)(a)(ii)
amended by
No. 74/2000
s. 3(Sch. 1
item 98).

S. 133(3)
amended by
No. 68/2009
s. 97(Sch.
item 91.1).

134 Orders for forfeiture in respect of certain offences

- (1) Where a person is convicted by the Supreme Court of an offence against section 19, 39, 59A or 60 the Court may, in addition to imposing a penalty, make one or more of the following orders—
- (a) an order for the forfeiture of a specified aircraft or vessel used in the commission of the offence;
 - (b) an order for the forfeiture of specified equipment used in the commission of the offence; and
 - (c) an order—
 - (i) for the forfeiture of specified petroleum recovered, or conveyed through a pipeline, as the case may be, in the course of the commission of the offence;
 - (ii) for the payment by that person to the State of an amount equal to the proceeds of the sale of specified petroleum so recovered or conveyed; or
 - (iii) for the payment by that person to the State of an amount equal to the value at the well-head, assessed by the Court, of the quantity, so assessed, of petroleum so recovered or conveyed or for the payment of such part of that amount as the Court, having regard to all the circumstances, thinks fit.
- (2) Where the Court is satisfied that an order made under subsection (1)(c)(i) cannot, for any reason, be enforced, the Court may, upon the application of the person by whom the proceedings were brought, set aside the order and make either of the orders referred to in subsection (1)(c)(ii) or (iii).

S. 134(1)
amended by
No. 91/2001
s. 11(d).

- (3) The Court may, before making an order under this section, require notice to be given to, and hear, such persons as the Court thinks fit.

S. 135
amended by
Nos 82/1993
s. 10(2),
91/2001
s. 65(c).

135 Disposal of forfeited goods

Goods in respect of which an order is made under section 134 shall be dealt with as the Attorney-General directs and, pending his or her direction, may be detained in such custody as the Court directs.

136 Time for bringing proceedings for offences

Proceedings in respect of an offence against this Act (being an offence arising under this Part) or the regulations may be brought at any time.

137 Judicial notice

- (1) All courts shall take judicial notice of the signature of a person who is, or has been, the Minister or a delegate of the Minister and of the fact that that person is, or has been, the Minister or a delegate of the Minister.
- (2) In this section, *court* includes all persons authorized by the law of the State or by consent of parties to receive evidence.

138 Service

- (1) A document required or permitted by this Act to be served on a person other than the Minister or a corporation shall be served—
- (a) by delivering the document to that person personally;
- (b) by prepaying and posting the document as a letter addressed to that person at the person's last known place of residence or business or, if the person is carrying on business at two or more places, at one of those places;

S. 138(1)(b)
amended by
No. 91/2001
s. 65(d)(i)(ii).

- (c) by leaving the document at the last known place of residence of that person with some person apparently a resident of that place and apparently not less than sixteen years of age; or
- (d) by leaving the document at the last known place of business of that person, or if the person is carrying on business at two or more places, at one of those places, with some person apparently in the service of that person and apparently not less than sixteen years of age.
- (2) A document required or permitted by this Act to be served on the Minister shall be served—
- (a) by prepaying and posting the document as a letter addressed to the Minister at a place of business of the Minister; or
- (b) by leaving it at a place of business of the Minister with some person apparently employed in connexion with the business of the Minister and apparently not less than sixteen years of age.
- (3) A document required by this Act to be served upon a person, being a corporation, shall be served—
- (a) by prepaying and posting the document as a letter addressed to the corporation at its last known place of business or, if it is carrying on business at two or more places, at one of those places; or
- (b) by leaving it at that place, or at one of those places, with some person apparently in the service of the corporation and apparently not less than sixteen years of age.

S. 138(1)(d)
amended by
No. 91/2001
s. 65(d)(ii).

S. 138A
inserted by
No. 68/1986
s. 43.

138A Service of documents on two or more permittees etc.

- (1) Where there are two or more registered holders of a title or special prospecting authority, those registered holders may, by notice in writing signed by each of them and served on the Minister, nominate one of the registered holders as being the person on whom documents relating to the title or special prospecting authority that are required or permitted by this Act to be served may be served.
- (2) Subject to subsections (3) and (4), where—
 - (a) a document relating to a title or special prospecting authority is required or permitted by this Act to be served on the registered holder;
 - (b) there are two or more registered holders of the title or special prospecting authority; and
 - (c) the document is served on a person in respect of whom a nomination under subsection (1) is in force in relation to the title or special prospecting authority—

the document shall be deemed to have been served on each of those registered holders.

- (3) Where—
 - (a) a person has been nominated under subsection (1) in relation to a title or special prospecting authority; and
 - (b) one of the registered holders of the title or special prospecting authority, by notice in writing served on the Minister, revokes that nomination—

that nomination ceases to be in force.

(4) Where—

- (a) a person has been nominated under subsection (1) in relation to a title or special prospecting authority; and
- (b) the person so nominated ceases to be one of the registered holders of the title or special prospecting authority—

that nomination ceases to be in force.

- (5) In this section, *title* means a permit, lease, licence, infrastructure licence, pipeline licence or access authority.

S. 138A(5)
amended by
No. 91/2001
s. 11(e).

Division 7—Fees and royalties

139 Permit fees

There is payable to the Minister by a permittee in respect of each year of the term of the permit, a fee calculated in accordance with the regulations.

S. 139
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

139A Lease fees

S. 139A
inserted by
No. 68/1986
s. 44.

- (1) There is payable to the Minister by a lessee, in respect of each year of the term if the lease, a fee calculated in accordance with the regulations.
- (2) A fee referred to in subsection (1) is due and payable at the end of one month after—
 - (a) in the case of the first year of the term of the lease—the day on which that term commenced; and
 - (b) in the case of a year of the term of the lease other than the first—the anniversary of that day.

S. 139A(1)
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

s. 140

S. 140
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

140 Licence fees

There is payable to the Minister by a licensee, in respect of each year of the term of the licence, a fee calculated in accordance with the regulations.

S. 140A
inserted by
No. 91/2001
s. 12.

140A Infrastructure licence fees

There is payable to the Minister by an infrastructure licensee, in respect of each year of the term of the infrastructure licence, a fee calculated in accordance with the regulations.

S. 141
amended by
No. 83/1990
s. 18(1)
(Sch. 1).

141 Pipeline licence fees

There is payable to the Minister by a pipeline licensee, in respect of each year of the term of the pipeline licence, a fee calculated in accordance with the regulations.

S. 142
amended by
No. 91/2001
s. 13(a).

142 Time of payment of fees

A fee under section 139, 140, 140A and 141 is payable within one month after—

S. 142(a)
amended by
No. 91/2001
s. 13(b).

(a) in the case of the first year of the term of the permit, licence, infrastructure licence or pipeline licence—the day on which that term commenced; and

S. 142(b)
amended by
No. 91/2001
s. 13(b).

(b) in the case of a year of the term of the permit, licence, infrastructure licence or pipeline licence other than the first—the anniversary of that day.

S. 143(1)
amended by
No. 68/1986
s. 45(b)(i)(ii).

143 Royalty

(1) A permittee, lessee or licensee shall, subject to this Division, pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered by the permittee, lessee or licensee in the permit area, lease area or licence area.

- (2) Subject to the succeeding provisions of this section and the provisions of section 144, the prescribed rate in respect of petroleum recovered under a permit, lease or licence is ten per centum of the value at the well-head of the petroleum.
- (3) The prescribed rate in respect of petroleum recovered under a secondary licence is the percentage determined by the Minister in pursuance of section 42(1) in respect of petroleum so recovered.
- (4) Where a secondary licence is granted to the holder of a primary licence, the prescribed rate in respect of petroleum recovered under the primary licence is, as from the commencement of the next royalty period after the day from which the secondary licence has effect, the same percentage as is applicable in respect of petroleum recovered under the secondary licence.
- (5) Where—
- (a) a licence is granted on an application under section 47; and
 - (b) the instrument served on the applicant under section 49 contains a statement that the applicant will be required to pay, in respect of petroleum recovered under that licence, royalty at the rate specified in that statement—
- the prescribed rate in respect of petroleum recovered under that licence is the percentage specified in that statement.
- (6) Where a licence is granted on an application under section 51(1), the prescribed rate in respect of petroleum recovered under that licence is the same percentage as was applicable in respect of petroleum recovered under the original licence as defined by that subsection.

S. 143(2)
amended by
No. 68/1986
s. 45(c) (as
amended by
No. 12/1990
s. 19(5)).

S. 143(8)
amended by
No. 68/1986
s. 45(c) (as
amended by
No. 12/1990
s. 19(5)).

- (7) The prescribed rate in respect of petroleum recovered in the licence area referred to in a licence granted by way of renewal of a licence is the percentage that would be the prescribed rate if the licence so granted were the continuation in force of the previous licence.
- (8) A reference in this section or in a permit, lease or licence to royalty at the prescribed rate or royalty at the rate that is for the time being the prescribed rate shall be read as a reference to royalty at the rate that is or was the prescribed rate applicable in accordance with the provisions of this Act as in force from time to time.

144 Reduction of royalty in certain cases

- (1) Where 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 section 143, further recovery of petroleum from that well would be uneconomic, 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 shall be at such rate (being a rate lower than the rate that would be applicable under section 143) as the Minister specifies.
- (2) The prescribed rate in respect of petroleum to which a determination under subsection (1) is applicable is the rate specified in the determination.
- (3) The Minister may, by instrument in writing, revoke or vary a determination under subsection (1) and the revocation or variation applies to petroleum recovered on or after such date as is specified in the instrument.

145 Royalty not payable in certain cases

(1) Royalty under this Act—

- (a) is not payable in respect of petroleum that the Minister is satisfied was unavoidably lost before the quantity of that petroleum was ascertained;
- (b) is not payable in respect of petroleum that is used by the permittee, lessee or licensee, as approved by the Minister, for the purposes of petroleum exploration operations or operations for the recovery of petroleum; and
- (c) is not payable in respect of petroleum that, with the approval of the Minister, is flared or vented in connexion with operations for the recovery of petroleum.

S. 145(1)(b)
amended by
No. 68/1986
s. 45(d)(i).

- (2) Where petroleum that has been recovered by a permittee, lessee or licensee is, with the approval of the Minister, returned to a natural reservoir, royalty under this Act 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 permittee, lessee or licensee to pay royalty in respect of petroleum that is recovered from that natural reservoir.

S. 145(2)
amended by
No. 68/1986
s. 45(d)(ii).

146 Ascertainment of well-head

For the purposes of this Act, the well-head, in relation to any petroleum, is such valve station as is agreed between the permittee, lessee or licensee and the Minister or, in default of agreement within such period as the Minister allows, is such valve station as is determined by the Minister as being that well-head.

S. 146
amended by
No. 68/1986
s. 45(e).

s. 147

S. 147
amended by
No. 68/1986
s. 45(f).

147 Ascertainment of value

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

S. 148
amended by
No. 68/1986
s. 45(g).

148 Ascertainment of quantity of petroleum recovered

For the purposes of this Act, the quantity of petroleum recovered by a permittee, lessee or licensee from a well during a period shall be 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 permittee, lessee or licensee from that well has been properly or accurately measured by such a measuring device—the quantity determined by the Minister as being the quantity recovered by the permittee, lessee or licensee from that well during that period.

S. 148(b)
amended by
No. 68/1986
s. 45(g).

149 Payment of royalty

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

150 Penalty for late payment

- (1) Where a fee or an amount of royalty under this Act is not paid under this Division at or before the time when the fee or the amount of royalty is payable there is payable to the Minister by the

S. 150(1)
amended by
No. 68/1986
s. 45(h).

permittee, lessee, licensee or pipeline licensee an additional amount calculated at the rate of one-third of one per centum per day upon the amount of the fee or royalty from time to time remaining unpaid to be computed from the time when the amount 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 seven days after the value of the petroleum was agreed or determined under section 147.

151 Fees and penalties debts due to the State

A fee royalty or other amount payable under this division is a debt due by the permittee, lessee, licensee or pipeline licensee to the State and is recoverable in a court of competent jurisdiction.

S. 151
amended by
No. 68/1986
s. 45(i).

Division 8—Area to be avoided and safety zones

Pt 3 Div. 8
(Heading and
ss 151A–
151G)
inserted by
No. 68/1986
s. 46.

151A Definitions

- (1) In this Division—

authorized person means a member or a special member of the Australian Federal Police, a member of the Police Force of a State or Territory, a member of the Defence Force or a person, or a person included in a class of persons, authorized to perform duties under this Division in accordance with subsection (4);

S. 151A
inserted by
No. 68/1986
s. 46.

exempt vessel, in relation to a safety zone, means a vessel—

- (a) that is excluded from the operation of section 119 in relation to that safety zone by virtue of the instrument establishing the safety zone; or
- (b) in respect of which there is in force a consent in writing of the Minister under section 119(1) in relation to that safety zone;

government vessel means a vessel that is beneficially owned by, or a vessel the whole possession and control of which is for the time being vested in, the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory;

master, in relation to a vessel, means the person having command or charge of the vessel;

owner, in relation to a vessel, means—

- (a) in a case to which paragraph (b) does not apply—the person who owns the vessel; or
- (b) if the vessel is being operated by a person (not being the person who owns the vessel) who has the whole possession and control of the vessel—the operator of the vessel;

prescribed safety zone means a safety zone that is situated within any part of the area described in Schedule 6 that comprises waters of the sea that are within the territorial sea of Australia or within any area on the landward side of the territorial sea of Australia;

relevant vessel means a vessel—

- (a) that is registered under the Shipping Registration Act and the gross tonnage of which specified in the certificate of registration of the vessel exceeds 200;
- (b) that is not registered under that Act but is permitted to be registered under that Act, being a vessel the tonnage length of which is equal to or exceeds 24 metres; or
- (c) not being a vessel to which paragraph (a) or (b) applies, that is in the adjacent area for the purpose of exploring the sea-bed or subsoil of the adjacent area for petroleum or minerals or for the purpose of exploiting the natural resources, being petroleum or minerals, of that sea-bed or subsoil; or
- (d) a vessel that is registered under the law of a foreign country—

but does not include a government vessel;

safety zone means an area that is a safety zone for the purposes of section 119;

Shipping Registration Act means the Shipping Registration Act 1981 of the Commonwealth as amended and in force for the time being.

- (2) A reference in this Division to the area to be avoided shall be read as a reference to so much of the area described in Schedule 6 as comprises waters of the sea that—
 - (a) are within the territorial sea of Australia or within any area on the landward side of the territorial sea of Australia; and
 - (b) are not within a safety zone.

s. 151A

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- (3) If at any time the breadth of the territorial sea of Australia is determined or declared to be greater than 3 nautical miles, subsection (2) and the definition of *prescribed safety zone* in subsection (1) continue to have effect as if the breadth of the territorial sea of Australia had continued to be three nautical miles.
- (4) The Minister may, by notice published in the Gazette, authorize a person, or a person included in a specified class of persons, to perform duties under this Division.
- (5) The reference in the definition of *government vessel* in subsection (1) to an authority of the Commonwealth, of a State or of a Territory shall be read as a reference to a body corporate established for a public purpose by or under a law of the Commonwealth or of a State or Territory, as the case may be, other than—
- (a) the Australian Shipping Commission;
 - (b) the Western Australian Coastal Shipping Commission;
 - (c) the Transport Commission established under the Transport Act 1938 of the State of Tasmania; or
 - (d) a body corporate that is declared by regulations made under the Shipping Registration Act not to be a Government authority for the purposes of that Act.
- (6) For the purposes of this Division, the tonnage length of a ship shall be determined in the same manner as it is determined for the purposes of the Shipping Registration Act.

151B Emergency periods

S. 151B
inserted by
No. 68/1986
s. 46.

- (1) Where the Commonwealth Minister is satisfied that—
- (a) terrorist activity is likely to occur in the area to be avoided or in a prescribed safety zone; and
 - (b) if that activity occurred, the safety of any person in the area to be avoided or in a prescribed safety zone would be likely to be at risk or any well, pipeline, structure or equipment in the area to be avoided or in a prescribed safety zone would be likely to be damaged—

and, under the Commonwealth Act, has, by notice published in the Commonwealth of Australia Gazette, declared that a state of emergency exists in relation to the area to be avoided, the Minister may, by notice so published, make a like declaration.

- (2) A declaration by the Minister under subsection (1) comes into force on the day on which the notice is published in the Gazette and continues to be in force during such period, not exceeding 14 days, as is specified in the notice.
- (3) Where—
- (a) a notice under subsection (1) is made; and
 - (b) before the expiration of the period during which the notice remains in force the Minister is satisfied that it is necessary to extend the period of the state of emergency—

the Minister may, by notice published in the Gazette, extend the period of the state of emergency by such period, not exceeding 14 days, as is specified in the notice.

s. 151C

- (4) During any period during which a notice under this section is in force, this Division has effect as if—
- (a) "and the gross tonnage of which specified in the certificate of registration of the vessel exceeds 200" were omitted from paragraph (a) of the definition of *relevant vessel* in section 151A(1); and
 - (b) ", being a vessel the tonnage length of which is equal to or exceeds 24 metres" were omitted from paragraph (b) of the definition of *relevant vessel* in section 151A(1).
- (5) A reference in this section to terrorist activity shall be read as including a reference to activities involving extortion.

S. 151C
inserted by
No. 68/1986
s. 46.

151C Minister may authorize entry into area to be avoided

- (1) The owner of a vessel may, by notice in writing given to the Minister, apply for the grant of an authorization under subsection (2) for the vessel to enter the area to be avoided.
- (2) The Minister may, by notice in writing given to a person who has made an application under subsection (1) in respect of a vessel, authorize the vessel to enter the area to be avoided.
- (3) An authorization under subsection (2) is subject to such conditions as are specified in the notice of authorization.
- (4) The Minister may, by notice in writing given to the owner of a vessel in respect of which an authorization is in force under subsection (2), revoke the authorization.

151D Unauthorized vessel not to enter area to be avoided

S. 151D
inserted by
No. 68/1986
s. 46.

- (1) Where a relevant vessel (not being an exempt vessel in relation to a prescribed safety zone) enters or remains in the area to be avoided otherwise than in accordance with an authorization in force in respect of the vessel under section 151C(2), the owner of the vessel and the master of the vessel are each guilty of an offence punishable, on conviction, by a fine not exceeding \$50 000 or imprisonment for a period not exceeding 5 years, or both, in the case of a natural person or a fine not exceeding \$250 000 in the case of a body corporate.
- (2) It is a defence to a prosecution for an offence against subsection (1) in relation to a vessel entering, or remaining in, the area to be avoided otherwise than in accordance with an authorization in force in respect of the vessel if the person charged satisfies the court that—
- (a) an unforeseen emergency rendered it necessary for the vessel to enter or remain in the area in order to attempt to secure the safety of the vessel, of another vessel, of any well, pipeline, structure or equipment or of human life; or
 - (b) the vessel entered or remained in the area in circumstances not under the control of the person who was in charge of the navigational watch of the vessel.

S. 151D(1)
amended by
No. 91/2001
s. 66(a).

S. 151E
inserted by
No. 68/1986
s. 46.

151E Powers of authorized persons

- (1) Subject to subsection (3), an authorized person may—
 - (a) board a vessel that the person has reasonable grounds to believe has been used, is being used or is about to be used in contravention of section 119 or 151D;
 - (b) where the person has boarded a vessel in the exercise of powers under paragraph (a)—
 - (i) require any person on board the vessel to answer questions relating to the vessel or to the movements of the vessel;
 - (ii) require the master of the vessel to state whether there is in force in respect of the vessel a consent under section 119(1) or an authorization under section 151C(2) and, if so, to produce the consent or authorization, as the case may be;
 - (iii) if the vessel is registered under the Shipping Registration Act—require the master of the vessel to produce the certificate of registration of the vessel;
or
 - (iv) search the vessel for any documents relating to the vessel or to the movements of the vessel;
 - (c) require the master of a vessel, being a vessel—
 - (i) that is, or that the person has reasonable grounds to believe is, a relevant vessel;

-
- (ii) that is in the area to be avoided otherwise than in accordance with an authorization in force in respect of the vessel under section 151C(2); and
 - (iii) that is not an exempt vessel in relation to a prescribed safety zone—
to take the vessel outside the area to be avoided;
 - (d) require the master of a vessel, being a vessel that is in a safety zone and that is not an exempt vessel in relation to the safety zone, to take the vessel outside the safety zone;
 - (e) require the master of a vessel, being a vessel—
 - (i) that is in, or that is near, the area to be avoided;
 - (ii) that the person has reasonable grounds to believe is a vessel of the kind referred to in paragraph (b) of the definition of *relevant vessel* in section 151A(1);
 - (iii) in respect of which there is not in force an authorization under section 151C(2); and
 - (iv) that is not an exempt vessel in relation to a prescribed safety zone—
to permit the person to take measurements of the vessel;
 - (f) require the master of a disabled vessel—
 - (i) that is in the area to be avoided and that is, or that the person has reasonable grounds to believe is, a relevant vessel;
 - (ii) that is in a safety zone; or

s. 151E

(iii) that is, or that the person has reasonable grounds to believe is, a relevant vessel and that the person has reasonable grounds to believe is likely to cause damage to any well, pipeline, structure or equipment in the area to be avoided or in a safety zone—

to permit the vessel to be towed away from the area to be avoided or the safety zone, as the case requires, or to accept the giving of such other assistance to the vessel as the person considers necessary; or

(g) detain a vessel that the person has reasonable grounds to believe has been used in contravention of section 119 or 151D.

(2) A person who—

- (a) fails to facilitate by all reasonable means the boarding of a vessel by an authorized person pursuant to subsection (1);
- (b) refuses to allow a search that is authorized under subsection (1) to be made by an authorized person;
- (c) refuses or neglects to comply with a requirement made by an authorized person under subsection (1);
- (d) when an authorized person requires the person to give information, pursuant to the powers of the authorized person under subsection (1)—gives information that is, to the knowledge of the person, false or misleading in a material particular; or

S. 151E(2)
amended by
Nos 91/2001
s. 66(b),
10/2004
s. 16(Sch. 2
item 1.21(a)
(b)).

-
- (e) resists or obstructs an authorized person who is acting pursuant to subsection (1)—
is guilty of an offence punishable, on conviction, by a fine not exceeding \$5500 in the case of a natural person or a fine not exceeding \$27 500 in the case of a body corporate.
- (3) The powers of an authorized person in relation to a vessel under subsection (1)(a), (b), (e) and (g) shall not be exercised except—
- (a) pursuant to a warrant issued under section 151F;
 - (b) after obtaining the consent of the master of the vessel; or
 - (c) in circumstances of seriousness and urgency, in accordance with section 151G.

151F Search warrants

S. 151F
inserted by
No. 68/1986
s. 46.

- (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds to believe that a vessel has been used, is being used or is about to be used in contravention of section 119 or 151D, and the information sets out those grounds and identifies the vessel, a Magistrate may issue a warrant authorizing an authorized person named in the warrant, with such assistance as the authorized person thinks necessary, to exercise all or any of the powers referred to in section 151E(1)(a), (b), (e) and (g) in relation to that vessel.
- (2) A Magistrate shall not issue a warrant under subsection (1) unless—
- (a) the informant or some other person has given to the Magistrate either orally or by affidavit such further information (if any) as the Magistrate requires concerning the grounds

s. 151G

- on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A warrant issued under subsection (1) shall—
- (a) specify the purpose for which the warrant is issued;
- (b) set out a description of the vessel in relation to which the warrant is issued; and
- (c) specify a day, not being later than 7 days after the date on which the warrant is issued, as being the day on which the warrant ceases to have effect.

S. 151G
inserted by
No. 68/1986
s. 46.

151G Exercise of powers in serious circumstances

An authorized person may exercise, in relation to a vessel, all or any of the powers referred to in section 151E(1)(a), (b), (e) and (g) where—

- (a) the authorized person has reasonable grounds to believe that—
- (i) the vessel has been used, is being used or is about to be used in contravention of section 119 or 151D; or
- (ii) the exercise of those powers is necessary to prevent damage being caused to any well, pipeline, structure or equipment in the area to be avoided or in a safety zone; and
- (b) the circumstances are of such a serious nature as to require and justify the immediate exercise of those powers without the authority of a warrant issued under section 151F.

PART IIIA—RELEASE OF INFORMATION

Division 1—Preliminary

Pt 3A
(Heading and
ss 151H–
151Q)
inserted by
No. 91/2001
s. 67.

151H Definitions

(1) In this Part—

S. 151H
inserted by
No. 91/2001
s. 67.

applicable document means—

S. 151H(1)
def. of
*applicable
document*
amended by
No. 11/2004
s. 7(1)(a)(i).

- (a) an application made after the commencement of this Part to the Minister under this Act; or
- (b) a document accompanying such an application; or
- (c) a report, return or other document relating to a block that has been given after the commencement of this Part to the Minister under this Act or regulations made for the purposes of section 122A;

* * * * *

S. 151H(1)
defs of
*confidential
information,
contested
information,
derivative
information*
repealed by
No. 11/2004
s. 7(1)(a)(ii).

documentary information means information contained in an applicable document;

Petroleum (Submerged Lands) Act 1982
 No. 9772 of 1982
 Part IIIA—Release of Information

s. 151H

<p>S. 151H(1) defs of <i>excluded information, notice inviting objections to the disclosure of information, petroleum mining instrument</i> repealed by No. 11/2004 s. 7(1)(a)(ii).</p>	*	*	*	*	*
<p>S. 151H(1) def. of <i>petroleum mining sample</i> amended by No. 11/2004 s. 7(1)(a)(iii).</p>	<p><i>petroleum mining sample</i> means a core or cutting from, or a sample of, the sea-bed or subsoil, or a sample of petroleum recovered, that has been given at any time, whether before or after the commencement of this Part, to the Minister and includes a portion of such a core, cutting or sample.</p>				
<p>S. 151H(1) def. of <i>seismic data grid scaled in time</i> repealed by No. 11/2004 s. 7(1)(a)(ii).</p>	*	*	*	*	*
<p>S. 151H(2)–(5) repealed by No. 11/2004 s. 7(1)(b).</p>	*	*	*	*	*

- (6) For the purposes of this Part—
- (a) cores and cuttings, well data, logs, sample descriptions and other documents, relating to the drilling of a well, are taken to have been given to the Minister not later than one month after the drilling of the well was, in the Minister's opinion, substantially completed; and

- (b) geophysical or geochemical data relating to geophysical or geochemical surveys are taken to have been given to the Minister not later than one year after the geophysical or geochemical field work was, in the Minister's opinion, substantially completed.
- (7) Subsection (6)(a) does not apply in relation to the drilling of a well unless the drilling of the well was, in the Minister's opinion, substantially completed before the commencement of this subsection. **S. 151H(7) inserted by No. 11/2004 s. 7(2).**
- (8) Subsection (6)(b) does not apply in relation to a geophysical or geochemical survey unless the geophysical or geochemical field work was, in the Minister's opinion, substantially completed before the commencement of this subsection. **S. 151H(8) inserted by No. 11/2004 s. 7(2).**

151I Application of Part

This Part applies in respect of—

- (a) information given to the Minister after the commencement of this Part; and
- (b) petroleum mining samples given to the Minister at any time whether before or after the commencement of this Part.

Note

Section 118 of this Act as previously in force continues to apply in respect of information given to the Minister before the commencement of this Part (see clause 3 of the First Schedule).

S. 151I inserted by No. 91/2001 s. 67.

s. 151J

Pt 3A Divs 2, 3
(Headings
and ss 151J–
151Q)
substituted as
Pt 3A Div. 2
(Heading and
ss 151J–
151Q) by
No. 11/2004
s. 8.

S. 151J
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

Division 2—Protection of confidentiality of information and samples

Subdivision A—Information and samples obtained by the Minister

151J Protection of confidentiality of documentary information obtained by the Minister

- (1) This section restricts what the Minister may do with documentary information.
- (2) The Minister must not—
 - (a) make the information publicly known; or
 - (b) make the information available to a person (other than another Victorian Minister, a Minister of another State or of the Northern Territory or a Minister of the Commonwealth)—
unless the Minister does so—
 - (c) in accordance with regulations made for the purposes of this paragraph; or
 - (d) for the purposes of the administration of this Act or the regulations.

S. 151K
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

151K Protection of confidentiality of petroleum mining samples obtained by the Minister

- (1) This section restricts what the Minister may do with a petroleum mining sample.
- (2) The Minister must not—
 - (a) make publicly known any details of the sample; or

- (b) permit a person (other than another Victorian Minister, a Minister of another State or of the Northern Territory or a Minister of the Commonwealth) to inspect the sample—
unless the Minister does so—
- (c) in accordance with regulations made for the purposes of this paragraph; or
- (d) for the purposes of the administration of this Act or the regulations.

151L Minister may make information or samples available to other Ministers

S. 151L
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

- (1) The Minister may make documentary information or a petroleum mining sample available to—
- (a) another Victorian Minister; or
- (b) a Minister of another State or of the Northern Territory; or
- (c) a Minister of the Commonwealth.
- (2) The Minister must make documentary information or a petroleum mining sample available to the Commonwealth Minister if the Commonwealth Minister requires the Minister to make the information or sample available to the Commonwealth Minister.

Notes

- 1 For protection of the confidentiality of information obtained by a Victorian Minister under this section, see section 151M.
- 2 For protection of the confidentiality of a sample obtained by a Victorian Minister under this section, see section 151N.

s. 151M

**Subdivision B—Information and samples obtained by a
Victorian Minister**

S. 151M
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

**151M Protection of confidentiality of information obtained
by a Victorian Minister**

- (1) This section restricts what a Victorian Minister may do with documentary information made available to the Victorian Minister under section 151L.
- (2) The Victorian Minister must not—
 - (a) make the information publicly known; or
 - (b) make the information available to a person (other than another Victorian Minister, a Minister of another State or of the Northern Territory or a Minister of the Commonwealth)—
unless the Victorian Minister does so—
 - (c) in accordance with regulations made for the purposes of this paragraph; or
 - (d) for the purposes of the administration of this Act or the regulations.

S. 151N
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

**151N Protection of confidentiality of petroleum mining
samples obtained by a Victorian Minister**

- (1) This section restricts what a Victorian Minister may do with a petroleum mining sample made available to the Victorian Minister under section 151L.
- (2) The Victorian Minister must not—
 - (a) make publicly known any details of the sample; or

- (b) permit a person (other than another Victorian Minister, a Minister of another State or of the Northern Territory or a Minister of the Commonwealth) to inspect the sample—
unless the Victorian Minister does so—
- (c) in accordance with regulations made for the purposes of this paragraph; or
- (d) for the purposes of the administration of this Act or the regulations.

Subdivision C—Miscellaneous

151O Fees

- (1) This section applies to regulations made for the purposes of any of the following—
- (a) section 151J(2)(c);
- (b) section 151K(2)(c);
- (c) section 151M(2)(c);
- (d) section 151N(2)(c).
- (2) The regulations may make provision for fees relating to—
- (a) making information available to a person; or
- (b) permitting a person to inspect a sample.

S. 151O
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

151P Review by Minister

- (1) This section applies to regulations made for the purposes of—
- (a) section 151J(2)(c); or
- (b) section 151K(2)(c).

S. 151P
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

s. 151Q

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- (2) The regulations may make provision for the Minister to—
- (a) review a decision of the Minister under the regulations; and
 - (b) make a decision—
 - (i) confirming the decision reviewed; or
 - (ii) revoking the decision reviewed and substituting another decision for it.

S. 151Q
inserted by
No. 91/2001
s. 67,
substituted by
No. 11/2004
s. 8.

151Q Information Privacy Act 2000

This Part does not override any requirements of the **Information Privacy Act 2000**. In particular, this Part is not to be taken, for the purposes of that Act, to require or authorise the disclosure of information.

PART IIIB—DATUMS

Pt 3B
(Heading and
ss 151R–
151ZA)
inserted by
No. 91/2001
s. 67.

S. 151R
inserted by
No. 91/2001
s. 67.

151R Objects

The main objects of this Part are—

- (a) to maintain the use of the Australian Geodetic Datum to determine the position of blocks and certain other areas; and
- (b) to enable the position of a point, line, block or other area to be described, in a title or other instrument under this Act, using another datum (but not so as to change the position of a point, line, block or area).

151S Australian Geodetic Datum

S. 151S
inserted by
No. 91/2001
s. 67.

- (1) For the purposes of this Act, the position on the surface of the Earth of—

- (a) a graticular section or block; or
- (b) an area described in the Third Schedule; or
- (c) an area described in the Sixth Schedule—

is to be determined by reference to the Australian Geodetic Datum.

Note

Australian Geodetic Datum is defined in section 151ZA.

- (2) Subject to subsection (3), subsection (1) does not apply for the purposes of describing, in a title or other instrument under this Act, the position on the surface of the Earth of a point, line or area.

s. 151T

- (3) Until a declaration under subsection 151T(1) takes effect, the Australian Geodetic Datum applies for the purposes of describing, in a title or other instrument under this Act, the position on the surface of the Earth of a point, line or area.

S. 151T
inserted by
No. 91/2001
s. 67.

151T Current datum, previous datum and changeover time

- (1) The regulations may declare that, for the purposes of describing, in a title or other instrument under this Act, the position on the surface of the Earth of a point, line or area—
- (a) a specified datum is the *current datum*; and
 - (b) that datum replaces the previous datum.
- (2) The *previous datum* is—
- (a) if a datum is the first datum declared to be the current datum under subsection (1)—the Australian Geodetic Datum; or
 - (b) in any other case—the datum that was the current datum immediately before the changeover time.
- (3) The *changeover time* is the time when the declaration takes effect.

S. 151U
inserted by
No. 91/2001
s. 67.

151U Use of current datum

For the purposes of this Act, the position on the surface of the Earth of the following—

- (a) the permit area of a permit granted or renewed after the changeover time;
- (b) the lease area of a lease granted or renewed after the changeover time;
- (c) the licence area of a licence granted or renewed after the changeover time;

- (ca) the infrastructure licence area of an infrastructure licence granted after the changeover time;
- (d) the area in respect of which a special prospecting authority granted after the changeover time is in force;
- (e) the area in respect of which an access authority granted after the changeover time is in force;
- (f) the route of a pipeline authorised by a pipeline licence granted after the changeover time;
- (g) a point, line or area set out in any other instrument under this Act made after the changeover time—

S. 151U(ca)
inserted by
No. 91/2001
s. 14(1)(a).

is to be described by reference to the current datum, and the title or instrument may be annotated accordingly.

151V Use of previous datum

S. 151V
inserted by
No. 91/2001
s. 67.

- (1) For the purposes of this Act, the position on the surface of the Earth of the following—
 - (a) the permit area of a permit in force immediately before the changeover time;
 - (b) the lease area of a lease in force immediately before the changeover time;
 - (c) the licence area of a licence in force immediately before the changeover time;
- (ca) the infrastructure licence area of an infrastructure licence in force immediately before the changeover time;
- (d) the area in respect of which a special prospecting authority in force immediately before the changeover time is in force;

S. 151V(1)(ca)
inserted by
No. 91/2001
s. 14(1)(b).

s. 151W

- (e) the area in respect of which an access authority in force immediately before the changeover time is in force;
- (f) the route of a pipeline authorised by a pipeline licence in force immediately before the changeover time;
- (g) a point, line or area set out in any other instrument under this Act in force immediately before the changeover time—
is to be described by reference to the previous datum.

(2) Subsection (1) has effect subject to section 151W.

S. 151W
inserted by
No. 91/2001
s. 67.

151W Variation of titles etc.

- (1) The regulations may authorise the Minister to issue an instrument varying a permit in force immediately before the changeover time for the sole purpose of relabelling the permit area using geographic co-ordinates based on the current datum.
- (2) The regulations may authorise the Minister to issue an instrument varying a lease in force immediately before the changeover time for the sole purpose of relabelling the lease area using geographic co-ordinates based on the current datum.
- (3) The regulations may authorise the Minister to issue an instrument varying a licence in force immediately before the changeover time for the sole purpose of relabelling the licence area using geographic co-ordinates based on the current datum.

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- (3A) The regulations may authorise the Minister to issue an instrument varying an infrastructure licence in force immediately before the changeover time for the sole purpose of relabelling the infrastructure licence area using geographic co-ordinates based on the current datum.
- (4) The regulations may authorise the Minister to issue an instrument varying a special prospecting authority or an access authority in force immediately before the changeover time for the sole purpose of relabelling the area in respect of which the authority is in force using geographic co-ordinates based on the current datum.
- (5) The regulations may authorise the Minister to issue an instrument varying a pipeline licence in force immediately before the changeover time for the sole purpose of relabelling the route of the pipeline using geographic co-ordinates based on the current datum.
- (6) The regulations may authorise the Minister to issue an instrument varying any other instrument under this Act that—
- (a) sets out a point, line or area; and
 - (b) is in force immediately before the changeover time—
- for the sole purpose of relabelling the point, line or area using geographic co-ordinates based on the current datum.
- (7) The regulations may authorise the Minister to issue an instrument varying a title or other instrument under this Act for the sole purpose of inserting an annotation about the applicable datum.

S. 151W(3A)
inserted by
No. 91/2001
s. 14(2).

s. 151X

S. 151X
inserted by
No. 91/2001
s. 67.

151X Variation of applications for titles

The regulations may authorise the Minister to issue an instrument varying an application for a title for the sole purpose of relabelling a point, line or area by reference to geographic co-ordinates based on the current datum.

S. 151Y
inserted by
No. 91/2001
s. 67.

151Y No change to actual position of point, line or area

This Part does not authorise any change to the position on the surface of the Earth of a point, line or area.

S. 151Z
inserted by
No. 91/2001
s. 67.

151Z Transitional regulations

The regulations may make provision for matters of a transitional nature arising from the change from the previous datum to the current datum.

S. 151ZA
inserted by
No. 91/2001
s. 67.

151ZA Definitions

In this Part—

Australian Geodetic Datum means the Australian Geodetic Datum as defined in the Commonwealth Government Gazette No. 84 of 6 October 1966;

instrument under this Act does not include the regulations;

this Act includes the regulations;

title means a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority.

S. 151ZA
def. of
title
amended by
No. 91/2001
s. 14(3).

PART IIIC—OCCUPATIONAL HEALTH AND SAFETY

Division 1—Introduction

Pt 3C
(Heading and
ss 151ZB–
151ZS)
inserted by
No. 11/2004
s. 9.

151ZB Definitions

In this Part—

Board means the National Offshore Petroleum
Safety Authority Board under the
Commonwealth Act;

CEO means the Chief Executive Officer of the
Safety Authority;

facility has the same meaning as in Schedule 7;

offshore petroleum operations means any
operations (including diving operations)
that—

- (a) relate to—
 - (i) the exploration for petroleum; or
 - (ii) the recovery, processing, storage,
offloading or piped conveyance of
petroleum; and
- (b) if the operations are diving
operations—take place in the adjacent
area; and
- (c) if the operations are not diving
operations—take place at a facility.

S. 151ZB
inserted by
No. 11/2004
s. 9.

151ZC Occupational health and safety

Schedule 7 has effect.

S. 151ZC
inserted by
No. 11/2004
s. 9.

s. 151ZD

S. 151ZD
inserted by
No. 11/2004
s. 9.

151ZD Listed OHS laws

The following provisions are the *listed OHS laws* for the purposes of this Act—

- (a) section 124A, to the extent to which that section relates to—
 - (i) damage to, or interference with, a facility; or
 - (ii) interference with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, a facility;
- (b) Schedule 7;
- (c) regulations made for the purposes of Schedule 7;
- (d) regulations made for the purposes of section 151ZE;
- (e) any other regulations relating to occupational health and safety matters that are prescribed for the purposes of this paragraph.

S. 151ZE
inserted by
No. 11/2004
s. 9.

151ZE Regulations relating to occupational health and safety

- (1) The regulations may make provision in relation to the occupational health and safety of persons at or near a facility who are under the control of a person who is carrying on an operation.
- (2) Without limiting subsection (1), regulations for the purpose of that subsection may—
 - (a) require a person who is carrying on an operation to establish and maintain a system of management to secure the occupational health and safety of persons referred to in that subsection; and

- (b) specify requirements with which the system must comply.

Division 2—Functions and powers of the Safety Authority

151ZF Safety Authority's functions

S. 151ZF
inserted by
No. 11/2004
s. 9.

The Safety Authority has the following functions—

- (a) the functions conferred on it by or under this Act in relation to offshore petroleum operations;
- (b) to promote the occupational health and safety of persons engaged in offshore petroleum operations;
- (c) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their occupational health and safety obligations under this Act and the regulations;
- (d) to—
 - (i) investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational health and safety of persons engaged in offshore petroleum operations; and
 - (ii) to report, as appropriate, to the Minister and the Commonwealth Minister on those investigations;
- (e) to advise persons, either on its own initiative or on request, on occupational health and safety matters relating to offshore petroleum operations;

s. 151ZG

(f) to make reports, including recommendations, to—

- (i) the Minister; and
- (ii) the Commonwealth Minister—

on issues relating to the occupational health and safety of persons engaged in offshore petroleum operations;

(g) to co-operate with—

- (i) the Minister and State agencies having functions relating to offshore petroleum operations; and
- (ii) other Commonwealth agencies having functions relating to offshore petroleum operations.

S. 151ZG
inserted by
No. 11/2004
s. 9.

151ZG Safety Authority's ordinary powers

- (1) The Safety Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The Safety Authority's powers include, but are not limited to, the following powers—
 - (a) the power to acquire, hold and dispose of real and personal property;
 - (b) the power to enter into contracts;
 - (c) the power to lease the whole or any part of any land or building for the purposes of the Safety Authority;
 - (d) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Safety Authority;
 - (e) the power to conduct research and development projects and to cooperate with others in such projects;

- (f) the power to apply for and hold patents and exploit patents;
- (g) the power to do anything incidental to any of its functions.

151ZH Judicial notice of seal

S. 151ZH
inserted by
No. 11/2004
s. 9.

All courts, judges and persons acting judicially must—

- (a) take judicial notice of the imprint of the seal of the Safety Authority appearing on a document; and
- (b) presume that the document was duly sealed.

Division 3—Safety Authority Board

151ZI Functions of the Board

S. 151ZI
inserted by
No. 11/2004
s. 9.

- (1) The Board has the following functions—
 - (a) to give advice, and make recommendations, to the CEO about the operational policies and strategies to be followed by the Safety Authority in the performance of its functions;
 - (b) to give advice, and make recommendations, to—
 - (i) the Minister; and
 - (ii) the Commonwealth Minister; and
 - (iii) interstate Ministers; and
 - (iv) the body known as the Ministerial Council on Mineral and Petroleum Resources—about either or both of the following—

s. 151ZJ

- (v) policy or strategic matters relating to the occupational health and safety of persons engaged in offshore petroleum operations;
 - (vi) the performance by the Safety Authority of its functions;
 - (c) any other functions specified in a written notice given by the Commonwealth Minister to the Chair of the Board.
- (2) As soon as practicable after the Board gives advice, or makes recommendations, under subsection (1)(b) to—
- (i) the Minister; or
 - (ii) an interstate Minister; or
 - (iii) the body known as the Ministerial Council on Mineral and Petroleum Resources—

the Board must give the Commonwealth Minister a written copy of that advice or those recommendations.

S. 151ZJ
inserted by
No. 11/2004
s. 9.

151ZJ Powers of the Board

The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

S. 151ZK
inserted by
No. 11/2004
s. 9.

151ZK Validity of decisions

The performance of the functions, or the exercise of the powers, of the Board is not affected only because of there being a vacancy or vacancies in the membership of the Board.

Division 4—Chief Executive Officer and staff of the Safety Authority

151ZL CEO acts for Safety Authority

Anything done by the CEO in the name of the Safety Authority or on the Safety Authority's behalf is taken to have been done by the Safety Authority.

S. 151ZL
inserted by
No. 11/2004
s. 9.

151ZM Working with the Board

- (1) The CEO must request the Board's advice on strategic matters relating to the performance of the Safety Authority's functions.
- (2) The CEO must have regard to the advice given to him or her by the Board (whether or not the advice was given in response to a request).
- (3) The CEO must—
 - (a) keep the Board informed of the Safety Authority's operations; and
 - (b) give the Board any reports, documents and information in relation to those operations that the Chair of the Board requires.

S. 151ZM
inserted by
No. 11/2004
s. 9.

151ZN Delegation

- (1) An officer or employee of this State, or of a public authority of this State, may perform any function and exercise any power delegated to him or her by the CEO under the Commonwealth Act.
- (2) In performing a function or exercising a power under the delegation, the delegate must comply with any directions of the CEO.

S. 151ZN
inserted by
No. 11/2004
s. 9.

s. 151ZO

S. 151ZO
inserted by
No. 11/2004
s. 9.

151ZO Secondments to the Safety Authority

An officer or employee of this State, or of a public authority of this State, may assist the Safety Authority in connection with the performance of any of its functions or the exercise of any of its powers under this Act, the Commonwealth Act or a corresponding law.

Division 5—Other Safety Authority provisions

S. 151ZP
inserted by
No. 11/2004
s. 9.

151ZP Minister may require the Safety Authority to prepare reports or give information

- (1) The Minister may, by written notice given to the Safety Authority, require the Safety Authority—
 - (a) to prepare a report about one or more specified matters relating to the performance of the Safety Authority's functions or the exercise of the Safety Authority's powers; and
 - (b) give a copy of the report to—
 - (i) the Minister; and
 - (ii) each interstate Minister; and
 - (iii) the Commonwealth Minister—within the period specified in the notice.
- (2) The Minister may, by written notice given to the Safety Authority, require the Safety Authority to—
 - (a) prepare a document setting out specified information relating to the performance of the Safety Authority's functions or the exercise of the Safety Authority's powers; and

- (b) give a copy of the report to—
- (i) the Minister; and
 - (ii) each interstate Minister; and
 - (iii) the Commonwealth Minister—
- within the period specified in the notice.
- (3) The Safety Authority must comply with a requirement under subsection (1) or (2).

151ZQ Directions to the Safety Authority

S. 151ZQ
inserted by
No. 11/2004
s. 9.

- (1) The Minister may request the Commonwealth Minister to give a direction to the Safety Authority that relates wholly or principally to the Safety Authority's operations in the adjacent area.
- (2) The Commonwealth Minister must use his or her best endeavours to make a decision on the request within 30 days after receiving the request.
- (3) If the Commonwealth Minister refuses the request, the Commonwealth Minister must give the Minister a written statement setting out the reasons for the refusal.
- (4) The Safety Authority must comply with any direction given by the Commonwealth Minister under this section.

151ZR Reviews of operations of Safety Authority

S. 151ZR
inserted by
No. 11/2004
s. 9.

- (1) The Minister must cause reviews to be conducted of the operations of the Safety Authority in relation to the adjacent area.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The first review is to relate to the 3-year period beginning on 1 January 2005, and is to be completed within 6 months, or the longer period that the Minister allows, after the end of that 3-year period.

s. 151ZS

- (4) Subsequent reviews are to relate to successive 3-year periods, and must be completed within 6 months, or the longer period that the Minister allows, after the end of the 3-year period to which the review relates.
- (5) A review under this section may be conducted in conjunction with a review under the Commonwealth Act or a corresponding law (or both).
- (6) Without limiting the matters to be covered by a review under subsection (1), the review must include an assessment of the effectiveness of the Safety Authority in bringing about improvements in the occupational health and safety of persons engaged in offshore petroleum operations.
- (7) The Minister must cause a copy of the report of a review under subsection (1) to be tabled in each House of Parliament within 15 sitting days of that House after the report of the review is completed.
- (8) For the purposes of this section, a review is completed when the report of the review is made available to the Minister.

S. 151ZS
inserted by
No. 11/2004
s. 9.

151ZS Liability for acts and omissions

- (1) This section applies to the following persons—
 - (a) the Safety Authority;
 - (b) the CEO;
 - (c) an OHS inspector;
 - (d) a person acting under the direction or authority of the Safety Authority or the CEO.

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- (2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith—
- (a) in the performance of a function under a listed OHS law; or
 - (b) in the reasonable belief that the act or omission was in the performance of a function under a listed OHS law.
-

Pt 4 (Heading)
substituted by
No. 11/2004
s. 10.

PART IV—GENERAL

S. 151ZT
inserted by
No. 11/2004
s. 11.

151ZT Supreme Court—limitation of jurisdiction

It is the intention of section 151ZS and clause 69(2) of Schedule 7 to alter or vary section 85 of the **Constitution Act 1975**.

152 Regulations

- (1) The Governor in Council may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, but without limiting the generality of subsection (1), the regulations may make provision for securing, regulating, controlling or restricting all or any of the following matters—
 - (a) the exploration for petroleum and the carrying on of operations and the execution of works for that purpose;
 - (b) the recovery of petroleum and the carrying on of operations and the execution of works for that purpose;
 - (c) conserving and preventing the waste of the natural resources, whether petroleum or otherwise, of the adjacent area;
 - (d) the construction and operation of pipelines, water lines, secondary lines, pumping stations, tank stations or valve stations and the carrying on of operations, and the execution of works, for any of those purposes;

-
- (e) the construction, erection, maintenance, operation or use of installations or equipment;
- (f) the control of the flow or discharge, and the prevention of the escape, of petroleum, water or drilling fluid, or a mixture of water or drilling fluid with petroleum or any other matter;
- (g) the clean-up or other remedying of the effects of the escape of petroleum;
- (h) the prevention of damage to petroleum-bearing strata in an area, whether in the adjacent area or not, in respect of which a permit, lease or licence is not in force; **S. 152(2)(h) amended by No. 68/1986 s. 49(Sch. item 66(a)).**
- (i) the keeping separate of—
- (i) each petroleum pool discovered in a permit area, lease area or licence area; and **S. 152(2)(i)(i) amended by No. 68/1986 s. 49(Sch. item 66(b)).**
 - (ii) each source of water discovered in a permit area, lease area or licence area; **S. 152(2)(i)(ii) amended by No. 68/1986 s. 49(Sch. item 66(b)).**
- (j) the prevention of water or other matter from entering a petroleum pool through wells;
- (k) the prevention of the waste or escape of petroleum or water from a pipeline, water line, secondary line, pumping station, tank station or valve station;
- (l) the maintaining in good condition and repair of all structures, equipment and other property in the adjacent area used or intended to be used for or in connexion with the exploration for or the exploitation of petroleum in the adjacent area; and

s. 152

(m) the removal from the adjacent area of structures, equipment and other property brought into the adjacent area for or in connexion with exploration for or the exploitation of petroleum that are not used or intended to be used in connexion with exploration for, or the exploitation of, petroleum in the adjacent area.

S. 152(2A)
inserted by
No. 68/1986
s. 47.

(2A) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a code of practice or standard contained in an instrument (including an instrument issued or made outside Australia), as in force or existing at the time when the regulations take effect or as in force or existing from time to time, being a code of practice or standard that is relevant to that matter.

S. 152(2B)
inserted by
No. 68/1986
s. 47.

(2B) Regulations under this section may prohibit the doing of an act or thing either unconditionally or subject to conditions, including conditions requiring the grant, as prescribed by the regulations, of the consent or approval of a person specified in the regulations.

S. 152(3)
substituted by
No. 11/2004
s. 12.

(3) The regulations may differ according to differences in time, place or circumstances.

(4) The regulations may provide, in respect of an offence against the regulations, for the imposition of—

S. 152(4)(a)
substituted by
No. 91/2001
s. 68(a),
amended by
No. 10/2004
s. 16(Sch. 2
item 1.22(a)
(b)).

(a) a fine not exceeding \$11 000 in the case of a natural person or \$55 000 in the case of a body corporate; or

- (b) a fine not exceeding those amounts for each day on which the offence occurs. **S. 152(4)(b)** amended by **No. 91/2001** s. 68(b).
- (5) Regulations prescribing fees under the Principal Act may be disallowed in whole or in part by resolution of either House of Parliament. **S. 152(5)** inserted by **No. 83/1990** s. 18(2), amended by **No. 78/2010** s. 24(Sch. 1 item 23.1).
- * * * * *
- S. 152(6)** inserted by **No. 83/1990** s. 18(2), repealed by **No. 78/2010** s. 24(Sch. 1 item 23.2).
- (7) If, under subregulation (5), either House of Parliament disallows a regulation, no regulation which is the same in substance as the disallowed regulation may be made within 6 months after the date of the disallowance, unless the resolution to disallow the regulation has been rescinded by the House of Parliament by which it was passed. **S. 152(7)** inserted by **No. 83/1990** s. 18(2).
- (8) Any regulation made in contravention of subsection (7) is void. **S. 152(8)** inserted by **No. 83/1990** s. 18(2).

Note

The giving of acceptance of an environment plan under regulations made under this Act may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies.

Note to s. 152 inserted by **No. 62/2010** s. 143.

SCHEDULES

Sch. 1
amended by
No. 10096
s. 4(4)(Sch.
item 8(c)),
substituted by
No. 91/2001
s. 69.

FIRST SCHEDULE

Section 2

TRANSITIONAL PROVISIONS

1 Application for renewal of permit

Despite the substitution of subsection (6) of section 31 by section 28 of the **Petroleum (Submerged Lands) (Amendment) Act 2001**, that subsection as in force immediately before the commencement of that section 28 continues to apply in respect of the first application after that commencement for the renewal of a permit that was granted under this Act before that commencement.

2 Indefinite term for pipeline licences

- (1) Section 67(1), as substituted by section 44 of the **Petroleum (Submerged Lands) (Amendment) Act 2001** applies to pipeline licences in force immediately before the commencement of that section 44 (including pipeline licences that had been renewed under section 69 as in force before that commencement or to which section 69(8) as so in force applied) as well as to pipeline licences granted after that commencement.
- (2) A renewal of a pipeline licence that was in force under section 70 immediately before the repeal of subsection (3) of that section continues, subject to Part III, to be subject to any conditions referred to in that subsection to which it was subject immediately before the repeal.

3 Release of information

- (1) Despite the repeal of section 118 by section 59 of the **Petroleum (Submerged Lands) (Amendment) Act 2001**, section 118 continues to apply in respect of information given to the Minister before the commencement of that section 59.
- (2) Any regulations providing for the calculation of a fee for the purposes of a provision of section 118 as in force immediately before its repeal—
 - (a) continue in force for the purposes of that section as it continues to apply under subclause (1); and
 - (b) also separately continue in force as if they had been made for the purposes of the corresponding provision of Part IIIA.
- (3) Any regulations in force under subclause (2)(a) or (b) may, for the purposes of their application under that subclause, be amended or revoked by regulations made under section 152.

4 Petroleum (Submerged Lands) (Amendment) Act 2004

The regulations may make provision for any transitional matters arising out of the amendments made to this Act by the **Petroleum (Submerged Lands) (Amendment) Act 2004**.

Sch. 1 cl. 4
inserted by
No. 11/2004
s. 13.

* * * * *

Sch. 2
repealed by
No. 91/2001
s. 70.

Sch. 3

S. 4(1) def. of
the adjacent
area.

Sch. 3
amended by
No. 91/2001
s. 71.

THIRD SCHEDULE

AREA THAT INCLUDES THE ADJACENT AREA

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the States of New South Wales and Victoria, and runs thence south-easterly along the geodesic to a point of Latitude 37° 35' South, Longitude 150° 10' East, thence south-easterly along the geodesic to a point of Latitude 40° 40' South, Longitude 158° 53' East, thence south-westerly along the geodesic to a point of Latitude 41° 30' South, Longitude 158° 13' East, thence north-westerly along the geodesic to a point of Latitude 39° 12' South, Longitude 150° East, thence westerly along the parallel of Latitude 39° 12' South to its intersection by the meridian of Longitude 142° 30' East, thence south-westerly along the geodesic to a point of Latitude 39° 50' South, Longitude 142° East, thence south-westerly along the geodesic to a point of Latitude 44° South, Longitude 136° 29' East, thence north-easterly along the geodesic to a point of Latitude 38° 40' 48" South, Longitude 140° 40' 44" East, thence north-easterly along the geodesic to a point of Latitude 38° 35' 30" South, Longitude 140° 44' 37" East, thence north-easterly along the geodesic to a point of Latitude 38° 26' South, Longitude 140° 53' East, thence north-easterly along the geodesic to a point of Latitude 38° 15' South, Longitude 140° 57' East, thence north-easterly along the geodesic to a point that is the intersection of the parallel of Latitude 38° 10' South by the meridian passing through the intersection of the coastline at mean low water by the boundary between the States of South Australia and Victoria, thence northerly along that meridian to its intersection by the coastline at mean low water, thence along the coastline of Victoria at mean low water to the point of commencement.

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982

Sch. 4

* * * * *

**Schs 4, 5
repealed by
No. 12/1990
s. 18.**

Sch. 6

SIXTH SCHEDULE

S. 151A.
Sch. 6
inserted by
No. 68/1986
s. 48.

AREA THAT INCLUDES THE AREA TO BE AVOIDED

The area the boundary of which commences at the intersection of the coastline of the State of Victoria at mean low water by the parallel of Latitude $38^{\circ} 15'$ South and runs thence south-easterly along the geodesic to the point of Latitude $38^{\circ} 35'$ South, Longitude $147^{\circ} 44'$ East; thence south-easterly along the geodesic to the point of Latitude $38^{\circ} 41'$ South, Longitude $148^{\circ} 06'$ East; thence easterly along the parallel of Latitude $38^{\circ} 41'$ South to its intersection by the meridian of Longitude $148^{\circ} 13'$ East; thence north-easterly along the geodesic to the point of Latitude $38^{\circ} 32'$ South, Longitude $148^{\circ} 26'$ East; thence north-easterly along the geodesic to the point of Latitude $38^{\circ} 19'$ South, Longitude $140^{\circ} 35'$ East; thence north-westerly along the geodesic to the point of Latitude $38^{\circ} 08'$ South, Longitude $148^{\circ} 31'$ East; thence north-westerly along the geodesic to the point of Latitude $38^{\circ} 05'$ South, Longitude $148^{\circ} 24'$ East; thence north-westerly along the geodesic to the intersection of the coastline of the State of Victoria at mean low water by the parallel of Latitude $37^{\circ} 58'$ South; thence along the coastline of the State of Victoria at mean low water to the point of commencement.

SCHEDULE 7

Section 151ZC

Sch. 7
inserted by
No. 11/2004
s. 14.

OCCUPATIONAL HEALTH AND SAFETY

PART 1—INTRODUCTION

1 Objects

The objects of this Schedule are, in relation to facilities located in the adjacent area—

- (a) to secure the occupational health and safety and welfare of persons at or near those facilities; and
- (b) to protect persons at or near those facilities from risks to occupational health and safety arising out of activities being conducted at those facilities; and
- (c) to ensure that expert advice is available on occupational health and safety matters in relation to those facilities; and
- (d) to promote an occupational environment for members of the workforce at those facilities that is adapted to their needs relating to health and safety; and
- (e) to foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities.

2 Simplified outline

The following is a simplified outline of this Schedule:

- This Schedule sets up a scheme to regulate occupational health and safety matters at or near facilities.

Sch. 7

- Occupational health and safety duties are imposed on the following—
 - (a) the operator of a facility;
 - (b) a person in control of a part of a facility, or of any work carried out at a facility;
 - (c) an employer;
 - (d) a manufacturer of plant, or a substance, for use at a facility;
 - (e) a supplier of a facility, or of any plant or substance for use at a facility;
 - (f) a person who erects or installs a facility, or any plant at a facility;
 - (g) a person at a facility.
- A group of members of the workforce at a facility may be established as a designated work group.
- The members of a designated work group may select a health and safety representative for that designated work group.
- The health and safety representative may exercise certain powers for the purpose of promoting or ensuring the occupational health and safety of group members.
- An OHS inspector may conduct an inspection—
 - (a) to ascertain whether a listed OHS law is being complied with; or
 - (b) concerning a contravention or a possible contravention of a listed OHS law; or

- (c) concerning an accident or dangerous occurrence that has happened at or near a facility.
- The operator of a facility must report accidents and dangerous occurrences to the Safety Authority.

3 Definitions

In this Schedule—

accident includes the contraction of a disease;

associated offshore place, in relation to a facility, means any offshore place near the facility where activities (including diving activities) relating to the construction, installation, operation, maintenance or decommissioning of the facility take place, but does not include—

- (a) another facility; or
- (b) a supply vessel, offtake tanker, anchor handler or tugboat; or
- (c) a vessel, or structure, that is declared by the regulations not to be an associated offshore place;

contract includes an arrangement or understanding;

contractor has the meaning given by clause 7;

dangerous occurrence means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition;

designated work group means—

- (a) a group of members of the workforce at a facility that is established as a designated work group under clause 18 or 19; or
- (b) that group as varied in accordance with clause 20 or 21;

employee, in relation to an employer, means an employee of that employer;

employer means an employer who carries on an activity at a facility;

facility means a facility as defined by clause 4, and—

- (a) includes a facility (as defined by clause 4) that is being constructed or installed; and
- (b) except in the definition of ***associated offshore place***, includes an associated offshore place in relation to a facility (as defined by clause 4);

Fair Work Australia has the same meaning as in the Fair Work Act 2009 of the Commonwealth;

Sch. 7 cl. 3
def. of
***Fair Work
Australia***
inserted by
No. 74/2009
s. 17(1).

group member, in relation to a designated work group at a facility, means a person who is—

- (a) a member of the workforce at that facility; and
- (b) included in that designated work group;

improvement notice means an improvement notice issued under clause 61(1);

inspection means an inspection conducted under Part 4 of this Schedule and includes an investigation or inquiry;

master, in relation to a vessel, means the person having command or charge of the vessel;

member of the workforce, in relation to a facility, means a natural person who does work at the facility, whether—

- (a) as an employee of the operator of the facility or of another person; or
- (b) as a contractor of the operator or of another person;

offshore petroleum operations has the same meaning as in Part IIIC;

operator, in relation to a facility or proposed facility, means the person who, under the regulations, is taken to be the operator of that facility or proposed facility;

operator's representative at a facility means a person present at the facility in compliance with the obligations imposed on the operator by clause 5;

own includes own jointly and own in part;

plant includes any machinery, equipment or tool, or any component;

premises includes the following—

- (a) a structure or building;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b);

prohibition notice means a prohibition notice issued under clause 59(1);

Sch. 7

proposed facility means a facility proposed to be constructed, installed or operated;

recovery, in relation to petroleum, includes all processes directly or indirectly associated with its recovery;

Sch. 7 cl. 3
def. of
***registered
organisation***
substituted by
No. 74/2009
s. 17(2).

registered organisation means an organisation registered under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth;

regulated business premises means—

- (a) a facility; or
- (b) premises that are—
 - (i) occupied by a person who is the operator of a facility; and
 - (ii) used, or proposed to be used, wholly or principally in connection with offshore petroleum operations;

regulations means regulations made for the purposes of this Schedule;

Sch. 7 cl. 3
def. of
***reviewing
authority***
amended by
No. 74/2009
s. 17(3).

reviewing authority means Fair Work Australia;

work means work offshore that is directly or indirectly related to the construction, installation, operation, maintenance or decommissioning of a facility;

workforce representative means—

- (a) in relation to a person who is a member of the workforce at a facility—a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work the person performs at the facility; or
- (b) in relation to a designated work group or a proposed designated work group—a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, at a facility as a member of the group;

work group employer, in relation to a designated work group at a facility, means an employer of one or more group members, but does not include the operator of the facility;

workplace, in relation to a facility, means the whole facility or any part of the facility.

4 Facilities

- (1) A vessel or structure is taken to be a facility for the purposes of this Schedule while that vessel or structure—
 - (a) is located at a site in the adjacent area; and
 - (b) is being used, or prepared for use, at that site—
 - (i) for the recovery of petroleum, for the processing of petroleum, or for the storage and offloading of petroleum, or for any combination of those activities; or

-
- (ii) for the provision of accommodation for persons working on another facility, whether connected by a walkway to that other facility or not; or
 - (iii) for drilling or servicing a well for petroleum or doing work associated with the drilling or servicing process; or
 - (iv) for laying pipes for petroleum, including any manufacturing of such pipes, or for doing work on an existing pipe; or
 - (v) for the erection, dismantling or decommissioning of a vessel or structure referred to in a previous subparagraph of this paragraph; or
 - (vi) for any other purpose related to offshore petroleum operations that is prescribed for the purposes of this subparagraph.
- (2) Subclause (1) applies to a vessel or structure—
- (a) whether it is floating or fixed; and
 - (b) whether or not it is capable of independent navigation.
- (3) Subclause (1) has effect subject to subclauses (6) and (7).
- (4) A vessel or structure used for a purpose referred to in subclause (1)(b)(i) includes—
- (a) any wells and associated plant and equipment by means of which petroleum processed or stored at the vessel or structure is recovered; and
 - (b) any pipe or system of pipes through which petroleum is conveyed from a well to the vessel or structure; and

-
- (c) any secondary line associated with the vessel or structure.
- (5) For the purposes of subclause (1), a vessel or structure that is located offshore for the purpose of laying pipes as described in subclause (1)(b)(iv) is taken to be located at a site, despite the fact that the vessel or structure moves as the pipe laying process proceeds.
- (6) Despite subclause (1), a vessel or structure is taken not to be a facility for the purposes of this Schedule if the vessel or structure is—
- (a) an offtake tanker; or
 - (b) a tug or an anchor handler; or
 - (c) a vessel or structure used for supplying a facility or otherwise travelling between a facility and the shore; or
 - (d) a vessel or structure used for any purpose such that it is declared by the regulations not to be a facility.
- (7) In determining when a vessel or structure that has the potential to be used for one or more of the purposes referred to in subclause (1)(b) is in fact being so used, the vessel or structure is taken—
- (a) to commence to be so used only at the time when it arrives at the site where it is to be so used and any activities necessary to make it operational at that site are begun; and
 - (b) to cease to be so used when operations cease, and the vessel or structure has been returned either to a navigable form or to a form in which it can be towed to another place.

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- (8) Each of the following is taken to be a facility for the purposes of this Schedule—
- (a) a pipeline subject to a pipeline licence;
 - (b) if a pipeline subject to a pipeline licence conveys petroleum recovered from a well without the petroleum having passed through another facility—that pipeline, together with—
 - (i) that well and associated plant and equipment; and
 - (ii) any pipe or system of pipes through which petroleum is conveyed from that well to that pipeline.
- (9) In subclause (8)(b)—
- facility* does not include a pipeline.

5 Operator must ensure presence of operator's representative

- (1) The operator of a facility must ensure that, at all times when one or more natural persons are present at a facility, there is also present a natural person (the *operator's representative at the facility*) who has day-to-day management and control of operations at the facility.
- Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.
- (2) The operator of a facility must ensure that the name of the operator's representative at the facility is displayed in a prominent place at the facility.
- Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.

- (3) Subclause (1) does not imply that, if the operator is a natural person, the operator's representative at the facility may not be, from time to time, the operator.

6 Health and safety of persons using an accommodation facility

For the avoidance of doubt, a reference in this Schedule to the occupational health and safety of a person includes a reference to the health and safety of a person using an accommodation facility provided for the accommodation of persons working on another facility.

7 Contractor

For the purposes of this Schedule, a natural person is taken to be a *contractor* of another person (the *relevant person*) if the natural person does work at a facility under a contract for services between—

- (a) the relevant person; and
- (b) either—
 - (i) the natural person; or
 - (ii) the employer of the natural person.

PART 2—OCCUPATIONAL HEALTH AND SAFETY

Division 1—Duties relating to occupational health and safety

8 Duties of operator

- (1) The operator of a facility must take all reasonably practicable steps to ensure that—
- (a) the facility is safe and without risk to the health of any person at or near the facility; and

Sch. 7

- (b) all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility.

Penalty: \$110 000, in the case of a natural person;
\$550 000, in the case of a body corporate.

- (2) Without limiting the generality of subclause (1), the operator of a facility must—
- (a) provide and maintain a physical environment at the facility that is safe and without risk to health; and
 - (b) provide and maintain adequate facilities for the welfare of all members of the workforce at the facility; and
 - (c) ensure that any plant, equipment, materials and substances at the facility are safe and without risk to health; and
 - (d) implement and maintain systems of work at the facility that are safe and without risk to health; and
 - (e) implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies at the facility; and
 - (f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the occupational health and safety of persons at the facility; and

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- (g) monitor the occupational health and safety of all members of the workforce and keep records of that monitoring; and
 - (h) provide appropriate medical and first aid services at the facility; and
 - (i) develop, in consultation with members of the workforce and workforce representatives, a policy relating to occupational health and safety that—
 - (i) will enable the operator and the members of the workforce to co-operate effectively in promoting and developing measures to ensure the occupational health and safety of persons at the facility; and
 - (ii) will provide adequate mechanisms for reviewing the effectiveness of the measures; and
 - (iii) provides for the making of an agreement that complies with subclauses (4) and (5).

Penalty: \$110 000, in the case of a natural person;
\$550 000, in the case of a body corporate.

- (3) Subclause (2)(i) does not require the operator of a facility to engage in consultations with a workforce representative unless a member of the workforce at the facility has requested the workforce representative to be involved in those consultations.

- (4) The agreement referred to in subclause (2)(i)(iii) must be between—
- (a) on the one hand—the operator; and
 - (b) on the other hand—
 - (i) the members of the workforce; and
 - (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be a party to that agreement—that workforce representative.
- (5) The agreement referred to in subclause (2)(i)(iii) must provide appropriate mechanisms for continuing consultation between—
- (a) on the one hand—the operator; and
 - (b) on the other hand—
 - (i) the members of the workforce; and
 - (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be involved in consultations on a particular occasion—that workforce representative.
- (6) The agreement may provide for any other matters agreed between the parties to it.

9 Duties of persons in control of parts of facility or particular work

- (1) A person who is in control of any part of a facility, or of any particular work carried out at a facility, must take all reasonably practicable steps to ensure that—

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- (a) that part of the facility, or the place where that work is carried out, is safe and without risk to health; and
 - (b) if the person is in control of particular work—the work is carried out in a manner that is safe and without risk to health.

Penalty: \$110 000, in the case of a natural person;
\$550 000, in the case of a body corporate.

- (2) Without limiting the generality of subclause (1), a person who is in control of any part of a facility, or of any particular work carried out at a facility, must—
 - (a) ensure that the physical environment at that part of the facility, or at the place where the work is carried out, is safe and without risk to health; and
 - (b) ensure that any plant, equipment, materials and substances at or near that part of the facility or that place, or used in that work, are safe and without risk to health; and
 - (c) implement and maintain systems of work at that part of the facility, or in carrying out work at that place, that are safe and without risk to health; and
 - (d) ensure a means of access to, and egress from, that part of the facility or that place that is safe and without risk to health; and

- (e) provide all members of the workforce located at that part of the facility or engaged on that work, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: \$110 000, in the case of a natural person;
\$550 000, in the case of a body corporate.

10 Duties of employers

- (1) An employer must take all reasonably practicable steps to protect the health and safety of employees at a facility.

Penalty: \$110 000, in the case of a natural person;
\$550 000, in the case of a body corporate.

- (2) Without limiting the generality of subclause (1), an employer must—
- (a) provide and maintain a working environment that is safe for employees and without risk to their health; and
 - (b) ensure that any plant, equipment, materials and substances used in connection with the employees' work are safe and without risk to health; and
 - (c) implement and maintain systems of work that are safe and without risk to health; and
 - (d) provide a means of access to, and egress from, the employees' work location that is safe and without risk to health; and

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- (e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: \$110 000, in the case of a natural person;
\$550 000, in the case of a body corporate.

- (3) A person has, in respect of a contractor of that person, the same obligations that an employer has under subclauses (1) and (2) in respect of an employee of that employer, but only in relation to—
- (a) matters over which the first-mentioned person has control; or
- (b) matters over which—
- (i) the first-mentioned person would have had control apart from express provision to the contrary in a contract; and
- (ii) the first-mentioned person would, in the circumstances, usually be expected to have had control.

- (4) An employer must take all reasonable steps to—
- (a) monitor the health and safety of employees; and
- (b) keep records of that monitoring.

Penalty: \$110 000, in the case of a natural person;
\$550 000, in the case of a body corporate.

11 Duties of manufacturers in relation to plant and substances

- (1) A manufacturer of any plant that the manufacturer ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps—
- (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe and without risk to health; and
 - (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to health and safety that may arise from the use of the plant; and
 - (c) to make available, in connection with the use of the plant at a facility, adequate written information about—
 - (i) the use for which it is designed and has been tested; and
 - (ii) details of its design and construction; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe and without risk to health.

Penalty: \$22 000, in the case of a natural person;
\$110 000, in the case of a body corporate.

- (2) A manufacturer of any substance that the manufacturer ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps—

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- (a) to ensure that the substance is so manufactured as to be, when properly used, safe and without risk to health; and
 - (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to health and safety that may arise from the use of the substance; and
 - (c) to make available, in connection with the use of the substance at a facility, adequate written information concerning—
 - (i) the use for which it is manufactured and has been tested; and
 - (ii) details of its composition; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe and without risk to health; and
 - (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: \$22 000, in the case of a natural person;
\$110 000, in the case of a body corporate.

(3) If—

- (a) plant or a substance is imported into Australia by a person who is not its manufacturer; and
- (b) at the time of the importation, the manufacturer of the plant or substance does not have a place of business in Australia—

the first-mentioned person is taken, for the purposes of this clause, to be the manufacturer of the plant or substance.

- (4) This clause does not affect the operation of any other law of this State that imposes an obligation on a manufacturer in respect of defective goods or in respect of information to be supplied in relation to goods.

12 Duties of suppliers of facilities, plant and substances

- (1) A supplier of a facility, or of any plant or substance that the supplier ought reasonably to expect will be used by members of the workforce at a facility, must take all reasonably practicable steps—
- (a) to ensure that, at the time of supply, the facility, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health; and
 - (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to health or safety that may arise from the condition of the facility, plant or substance; and
 - (c) to make available—
 - (i) in the case of a facility—to the operator of a facility; and
 - (ii) in the case of plant or substance—to the person to whom the plant or substance is supplied—
adequate written information, in connection with the use of the facility, plant or substance (as the case requires) about—
 - (iii) the condition of the facility, plant or substance at the time of supply; and
 - (iv) any risk to the health and safety of members of the workforce at the facility to which the condition of the

facility, plant or substance may give rise unless it is properly used; and

- (v) the steps that need to be taken in order to eliminate that risk; and
- (vi) in the case of a substance—the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce at the facility.

Penalty: \$22 000, in the case of a natural person;
\$110 000, in the case of a body corporate.

- (2) For the purposes of subclause (1), if a person (the *ostensible supplier*) supplies to a person either a facility, or any plant or substance that is to be used by members of the workforce at a facility, and the ostensible supplier—
- (a) carries on the business of financing the acquisition or the use of goods by other persons; and
 - (b) has, in the course of that business, acquired an interest in the facility, or in the plant or substance, from another person (the *actual supplier*), solely for the purpose of financing its acquisition by, or its provision to, the person to whom it is finally supplied; and
 - (c) has not taken possession of the facility, plant or substance, or has taken possession of the facility, plant or substance solely for the purpose of passing possession of the facility, plant or substance to the person to whom it is finally supplied—

a reference in subclause (1) to a supplier is, in relation to the facility, plant or substance referred to in this subclause, to be read as a reference to

the actual supplier and not as a reference to the ostensible supplier.

- (3) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the sale or supply of goods or in respect of the information to be supplied in relation to goods.

13 Duties of persons erecting facilities or installing plant

- (1) A person who erects or installs a facility, or erects or installs any plant at a facility, must take all reasonably practicable steps to ensure that the facility or plant is not erected or installed in such a way that it is unsafe or constitutes a risk to health.

Penalty: \$22 000, in the case of a natural person;
\$110 000, in the case of a body corporate.

- (2) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the erection or installation of structures or goods or the supply of services.

14 Duties of persons in relation to occupational health and safety

- (1) A person at a facility must, at all times, take all reasonably practicable steps—
- (a) to ensure that the person does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the occupational health and safety of that person or of any other person at or near the facility; and
 - (b) in respect of any obligation imposed on the operator or on any other person by or under a listed OHS law—to co-operate with the operator or that other person to the extent

necessary to enable the operator or that other person to fulfil that obligation; and

- (c) to use equipment that is—
- (i) supplied to the person by the operator, an employer of the person or any other person having control of work at a facility (the *equipment supplier*); and
 - (ii) necessary to protect the occupational health and safety of the person, or of any other person at or near the facility—

in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.

- (2) Despite subclause (1), the choice or manner of use, or choice and manner of use, of equipment of the kind referred to in subclause (1)(c)(ii) is a matter that may be, consistently with each listed OHS law—
- (a) agreed on between the equipment supplier and any relevant health and safety representative; or
 - (b) agreed on by a health and safety committee.
- (3) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for choosing equipment of a particular kind that is to be provided by the equipment supplier, action must not be taken against a person for failure to use equipment of that kind that is so provided unless the equipment has been chosen in accordance with that process.

- (4) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for determining the manner of use of equipment of a particular kind, action must not be taken against a person for failure to use, in the manner required by the equipment supplier, equipment of that kind that is so provided unless the manner has been determined in accordance with that process.

15 Reliance on information supplied or results of research

- (1) For the purpose of the application of clause 8, 9 or 10 to the use of plant or a substance, a person on whom an obligation is imposed under any of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to the use of the plant or substance, to the extent that—
- (a) the person ensured, so far as practicable, that its use was in accordance with the information supplied by the manufacturer or the supplier of the plant or substance relating to occupational health and safety in its use; and
 - (b) it was reasonable for the person to rely on that information.
- (2) For the purpose of the application of clause 11 or 12 to carrying out research, testing and examining a facility, or any plant or substance, a person on whom an obligation is imposed under either of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to carrying out research, testing and examining the facility, plant or substance, to the extent that—

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- (a) the research, testing or examination has already been carried out by or on behalf of someone else; and
- (b) it was reasonable for the person to rely on that research, testing or examination.
- (3) For the purpose of the application of clause 13 to the erection of a facility or the erection or installation of plant at a facility, a person on whom an obligation is imposed under that clause is regarded as having taken reasonably practicable steps as required by that clause to the extent that—
- (a) the person ensured, so far as is reasonably practicable, that the erection of the facility, or the erection or installation of the plant, was—
- (i) in accordance with information supplied by the manufacturer or supplier of the facility or plant relating to its erection or its installation; and
- (ii) consistent with the occupational health and safety of persons at the facility; and
- (b) it was reasonable for the person to rely on that information.
- (4) Nothing in this clause limits the generality of what constitutes reasonably practicable steps as required by clause 8, 9, 10, 11, 12 or 13.

Division 2—Regulations relating to occupational health and safety

16 Regulations relating to occupational health and safety

- (1) The regulations may make provision relating to any matter affecting, or likely to affect, the occupational health and safety of persons at a facility.
- (2) Regulations made for the purposes of subclause (1) may make provision for any or all of the following—
 - (a) prohibiting or restricting the performance of all work or specified work at a facility;
 - (b) prohibiting or restricting the use of all plant or specified plant at a facility;
 - (c) prohibiting or restricting the carrying out of all processes or a specified process at a facility;
 - (d) prohibiting or restricting the storage or use of all substances or specified substances at a facility;
 - (e) specifying the form in which information required to be made available under clause 11(1)(c) or 12(1)(c) is to be so made available;
 - (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified plant or specified substances at a facility;
 - (g) providing for—
 - (i) the issue, variation, renewal, transfer, suspension and cancellation of those licences; and

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- (ii) the conditions to which the licences may be subject;
 - (h) regulating the maintenance and testing of plant used at a facility;
 - (i) regulating the labelling or marking of substances used at a facility;
 - (j) regulating the transport of specified plant or specified substances for use at a facility;
 - (k) prohibiting the performance, at a facility, of specified activities or work except—
 - (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
 - (ii) under the supervision specified in the regulations;
 - (l) requiring specified action to avoid accidents or dangerous occurrences;
 - (m) providing for, or prohibiting, specified action in the event of accidents or dangerous occurrences;
 - (n) providing for the employment at a facility of persons to perform specified duties relating to the maintenance of occupational health and safety at the facility;
 - (o) regulating the provision and use, at a facility, of protective clothing and equipment, safety equipment and rescue equipment;
 - (p) providing for monitoring the health of members of the workforce at a facility and the conditions at the facility;
 - (q) requiring employers to keep records of matters related to the occupational health and safety of employees;

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- (r) providing for the provision of first aid equipment and facilities at facilities.

PART 3—WORKPLACE ARRANGEMENTS

Division 1—Introduction

17 Simplified outline

The following is a simplified outline of this Part:

- A group of members of the workforce at a facility may be established as a designated work group.
- The members of a designated work group may select a health and safety representative for that designated work group.
- The health and safety representative may exercise certain powers for the purpose of promoting or ensuring the occupational health and safety of group members.
- A health and safety committee may be established in relation to the members of the workforce at a facility.
- The main function of a health and safety committee is to assist the operator in relation to occupational health and safety matters.

Division 2—Designated work groups

Subdivision A—Establishment of designated work groups

18 Establishment of designated work groups by request

- (1) A request to the operator of a facility to enter into consultations to establish designated work groups in relation to the members of the workforce at the facility may be made by—

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- (a) any member of the workforce; or
 - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator—that workforce representative.
- (2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with—
- (a) if any member of the workforce made a request to establish designated work groups—
 - (i) that member of the workforce; and
 - (ii) if that member requests that the operator enter into consultations with a workforce representative in relation to the member—that workforce representative; and
 - (iii) each employer (if any) of members of the workforce; and
 - (b) if a workforce representative made a request to establish designated work groups—
 - (i) if a member of the workforce requests that the operator enter into consultations with that workforce representative—that workforce representative; and
 - (ii) each employer of members of the workforce.
- (3) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

19 Establishment of designated work groups at initiative of operator

- (1) If, at any time, the operator of a facility considers that designated work groups should be established, the operator must enter into consultations with—
 - (a) all members of the workforce; and
 - (b) if a member of the workforce requests that the operator enter into consultations with a workforce representative in relation to the member—that workforce representative; and
 - (c) each employer (if any) of members of the workforce.
- (2) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

Subdivision B—Variation of designated work groups

20 Variation of designated work groups by request

- (1) A request to the operator of a facility to enter into consultations to vary designated work groups that have already been established in relation to the members of the workforce at the facility may be made by—
 - (a) any member of the workforce; or
 - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator—that workforce representative.

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- (2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with—
- (a) if any member of the workforce made a request to vary designated work groups—
 - (i) that member of the workforce; and
 - (ii) the health and safety representative of each designated work group affected by the proposed variation; and
 - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation; and
 - (b) if a workforce representative made a request to vary designated work groups—
 - (i) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group— that workforce representative; and
 - (ii) the health and safety representative of each designated work group affected by the proposed variation; and
 - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
- (3) If—
- (a) consultations take place about the variation of designated work groups that have already been established; and

- (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified—

then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

21 Variation of designated work groups at initiative of operator

- (1) If the operator of a facility believes the designated work groups should be varied, the operator may, at any time, enter into consultations about the variations with—
- (a) the health and safety representative of each of the designated work groups affected by the proposed variation; and
 - (b) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group—that workforce representative; and
 - (c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
- (2) If—
- (a) consultations take place about the variation of designated work groups that have already been established; and

(b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified—

then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

Subdivision C—General

22 Referral of disagreement to reviewing authority

- (1) If, in the course of consultations under clause 18, 19, 20 or 21, there is a disagreement between any of the parties to the consultation about the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority.
- (2) If the matter of a disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.

23 Manner of grouping members of the workforce

- (1) Consultations about the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping members of the workforce—
 - (a) that best and most conveniently enables their interests relating to occupational health and safety to be represented and safeguarded;
and

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- (b) that best takes account of the need for any health and safety representative selected for that designated work group to be accessible to each group member.
- (2) The parties to the consultations must have regard, in particular, to—
- (a) the number of members of the workforce at the facility to which the consultation relates; and
 - (b) the nature of each type of work performed by those members; and
 - (c) the number and grouping of those members who perform the same or similar types of work; and
 - (d) the workplaces where each type of work is performed; and
 - (e) the nature of any risks to health and safety at each of those workplaces; and
 - (f) any overtime or shift working arrangement at the facility.
- (3) The designated work groups must be established or varied in such a way that, so far as practicable, each of the members of the workforce at a facility is in a designated work group.
- (4) All the members of the workforce at a facility may be in one designated work group.

Division 3—Health and safety representatives

Subdivision A—Selection of health and safety representatives

24 Selection of health and safety representatives

- (1) One health and safety representative may be selected for each designated work group.

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- (2) A person is not eligible for selection as the health and safety representative for a designated work group unless the person is a member of the workforce included in the group.
 - (3) A person is taken to have been selected as the health and safety representative for a designated work group if—
 - (a) all the members of the workforce in the group unanimously agree to the selection; or
 - (b) the person is elected as the health and safety representative of the group in accordance with clause 25.

25 Election of health and safety representatives

- (1) If—
 - (a) there is a vacancy in the office of health and safety representative for a designated work group; and
 - (b) within a reasonable time after the vacancy occurs, a person has not been selected under clause 24(3)(a)—

the operator of the facility must invite nominations from all group members for election as the health and safety representative of the group.
- (2) If the office of health and safety representative is vacant and the operator has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Safety Authority may direct the operator to do so.
- (3) If there is more than one candidate for election at the close of the nomination period, the operator must conduct, or arrange for the conduct of, an election at the operator's expense.

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- (4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of—
 - (a) 100 members of the workforce normally in the designated work group; or
 - (b) a majority of the members of the workforce normally in the designated work group.
 - (5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.
 - (6) A person cannot be a candidate in the election if he or she is disqualified under clause 31.
 - (7) All the members of the workforce in the designated work group are entitled to vote in the election.
 - (8) An operator conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Safety Authority.

26 List of health and safety representatives

The operator of a facility must—

- (a) prepare and keep up to date a list of all the health and safety representatives of designated work groups comprising members of the workforce performing work at the facility; and
- (b) ensure that the list is available for inspection, at all reasonable times, by—
 - (i) the members of the workforce at the facility; and
 - (ii) OHS inspectors.

27 Members of designated work group must be notified of selection etc. of health and safety representative

The operator of a facility must—

- (a) notify members of a designated work group in relation to the facility of a vacancy in the office of health and safety representative for the designated work group within a reasonable time after the vacancy arises; and
- (b) notify those members of the name of any person selected (whether under clause 24(3)(a) or (b)) as health and safety representative for the designated work group within a reasonable time after the selection is made.

28 Term of office

- (1) A health and safety representative for a designated work group holds office—
 - (a) if, in consultations that took place under clause 18, 19, 20 or 21, the parties to the consultations agreed to the period for which the health and safety representative for the group was to hold office—for that period; or
 - (b) if paragraph (a) does not apply—for 2 years.
- (2) The term of office of a health and safety representative begins at the start of the day on which he or she was selected.
- (3) Nothing in this clause prevents a health and safety representative from being selected for further terms of office.

29 Training of health and safety representatives

- (1) A health and safety representative for a designated work group must undertake a course of training relating to occupational health and safety that is

accredited by the Safety Authority for the purposes of this clause.

- (2) The operator of the facility concerned must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.
- (3) If a person other than the operator is the employer of the representative, that person must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

30 Resignation etc. of health and safety representatives

- (1) A person ceases to be the health and safety representative for the designated work group if—
 - (a) the person resigns as the health and safety representative; or
 - (b) the person ceases to be a group member of that designated work group; or
 - (c) the person's term of office expires without the person having been selected, under clause 24, to be the health and safety representative for the designated work group for a further term; or
 - (d) the person is disqualified under clause 31.
- (2) A person may resign as the health and safety representative for a designated work group by notice in writing delivered to the operator and to each work group employer.
- (3) If a person resigns as the health and safety representative for a designated work group, the person must notify the resignation to the group members.

(4) If a person has ceased to be the health and safety representative for a designated work group because of subclause (1)(b), the person must notify in writing—

- (a) the group members; and
- (b) the operator and each work group employer—

that the person has ceased to be the health and safety representative for that designated work group.

31 Disqualification of health and safety representatives

(1) An application for the disqualification of a health and safety representative for a designated work group may be made to the Safety Authority by—

- (a) the operator; or
- (b) a work group employer; or
- (c) at the request of a group member of the designated work group—a workforce representative in relation to the designated work group.

(2) An application under subclause (1) may be made on either or both of the following grounds—

- (a) that action taken by the representative in the exercise or purported exercise of a power under clause 33(1) or any other provision of this Schedule was taken—
 - (i) with the intention of causing harm to the operator or work group employer or to an undertaking of the operator or work group employer; or
 - (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;

Sch. 7

- (b) that the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a health and safety representative, information acquired from the operator or work group employer.
- (3) On an application under subclause (1), the Safety Authority may disqualify the representative, for a specified period not exceeding 5 years, from being a health and safety representative for any designated work group, if the Safety Authority is satisfied that the representative has acted in a manner referred to in subclause (2).
- (4) In making a decision under subclause (3), the Safety Authority must have regard to—
 - (a) the harm (if any) that was caused to the operator or work group employer or to an undertaking of the operator or work group employer as a result of the action of the representative; and
 - (b) the past record of the representative in exercising the powers of a health and safety representative; and
 - (c) the effect (if any) on the public interest of the action of the representative; and
 - (d) any other matters the Safety Authority thinks relevant.

32 Deputy health and safety representatives

- (1) One deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected.
- (2) A deputy health and safety representative is to be selected in the same way as a health and safety representative under clause 24.

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- (3) If the health and safety representative for a designated work group—
- (a) ceases to be the health and safety representative; or
 - (b) is unable (because of absence or for any other reason) to exercise the powers of a health and safety representative—
- then—
- (c) the powers may be exercised by the deputy health and safety representative (if any) for the group; and
 - (d) this Schedule (other than this clause) applies in relation to the deputy health and safety representative accordingly.

Subdivision B—Powers of health and safety representatives

33 Powers of health and safety representatives

- (1) A health and safety representative for a designated work group may, for the purpose of promoting or ensuring the health and safety at a workplace of the group members—
- (a) do all or any of the following—
 - (i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or if there is an immediate threat of such an accident or dangerous occurrence;
 - (ii) inspect the whole or any part of the workplace if the health and safety representative has given reasonable notice of the inspection to the operator's representative at the facility and to any

Sch. 7

- other person having immediate control of the workplace;
- (iii) make a request to an OHS inspector or to the Safety Authority that an inspection be conducted at the workplace;
 - (iv) accompany an OHS inspector during any inspection at the workplace by the OHS inspector (whether or not the inspection is being conducted as a result of a request made by the health and safety representative);
 - (v) if there is no health and safety committee in respect of the members of the workforce at the facility—represent group members in consultations with the operator and any work group employer about the development, implementation and review of measures to ensure the health and safety of those members at the workplace;
 - (vi) if a health and safety committee has been established in respect of the members of the workforce at the facility—examine any of the records of that committee; and
- (b) investigate complaints made by any group member to the health and safety representative about the health and safety of any of the members of the workforce (whether in the group or not); and
- (c) with the consent of a group member, be present at any interview about health and safety at work between that member and—
- (i) an OHS inspector; or

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- (ii) the operator or a person representing the operator; or
 - (iii) a work group employer or a person representing that employer; and
 - (d) obtain access to any information under the control of the operator or any work group employer—
 - (i) relating to risks to the health and safety of any group member; and
 - (ii) relating to the health and safety of any group member; and
 - (e) issue provisional improvement notices in accordance with clause 37.
- (2) Subclause (1)(d)(ii) has effect subject to clause 35.

34 Assistance by consultant

- (1) A health and safety representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.
- (2) A health and safety representative for a designated work group may—
 - (a) be assisted by a consultant at a workplace at which work is performed; or
 - (b) provide to a consultant information that has been provided to the health and safety representative by a group member under clause 33(1)(d)—

only if the operator or the Safety Authority has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.

Sch. 7

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- (3) Neither the operator nor any workplace employer becomes, because of the agreement under subclause (2) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with the consultant's activities.
- (4) If a health and safety representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, about health and safety at work, between a group member and—
- (a) an OHS inspector; or
 - (b) the operator or any work group employer or a person representing the operator or that employer—

if, and only if, the group member consents to the presence of the consultant.

35 Information

- (1) Neither—
- (a) a health and safety representative; nor
 - (b) a consultant assisting a health and safety representative—

is entitled, under clause 33(1)(d)(ii), to have access to information in respect of which a group member is entitled to claim, and does claim, legal professional privilege or client legal privilege.

Sch. 7 cl. 35(1)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 41).

(2) Neither—

- (a) a health and safety representative; nor
- (b) a consultant assisting a health and safety representative—

is entitled, under clause 33(1)(d)(ii), to have access to information of a confidential medical nature relating to a person who is or was a group member unless—

- (c) the person has delivered to the operator or any work group employer a written authority permitting the health and safety representative, or the health and safety representative and the consultant, as the case requires, to have access to the information; or
- (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

36 Obligations and liabilities of health and safety representatives

This Schedule does not—

- (a) impose an obligation on a person to exercise any power conferred on the person because the person is a health and safety representative; or
- (b) render a person liable in civil proceedings because of—
 - (i) a failure to exercise such a power; or
 - (ii) the way such a power was exercised.

37 Provisional improvement notices

- (1) If—
- (a) a health and safety representative for a designated work group believes, on reasonable grounds, that a person—
 - (i) is contravening a provision of a listed OHS law; or
 - (ii) has contravened a provision of a listed OHS law and is likely to contravene that provision again; and
 - (b) the contravention affects or may affect one or more group members—

the representative must consult with the person supervising the relevant activity in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

- (2) If, in the health and safety representative's opinion, agreement is not reached within a reasonable time, the health and safety representative may issue a provisional improvement notice to any or all of the persons (each of whom is in this clause called a **responsible person**) responsible for the contravention.
- (3) If a responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator's representative at the facility.
- (4) If it is not practicable to issue the notice to a responsible person (other than the operator or the supervisor) by giving it to that responsible person—
- (a) the notice may be issued to that responsible person by giving it to the person who for the time being is, or may reasonably be

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- presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and
- (b) if the notice is so issued, a copy of the notice must be given to the responsible person as soon as practicable afterwards.
- (5) The notice must—
- (a) specify the contravention that, in the health and safety representative's opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
- (b) specify a period that—
- (i) is not less than 7 days beginning on the day after the notice is issued; and
- (ii) is, in the representative's opinion, reasonable—
- within which the responsible person is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.
- (6) The notice may specify action that the responsible person is to take during the period specified in the notice.
- (7) If, in the health and safety representative's opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period specified in the notice.
- (8) On issuing the notice, the health and safety representative must give a copy of the notice to—
- (a) if the operator is not a responsible person— the operator; and

- (b) each work group employer other than a work group employer who is a responsible person; and
- (c) if the supervisor is not a responsible person—the supervisor; and
- (d) if the notice relates to any plant, substance or thing that is owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c)—that owner.

38 Effect of provisional improvement notice

- (1) Within 7 days after a notice is issued under clause 37—
 - (a) the responsible person; or
 - (b) any other person, to whom a copy of the notice has been given under clause 37(8)—
may request the Safety Authority or an OHS inspector for an inspection of the matter to be conducted.
- (2) On the request being made, the operation of the notice is suspended pending the determination of the matter by an OHS inspector.
- (3) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the disagreement, and the OHS inspector conducting the inspection must—
 - (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under clause 37(8) accordingly; and
 - (b) make decisions, and exercise powers, under Part 4, as the OHS inspector considers necessary in relation to the work.

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- (4) If the OHS inspector varies a notice, the notice as so varied has effect—
- (a) so far as the notice concerns obligations imposed on the responsible person that are unaffected by the variation—as if the notice as so varied resumed effect on the day of the variation; and
 - (b) so far as the notice concerns new obligations imposed by virtue of the variation—as if the notice as so varied were a new notice issued on the day of the variation.
- (5) If the notice is issued to a responsible person, the responsible person must—
- (a) notify each group member who is affected by the notice of the fact of the issue of the notice; and
 - (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.
- (6) The notice ceases to have effect if—
- (a) it is cancelled by an OHS inspector or by the health and safety representative; or
 - (b) the responsible person—
 - (i) takes the action, if any, specified in the notice; or
 - (ii) if no action is so specified—takes the action necessary to prevent the further contravention, or likely contravention, concerned.
- (7) The responsible person—
- (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and

- (b) must take reasonable steps to inform the health and safety representative who issued the notice of the action taken to comply with the notice.
- (8) For the purposes of clause 65, if the OHS inspector confirms or varies the notice, the OHS inspector is taken to have decided, under clause 61, to issue an improvement notice in those terms.

**Subdivision C—Duties of the operator and other employers
in relation to health and safety representatives**

**39 Duties of the operator and other employers in
relation to health and safety representatives**

- (1) The operator of a facility, in relation to which a designated work group having a health and safety representative has been established, must—
 - (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the group members perform work, being changes that may affect their health and safety; and
 - (b) in relation to a workplace at which some or all of the group members perform work—
 - (i) permit the representative to make any inspection of the workplace that the representative is entitled to make in accordance with clause 33(1)(a)(i) and to accompany an OHS inspector during an inspection at the workplace by the OHS inspector; and
 - (ii) if there is no health and safety committee in respect of the members of the workforce—on being requested to

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- do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the health and safety of group members; and
- (c) permit the representative to be present at any interview at which the representative is entitled to be present under clause 33(1)(c); and
 - (d) provide to the representative access to any information to which the representative is entitled to obtain access under clause 33(1)(d)(i) or (ii) and to which access has been requested; and
 - (e) permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to exercise the powers of a health and safety representative; and
 - (f) provide the representative with access to any facilities that are—
 - (i) prescribed for the purposes of this paragraph; or
 - (ii) necessary for the purposes of exercising the powers of a health and safety representative.
- (2) Subclause (1)(d) has effect subject to subclauses (3) and (4).
- (3) The operator must not permit a health and safety representative in relation to a designated work group to have access to information that—
- (a) is of a confidential medical nature under the control of the operator; and

Sch. 7

(b) relates to a person who is or was a group member—

unless—

(c) the person has delivered to the employer a written authority permitting the representative to have access to the information; or

(d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

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(4) The operator is not required to give a health and safety representative access to any information in respect of which the operator is entitled to claim, and does claim, legal professional privilege or client legal privilege.

(5) The duties imposed by this clause on the operator in respect of the health and safety representative for a designated work group apply equally, to the extent that the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to that employer and to that supervisor.

Division 4—Health and safety committees

40 Health and safety committees

(1) A health and safety committee must be established in relation to the members of the workforce at a facility if—

(a) the number of those members normally present at the facility is not less than 50 (whether or not those members are all at work at the facility at the same time); and

(b) the members of the workforce are included in one or more designated work groups; and

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- (c) the operator is requested to establish the committee by the health and safety representative for the designated work group or for one of the designated work groups.
- (2) The health and safety committee consists of—
- (a) the number of members specified in an agreement reached between the operator and the members of the workforce; or
- (b) if there is no such agreement—an equal number of—
- (i) members, chosen by the members of the workforce, to represent the interests of members of the workforce; and
- (ii) members, chosen by the operator, to represent the interests of the operator and the employer (other than the operator) of members of the workforce.
- (3) The agreement referred to in subclause (2)(a) may—
- (a) specify the persons who are to be members to represent the interests of the operator and employers (other than the operator) of members of the workforce; and
- (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.
- (4) If regulations made for the purposes of this clause specify procedures for the selection of persons as members of health and safety committees to represent the interests of members of the workforce, an agreement referred to in subclause (2)(a) must not provide for members to be chosen in a way inconsistent with the regulations.

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- (5) A health and safety committee must hold a meeting at least once every 3 months.
 - (6) The procedure at meetings of a health and safety committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.
 - (7) A health and safety committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.
 - (8) This clause does not prevent an operator from establishing, in consultation with registered unions or any other persons, committees concerned with occupational health and safety in relation to undertakings carried on by the operator.

41 Functions of health and safety committees

- (1) A health and safety committee has the following functions—
 - (a) to assist the operator of the facility concerned—
 - (i) to develop and implement measures designed to protect; and
 - (ii) to review and update measures used to protect—

the health and safety at work of members of the workforce;

- (b) to facilitate co-operation between the operator of the facility, employers (other than the operator) of members of the workforce, and members of the workforce, in relation to occupational health and safety matters;

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- (c) to assist the operator to disseminate among members of the workforce, in appropriate languages, information relating to health and safety at work;
 - (d) any prescribed functions;
 - (e) any other functions that are agreed between the operator and the health and safety committee.
- (2) A health and safety committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) This Schedule does not—
- (a) impose an obligation on a person to do any act, because the person is a member of a health and safety committee, in connection with the performance of a function conferred on the committee; or
 - (b) render such a person liable in civil proceedings because of—
 - (i) a failure to do such an act; or
 - (ii) the manner in which such an act was done.

42 Duties of the operator and other employers in relation to health and safety committees

- (1) If there is a health and safety committee, the operator and any employer (other than the operator) of a member of the workforce must—
- (a) make available to the committee any information possessed by the operator or that employer relating to risks to health and safety to members of the workforce; and

Sch. 7

- (b) permit any member of the committee who is a member of the workforce to take time off work, without loss of remuneration or other entitlements, as is necessary for the member adequately to participate in the performance by the committee of its functions.
- (2) Subclause (1)(a) has effect subject to subclauses (3) and (4).
- (3) The operator or any employer (other than the operator) of a member of the workforce must not make available to a health and safety committee information of a confidential nature relating to a person who is or was a member of the workforce, unless—
- (a) the person has authorised the information to be made available to the committee; or
- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- (4) The operator or any employer (other than the operator) of a member of the workforce is not required to make available to a health and safety committee any information in respect of which the operator or employer is entitled to claim, and does claim, legal professional privilege or client legal privilege.

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Division 5—Emergency procedures

43 Action by health and safety representatives

- (1) If a health and safety representative for a designated work group has reasonable cause to believe that there is an imminent and serious danger to the health or safety of any person at or near the facility unless a group member or group members cease to perform particular work, the representative must—

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- (a) inform a person (a *supervisor*) supervising the group member or group members in the performance of the work of the danger; or
- (b) if no supervisor can be contacted immediately—
- (i) direct the group member or group members to cease, in a safe manner, to perform the work; and
 - (ii) as soon as practicable, inform a supervisor that the direction has been given.
- (2) If a supervisor is informed under subclause (1)(a) of a danger to the health or safety of any person at or near the facility, the supervisor must take the action he or she thinks appropriate to remove that danger, which may include directing a group member or group members to cease, in a safe manner, to perform the work.
- (3) If—
- (a) a health and safety representative has informed a supervisor under subclause (1)(a) of a danger; and
 - (b) the representative has reasonable cause to believe that, despite any action taken by the supervisor in accordance with subclause (2), there continues to be an imminent and serious danger to the health or safety of any person at or near the facility unless the group member or group members cease to perform particular work—
- the representative must—
- (c) direct the group member or group members to cease, in a safe manner, to perform the work; and

(d) as soon as practicable, inform the supervisor that the direction has been given.

(4) If—

(a) a health and safety representative gives a direction under subclause (1)(b), but is unable to agree with a supervisor whom the representative has informed under that subclause that there is a need for a direction under that subclause; or

(b) a health and safety representative gives a direction under subclause (3)(c)—

the representative or the supervisor may request the Safety Authority or an OHS inspector that an inspection be conducted of the work that is the subject of the direction.

(5) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the direction, and the OHS inspector conducting the inspection must make decisions, and exercise powers, under Part 4 as the OHS inspector considers necessary in relation to the work.

(6) This clause does not limit the power of a health and safety representative under clause 33(1)(a)(iii) to request an OHS inspector or the Safety Authority that an inspection be conducted at the workplace.

44 Directions to perform other work

If—

(a) a group member who is an employee has ceased to perform work, in accordance with the direction of a health and safety representative under clause 43(1)(b) or (3)(c); and

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- (b) the cessation of work does not continue after—
- (i) the health and safety representative has agreed with a person supervising work at the workplace where the work was being performed that the cessation of work was not, or is no longer, necessary; or
 - (ii) an OHS inspector has, under clause 43(5), made a decision to the effect that the employee should perform the work—

the employer may direct the employee to perform suitable alternative work, and the employee is to be taken, for all purposes, to be required to perform that other work under the terms and conditions of the employee's employment.

Division 6—Exemptions

45 Exemptions

- (1) The Safety Authority may, in accordance with the regulations, make a written order exempting a specified person or class of person from any or all of the provisions of this Part (other than this clause).
- (2) The Safety Authority must not make an order under subclause (1) unless it is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

PART 4—INSPECTIONS

Division 1—Introduction

46 Simplified outline

The following is a simplified outline of this Part:

- An OHS inspector may conduct an inspection—
 - (a) to ascertain whether a listed OHS law is being complied with; or
 - (b) concerning a contravention or a possible contravention of a listed OHS law; or
 - (c) concerning an accident or dangerous occurrence that has happened at or near a facility.
- An OHS inspector may issue a prohibition notice to the operator of a facility in order to remove an immediate threat to the health and safety of any person.
- An OHS inspector may issue an improvement notice specifying action that is to be taken to prevent contravention of a listed OHS law.
- An OHS inspector must prepare a report about an inspection and give the report to the Safety Authority.

47 Powers, functions and duties of OHS inspectors

- (1) An OHS inspector has the powers, functions and duties conferred or imposed by the listed OHS laws.

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- (2) The Safety Authority may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on OHS inspectors by a listed OHS law are to be exercised. If it does so, the powers of OHS inspectors must be exercised in accordance with those directions.
 - (3) The Safety Authority may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subclause (2), on the powers that are conferred on a particular OHS inspector by a listed OHS law. If it does so, the powers of the OHS inspector are taken to have been restricted accordingly.

Division 2—Inspections

48 Inspections

- (1) An OHS inspector may, at any time, conduct an inspection—
 - (a) to ascertain whether the requirements of, or any requirements properly made under, a listed OHS law are being complied with; or
 - (b) concerning a contravention or a possible contravention of a listed OHS law; or
 - (c) concerning an accident or dangerous occurrence that has happened at a facility.
- (2) The Safety Authority may direct an OHS inspector to conduct an inspection—
 - (a) to ascertain whether the requirements of, or any requirements properly made under, a listed OHS law are being complied with; or
 - (b) concerning a contravention or a possible contravention of a listed OHS law; or

- (c) concerning an accident or dangerous occurrence that has happened at a facility—
and the OHS inspector must, unless the Safety Authority revokes the direction, conduct an inspection accordingly.

Division 3—Powers of OHS inspectors in relation to the conduct of inspections

Subdivision A—General powers of entry and search

49 Powers of entry and search—facilities

- (1) An OHS inspector may, for the purposes of an inspection, at any reasonable time during the day or night—
- (a) enter the facility to which the inspection relates and do all or any of the following—
 - (i) search the facility;
 - (ii) inspect, examine, take measurements of, or conduct tests concerning, any workplace at the facility or any plant, substance or thing at the facility;
 - (iii) take photographs of, make video recordings of, or make sketches of, any workplace at the facility or any plant, substance or thing at the facility;
 - (iv) inspect, take extracts from, or make copies of, any documents at the facility that the OHS inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection; and
 - (b) inspect the seabed and subsoil in the vicinity of the facility to which the inspection relates.

(2) Immediately on entering a facility for the purposes of an inspection, an OHS inspector must take reasonable steps to notify the purpose of entering the facility to—

- (a) the operator's representative at the facility; and
- (b) if there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection—that representative—

and must, on being requested to do so by the person referred to in paragraph (a) or (b), produce for inspection by that person—

- (c) the OHS inspector's identity card; and
 - (d) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
 - (e) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 47(3).
- (3) If there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the OHS inspector must afford the health and safety representative a reasonable opportunity to consult on the matter the subject of the inspection.

50 Powers of entry and search—regulated business premises (other than facilities)

- (1) An OHS inspector may, for the purposes of an inspection—
 - (a) at any reasonable time, enter any regulated business premises (other than a facility) if the OHS inspector has reasonable grounds to

believe that there are likely to be at those premises documents that relate to a facility that is, or to facility operations that are, the subject of the inspection; and

(b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

(2) Immediately on entering premises referred to in subclause (1), an OHS inspector must take reasonable steps to notify the purpose of the entry to the occupier of those premises, and must, on being requested to do so by the occupier, produce for inspection by the occupier—

(a) the OHS inspector's identity card; and

(b) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and

(c) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 47(3).

51 Powers of entry and search—premises (other than regulated business premises)

(1) An OHS inspector may, for the purposes of an inspection—

(a) enter any premises (other than regulated business premises) if the OHS inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a facility that is, or to facility operations that are, the subject of the inspection; and

(b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

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- (2) An OHS inspector may exercise the powers referred to in subclause (1) to enter premises only—
- (a) if the premises are not a residence—
 - (i) in accordance with a warrant under clause 52; or
 - (ii) with the consent of the occupier of the premises; or
 - (b) if the premises are a residence—with the consent of the occupier of the premises.
- (3) Immediately on entering premises referred to in subclause (1), an OHS inspector must—
- (a) take reasonable steps to notify the purpose of the entry to the occupier of those premises; and
 - (b) take reasonable steps to produce, for inspection by the occupier, the OHS inspector's identity card; and
 - (c) on being requested to do so by the occupier, produce, for inspection by the occupier—
 - (i) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
 - (ii) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 47(3).
- (4) If—
- (a) an OHS inspector enters premises in accordance with a warrant under clause 52; and

(b) the occupier of the premises is present at the premises—

the OHS inspector must make a copy of the warrant available to the occupier.

(5) Before obtaining the consent of a person as mentioned in subclause (2)(a) or (b), an OHS inspector must inform the person that—

(a) the person may refuse consent; and

(b) the consent may be withdrawn.

(6) The consent of a person is not effective for the purposes of subclause (2) unless the consent is voluntary.

52 Warrant to enter premises (other than regulated business premises)

(1) An OHS inspector may apply to a Magistrate for a warrant authorising the OHS inspector, with any assistance as the OHS inspector thinks necessary, to exercise the powers referred to in clause 51(1) in relation to particular premises (other than a residence).

(2) The application must be supported by evidence on oath (whether oral or by affidavit) that sets out the grounds on which the OHS inspector is applying for the warrant.

(3) If the Magistrate is satisfied that there are reasonable grounds for issuing the warrant, the Magistrate may issue the warrant in accordance with the **Magistrates' Court Act 1989**.

(4) A warrant issued under subclause (3) must state—

(a) the name of the OHS inspector; and

(b) whether the inspection may be carried out at any time or only during specified hours of the day; and

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- (c) the day on which the warrant ceases to have effect; and
 - (d) the purposes for which the warrant is issued.
- (5) The day specified under subclause (4)(c) is not to be more than 7 days after the day on which the warrant is issued.
- (6) The purposes specified under subclause (4)(d) must include the identification of the premises in relation to which the warrant is issued.
- (7) The rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this clause.

53 Obstructing or hindering OHS inspector

A person must not, without reasonable excuse, obstruct or hinder an OHS inspector in the exercise of an OHS inspector's powers under clause 49, 50 or 51.

Penalty: \$5500, in the case of a natural person;
\$27 500, in the case of a body corporate.

Subdivision B—Other powers

54 Power to require assistance and information

- (1) An OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an inspection, require—
- (a) the operator of a facility; or
 - (b) the person in charge of operations at a workplace in relation to a facility; or
 - (c) a member of the workforce at a facility; or

Sch. 7

(d) any person representing a person referred to in paragraph (a) or (b)—

to provide the OHS inspector with reasonable assistance and facilities—

(e) that is or are reasonably connected with the conduct of the inspection at or near the facility; or

(f) for the effective exercise of the OHS inspector's powers under this Schedule in connection with the conduct of the inspection at or near the facility.

(2) The reasonable assistance referred to in subclause (1) includes, so far as the operator of the facility is concerned—

(a) appropriate transport to or from the facility for the OHS inspector and for any equipment required by the OHS inspector, or any article of which the OHS inspector has taken possession; and

(b) reasonable accommodation and means of subsistence while the OHS inspector is at the facility.

(3) A person must not fail, without reasonable excuse, to comply with a requirement under this clause.

Penalty: \$3300 or imprisonment for 6 months or both, in the case of a natural person;
\$16 500, in the case of a body corporate.

55 Power to require the answering of questions and the production of documents or articles

- (1) If—
- (a) an OHS inspector believes on reasonable grounds that a person is capable of answering a question that is reasonably connected with the conduct of an inspection; and
 - (b) the person is—
 - (i) the operator of a facility; or
 - (ii) the person in charge of operations at a workplace in relation to a facility; or
 - (iii) a member of the workforce at a facility; or
 - (iv) any person representing a person referred to in subparagraph (i) or (ii)—the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the OHS inspector.
- (2) If, at the time when a requirement under subclause (1) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement—
- (a) is in writing; and
 - (b) specifies the day on or before which the question is to be answered (being at least 14 days after the day on which the requirement is imposed); and
 - (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

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- (3) If—
- (a) an OHS inspector believes on reasonable grounds that a person is capable of producing a document or article that is reasonably connected with the conduct of an inspection; and
 - (b) the person is—
 - (i) the operator of a facility; or
 - (ii) the person in charge of operations at a workplace in relation to a facility; or
 - (iii) a member of the workforce at a facility; or
 - (iv) any person representing a person referred to in subparagraph (i) or (ii)—the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.
- (4) If, at the time when a requirement under subclause (3) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement—
- (a) is in writing; and
 - (b) specifies the day on or before which the document or article is to be produced (being at least 14 days after the day on which the requirement is imposed); and
 - (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

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- (5) A person must not—
- (a) fail, without reasonable excuse, to comply with a requirement under this clause; or
 - (b) in purported compliance with a requirement under this clause, give information that is false or misleading in a material particular.

Penalty: \$3300 or imprisonment for 6 months or both, in the case of a natural person;
\$16 500, in the case of a body corporate.

56 Privilege against self-incrimination

- (1) A person is not excused from answering a question or producing a document or article when required to do so under clause 55 on the ground that the answer to the question, or the production of the document or article, may tend to incriminate the person or make the person liable to a penalty.

- (2) However—

- (a) the answer given or document or article produced; or
- (b) answering the question or producing the document or article; or
- (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document or article—

is not admissible in evidence against the person—

- (d) in any civil proceedings; or
- (e) in any criminal proceedings other than proceedings for an offence against clause 55.

57 Power to take possession of plant, take samples of substances etc.

- (1) In conducting an inspection, an OHS inspector may, to the extent that it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a facility in connection with the inspection—
 - (a) take possession of the plant, substance or thing and remove it from the facility; or
 - (b) take a sample of the substance or thing and remove that sample from the facility.
- (2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the OHS inspector must, by notice in writing, inform—
 - (a) the operator of the facility; and
 - (b) if the plant, substance or thing is used for the performance of work by an employer of a member or members of the workforce at the facility other than the operator of the facility—that employer; and
 - (c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b)—that person; and
 - (d) if there is a health and safety representative for a designated work group that includes a member of the workforce who is affected by the matter to which the inspection relates—that representative—of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.
- (3) If the OHS inspector gives the notice to the operator of the facility to which the inspection relates, the operator's representative at the facility

must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.

- (4) If the OHS inspector takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the OHS inspector must—
- (a) ensure that the inspection, examination, measuring or testing is conducted as soon as practicable; and
 - (b) return it to the workplace as soon as practicable afterwards.
- (5) As soon as practicable after completing any such inspection, examination, measurement or testing, the investigator must give a written statement setting out the results to each person whom the investigator is required to notify under subclause (2).

58 Power to direct that workplace etc. not be disturbed

- (1) An OHS inspector may give a direction under subclause (2) if, in conducting an inspection, the OHS inspector has reasonable grounds to believe that it is reasonably necessary to do so in order to—
- (a) remove an immediate threat to the health or safety of any person; or
 - (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a facility or any plant, substance or thing at the facility.

Sch. 7

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- (2) If subclause (1) applies, the OHS inspector may direct, by written notice given to the operator's representative at the facility, that the operator must ensure that—
- (a) a particular workplace; or
 - (b) particular plant, or a particular substance or thing—
- not be disturbed for a period specified in the direction.
- (3) The period specified in the direction must be a period that the OHS inspector has reasonable grounds to believe is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
- (4) The direction may be renewed by another direction in the same terms.
- (5) If an OHS inspector gives a notice to the operator's representative under subclause (2), the operator's representative must cause the notice to be displayed in a prominent place at the workplace—
- (a) that is to be left undisturbed; or
 - (b) where the plant, substance or thing that is to be left undisturbed is located.
- (6) As soon as practicable after giving the direction, the OHS inspector must take reasonable steps to notify—
- (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the operator of the facility—that person; and
 - (b) if there is a health and safety representative for a designated work group that includes a group member performing work—

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- (i) at a workplace; or
- (ii) involving the plant, substance or thing—
to which the direction relates—that representative—
of the direction and the reasons for giving it.
- (7) The operator of a facility to which a direction concerning a workplace, plant, substance or a thing relates must ensure that the direction is complied with.
- Penalty: \$27 500, in the case of a natural person;
\$137 500, in the case of a body corporate.
- (8) A direction under subclause (2) must be accompanied by a statement setting out the reasons for the direction.

59 Power to issue prohibition notices

- (1) If, having conducted an inspection, an OHS inspector is satisfied on reasonable grounds that it is reasonably necessary to issue a prohibition notice to the operator of a facility in order to remove an immediate threat to the health or safety of any person, the OHS inspector may issue a prohibition notice, in writing, to the operator.
- (2) The notice must be issued to the operator by giving it to the operator's representative at the facility.
- (3) The notice must—
- (a) specify the activity in respect of which, in the OHS inspector's opinion, the threat to health or safety has arisen, and set out the reasons for that opinion; and

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- (b) either—
- (i) direct the operator to ensure that the activity is not engaged in; or
 - (ii) direct the operator to ensure that the activity is not engaged in in a specified manner.
- (4) A specified manner may relate to any one or more of the following—
- (a) any workplace, or part of a workplace, at which the activity is not to be engaged in;
 - (b) any plant or substance that is not to be used in connection with the activity;
 - (c) any procedure that is not to be followed in connection with the activity.
- (5) The notice may specify action that may be taken to satisfy an OHS inspector that adequate action has been taken to remove the threat to health and safety.
- (6) The operator's representative at the facility must—
- (a) give a copy of the notice to each health and safety representative (if any) for any designated work group having group members performing work that is affected by the notice; and
 - (b) cause a copy of the notice to be displayed at a prominent place at or near each workplace at which that work is performed.
- (7) If the notice relates to any workplace, plant, substance or thing that is owned by a person other than the operator, the OHS inspector must, upon issuing the notice, give a copy of the notice to that person.

60 Compliance with prohibition notice

- (1) An operator must ensure that a prohibition notice issued to the operator is complied with.

Penalty: \$27 500, in the case of a natural person;
\$137 500, in the case of a body
corporate.

- (2) If an OHS inspector is satisfied that action taken by the operator to remove the threat to health and safety in respect of which the notice was issued is not adequate, the OHS inspector must inform the operator accordingly.
- (3) A prohibition notice ceases to have effect when an OHS inspector notifies the operator that the OHS inspector is satisfied that the operator has taken adequate action to remove the threat to health or safety.
- (4) In making a decision under subclause (2), an OHS inspector may exercise any of the powers of an OHS inspector conducting an inspection that the OHS inspector considers necessary for the purposes of making the decision.

61 Power to issue improvement notices

- (1) If, in conducting an inspection, an OHS inspector believes on reasonable grounds that a person—
- (a) is contravening a provision of a listed OHS law; or
 - (b) has contravened a provision of a listed OHS law and is likely to contravene that provision again—

the OHS inspector may issue an improvement notice, in writing, to the person (the *responsible person*).

Sch. 7

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- (2) If the responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator's representative at the facility.
 - (3) If the responsible person is an employer (other than the operator) of members of the workforce, but it is not practicable to give the notice to that employer—
 - (a) the improvement notice may be issued to the employer by giving it to the operator's representative at the facility; and
 - (b) if the notice is so issued—the operator must ensure that a copy of the notice is given to the employer as soon as practicable afterwards.
 - (4) The notice—
 - (a) must specify the contravention that the OHS inspector believes is occurring or is likely to occur, and set out the reasons for that belief; and
 - (b) must specify a reasonable period within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be; and
 - (c) may specify action that the responsible person is to take during the period specified in the notice.
 - (5) If the OHS inspector believes on reasonable grounds that it is appropriate to do so, the OHS inspector may, in writing and before the end of the period, extend the period specified in the notice.
 - (6) If an improvement notice is issued to an employer (other than the operator) of members of the workforce in circumstances other than the

circumstance referred to in subclause (3), the employer must immediately ensure that a copy of the notice is given to the operator's representative at the facility.

- (7) If a notice is issued to the operator or to an employer (other than the operator) of members of the workforce, the operator's representative at the facility must—
- (a) give a copy of the notice to each health and safety representative for a designated work group having group members performing work that is affected by the notice; and
 - (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work is being performed.
- (8) On issuing a notice, the OHS inspector must give a copy of the notice to—
- (a) if the notice is—
 - (i) given to a member of the workforce who is an employee; and
 - (ii) in connection with work performed by the employee—
the employer of that employee; and
 - (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than—
 - (i) a responsible person; or
 - (ii) a person who is an employer referred to in paragraph (a)—
that owner; and

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- (c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of a listed OHS law has occurred or is likely to occur—
- (i) the operator of the facility; and
 - (ii) if the employer of employees who work in that workplace or who use that plant, substance or thing is a person other than the operator—that employer.

62 Compliance with improvement notice

A person to whom an improvement notice is issued must comply with it to the extent that the notice relates to any matter over which the person has control.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body corporate.

63 Notices not to be tampered with or removed

- (1) A person must not, without reasonable excuse, tamper with any notice that has been displayed under clause 57(3), 58(5), 59(6) or 61(7) while that notice is so displayed.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body corporate.

- (2) If a notice has been displayed under clause 57(3), a person must not, without reasonable excuse, remove the notice until the plant or thing to which the notice relates is returned to the workplace from which it was removed.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body corporate.

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- (3) If a notice has been displayed under clause 58(5), 59(6) or 61(7), a person must not, without reasonable excuse, remove the notice before it has ceased to have effect.

Penalty: \$11 000, in the case of a natural person;
\$55 000, in the case of a body
corporate.

Division 4—Reports on Inspections

64 Reports on inspections

- (1) If an OHS inspector has conducted an inspection, the OHS inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Safety Authority.
- (2) The report must include—
- (a) the OHS inspector's conclusions from conducting the inspection and the reasons for those conclusions; and
 - (b) any recommendations that the OHS inspector wishes to make arising from the inspection; and
 - (c) any other prescribed matters.
- (3) As soon as practicable after receiving the report, the Safety Authority must give a copy of the report, together with any written comments that it wishes to make—
- (a) to the operator of the facility to which the report relates; and
 - (b) if the report relates to activities performed by an employee of another person—that other person; and

Sch. 7

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- (c) if the report relates to any plant, substance or thing owned by another person—that other person.
- (4) The Safety Authority may, in writing, request the operator or any other person to whom the report is given to provide to the Safety Authority, within a reasonable period specified in the request, details of—
- (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and
 - (b) if a notice has been issued under clause 59 or 61 in relation to work being performed for the operator or that other person—any action taken, or proposed to be taken, in respect of that notice—
- and the operator or that other person must comply with the request.
- (5) As soon as practicable after receiving a report, the operator of a facility must give a copy of the report, together with any written comment made by the Safety Authority on the report—
- (a) if there is a least one health and safety committee in respect of some or all of the members of the workforce—to each such committee; and
 - (b) if there is no such committee in respect of some or all of the members of the workforce, but some or all of those members (in respect of which there is no such committee) are in at least one designated work group for which there is a health and safety representative—to each such health and safety representative.

Division 5—Appeals

65 Appeals

- (1) If an OHS inspector, in conducting an inspection or having conducted an inspection—
- (a) decides, under clause 38, to confirm or vary a provisional improvement notice; or
 - (b) decides, under clause 57, to take possession of plant, a substance or a thing at a workplace; or
 - (c) decides, under clause 58, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
 - (d) decides, under clause 59, to issue a prohibition notice; or
 - (e) decides, under clause 60, that the operator of a facility to whom a prohibition notice has been issued has not taken adequate action to remove the threat to health and safety that caused the notice to be issued; or
 - (f) decides, under clause 61, to issue an improvement notice—

a person referred to in subclause (2) may appeal to the reviewing authority against the decision, by giving notice in writing to the reviewing authority.

- (2) The following persons may appeal, as applicable—
- (a) the operator of the facility or any employer (other than the operator) who is affected by the decision; or
 - (b) a person to whom a notice has been issued under clause 37(2) or 61(1); or

Sch. 7

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- (c) the health and safety representative for a designated work group having a group member affected by the decision; or
 - (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal; or
 - (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—that workforce representative; or
 - (f) a person who owns any workplace, plant, substance or thing to which the decision referred to in subclause (1)(a), (b), (c) or (f) relates.
- (3) If an OHS inspector, having conducted an inspection—
- (a) decides under clause 38 to cancel a provisional improvement notice; or
 - (b) decides under clause 60 that the operator of a facility to whom a prohibition notice has been issued has taken adequate action to remove the threat to health and safety that caused the notice to be issued—
- an appeal against a decision may be made, by notice in writing, to the reviewing authority by—
- (c) the health and safety representative for a designated work group having a group member affected by the decision; or
 - (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and

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- who has requested the workforce representative to make the appeal; or
- (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—that workforce representative.
- (4) Subject to this clause, giving notice of an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision, except to the extent that the reviewing authority makes an order to the contrary.
- (5) If the decision appealed against is a decision under clause 61 to issue an improvement notice, the operation of the decision is suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.
- (6) If the decision appealed against is a decision of an OHS inspector under clause 38 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

66 Powers of reviewing authority on appeal

- (1) On an appeal, the reviewing authority may—
- (a) affirm or revoke the decision appealed against; and
- (b) if it revokes the decision—substitute any other decision of the kind appealed against that it thinks appropriate.

(2) If the decision is—

- (a) varied; or
- (b) revoked; or
- (c) revoked with the substitution of another decision—

the decision is taken to have effect, and always to have had effect, accordingly.

(3) If—

- (a) the decision appealed against is a decision under clause 57 to take possession of plant, a substance or a thing at a workplace; and
- (b) the decision is not affirmed—

the OHS inspector who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as practicable.

PART 5—GENERAL

67 Notifying and reporting accidents and dangerous occurrences

(1) If, at or near a facility, there is—

- (a) an accident that causes the death of, or serious personal injury to, any person; or
- (b) an accident that causes a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
- (c) a dangerous occurrence—

the operator must, in accordance with the regulations, give the Safety Authority notice of, and a report about, the accident or dangerous occurrence.

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- (2) Regulations made for the purposes of subclause (1) (other than regulations made for the purpose of subclause (1)(b)) may prescribe—
- (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of the notice; and
 - (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of the report.
- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

68 Records of accidents and dangerous occurrences to be kept

- (1) The operator of a facility must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the operator is required by clause 67 to notify the Safety Authority.
- (2) Regulations made for the purposes of subclause (1) may prescribe—
- (a) the nature of the contents of a record maintained under this clause; and
 - (b) the period for which the record must be retained.
- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

69 Codes of practice

- (1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to operators of facilities and employers (other than operators) of members of the workforce at facilities.

- (2) A person is not liable to any civil or criminal proceedings for contravening a code of practice.

70 Use of codes of practice in proceedings

- (1) This clause applies if, in any proceedings for an offence against a listed OHS law, it is alleged that a person contravened a provision of a listed OHS law in relation to which a code of practice was in effect at the time of the alleged contravention.
- (2) The code of practice is admissible in evidence in those proceedings.
- (3) If the court is satisfied, in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention, that—
- (a) any provision of the code of practice is relevant to that matter; and
 - (b) the person failed at any material time to comply with that provision of the code of practice—

that matter is treated as proved unless the court is satisfied that in respect of that matter the person complied with that provision of a listed OHS law otherwise than by complying with the code of practice.

71 Interference etc. with equipment etc.

A person must not, without reasonable excuse, do anything that results in the interference with, or the rendering ineffective of, any protective equipment or safety device provided for the occupational health and safety or welfare of members of the workforce at a facility if the person knew (or ought reasonably to have known)

that the equipment or device was protective equipment or a safety device.

Penalty: \$3300 or imprisonment for 6 months or both, in the case of a natural person;
\$16 500, in the case of a body corporate.

72 Members of workforce not to be levied

The operator of a facility or an employer (other than the operator) of members of the workforce at a facility must not levy, or permit to be levied, on a member of the workforce any charge in respect of anything done or provided in accordance with a listed OHS law in order to ensure the occupational health and safety or welfare of persons at or near the facility.

Penalty: \$27 500, in the case of a natural person;
\$137 500, in the case of a body corporate.

73 Victimisation

- (1) An employer (whether the operator or another person) must not—
- (a) dismiss an employee; or
 - (b) perform an act that results in injury to an employee in his or her employment; or
 - (c) perform an act that prejudicially alters the employee's position (whether by deducting or withholding remuneration or by any other means); or
 - (d) threaten to do any of those things—
because the employee—
 - (e) has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or

- (f) has assisted or proposes to assist, by giving information or otherwise, the conduct of an inspection; or
- (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a health and safety representative under clause 43(1)(b) or (3)(c), and the cessation or proposed cessation does not continue after—
 - (i) the health and safety representative has agreed with a person supervising the work that the cessation or proposed cessation was not, or is no longer, necessary; or
 - (ii) an OHS inspector has, under clause 43(5), made a decision that has the effect that the employee should perform the work.

Penalty: \$27 500, in the case of a natural person;
\$137 500, in the case of a body corporate.

- (2) In proceedings for an offence against subclause (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, the defendant has the onus of establishing that the action was not taken for that reason.

74 Institution of prosecutions

- (1) Proceedings for an offence against a listed OHS law may be instituted by the Safety Authority or by an OHS inspector.
- (2) A health and safety representative for a designated work group may request the Safety Authority to institute proceedings for an offence against a listed OHS law in relation to the occurrence of an act or omission if—

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- (a) a period of 6 months has elapsed since the act or omission occurred; and
 - (b) the health and safety representative considers that the occurrence of the act or omission constitutes an offence against a listed OHS law; and
 - (c) proceedings in respect of the offence have not been instituted.
- (3) A workforce representative in relation to a designated work group may request the Safety Authority to institute proceedings for an offence against a listed OHS law in relation to the occurrence of an act or omission if—
- (a) a period of 6 months has elapsed since the act or omission occurred; and
 - (b) the workforce representative considers that the occurrence of the act or omission constitutes an offence against a listed OHS law; and
 - (c) proceedings in respect of the offence have not been instituted; and
 - (d) a group member included in the group requests the workforce representative to request the Safety Authority to institute the proceedings.
- (4) A request under subclause (2) or (3) must be in writing.
- (5) The Safety Authority must, within 3 months after receiving the request, advise the health and safety representative or the workforce representative, as the case may be, whether proceedings under subclause (1) have been or will be instituted, and, if not, give reasons why not.

75 Role of Commonwealth DPP

The Commonwealth Director of Public Prosecutions has the same functions and powers in respect of an offence against a listed OHS law as he or she would have if that offence were an offence against a law of the Commonwealth, including the power to institute and carry on an appeal arising out of a prosecution for that offence.

76 Conduct of directors, employees and agents

- (1) This clause has effect for the purposes of a proceeding for an offence against a listed OHS law.
- (2) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (3) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of actual or apparent authority is taken to have been engaged in also by the body corporate unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (4) If it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show—

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- (a) that the conduct was engaged in by an employee or agent of the natural person within the scope of actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (5) Any conduct engaged in on behalf of a natural person by an employee or agent of the natural person within the scope of actual or apparent authority is taken to have been engaged in also by the natural person unless the natural person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (6) If—
- (a) a natural person is found guilty of an offence; and
 - (b) he or she would not have been found guilty of the offence if subclauses (4) and (5) had not been enacted—
- he or she is not liable to be punished by imprisonment for that offence.
- (7) A reference in subclause (2) or (4) to the state of mind of a person includes a reference to—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

77 Act not to give rise to other liabilities etc.

This Schedule does not—

- (a) confer a right of action in any civil proceeding in respect of any contravention of a provision of a listed OHS law; or

- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

Sch. 7 cl. 78
amended by
No. 68/2009
s. 97(Sch.
item 91.2).

78 Circumstances preventing compliance may be defence to prosecution

It is a defence to a prosecution for refusing or failing to do anything required by a listed OHS law if the accused proves that it was not practicable to do it because of an emergency prevailing at the relevant time.

79 Regulations—general

- (1) The regulations may prescribe—
- (a) procedures for the selection of persons, under clause 40, as members of health and safety committees, to represent the interests of members of the workforce at a facility; and
 - (b) procedures to be followed at meetings of health and safety committees; and
 - (c) the manner in which notices are to be served under this Schedule or the regulations; and
 - (d) forms for the purposes of this Schedule or the regulations.
- (2) If the Minister is satisfied that—
- (a) a power, function or duty is conferred or imposed on a person under a law of this State or the Commonwealth; and
 - (b) the proper exercise of the power or performance of the function or duty is or would be prevented by this Schedule or a provision of this Schedule—

regulations made for the purposes of this subclause may declare that this Schedule, or the provision, as the case may be, does not apply to

that person, or does not apply to that person in the circumstances specified in the regulations.

(3) Regulations made for the purposes of subclause (2) do not remain in force for longer than 5 years after they commence, but this subclause does not prevent the making of further regulations of the same substance.

(4) In subclause (2)—

this Schedule includes regulations made for the purposes of this Schedule.

ENDNOTES

1. General Information

The **Petroleum (Submerged Lands) Act 1982** was assented to on 20 July 1982 and came into operation on 14 February 1983 (see Government Gazette 16 February 1983 page 367).

2. Table of Amendments

This Version incorporates amendments made to the **Petroleum (Submerged Lands) Act 1982** by Acts and subordinate instruments.

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83: s. 2(2)
Current State: All of Act in operation

Interpretation of Legislation Act 1984, No. 10096/1984

Assent Date: 22.5.84
Commencement Date: 1.7.84: s. 2
Current State: All of Act in operation

Petroleum (Submerged Lands) (Amendment) Act 1986, No. 68/1986 (as amended by Act No. 12/1990)

Assent Date: 14.10.86
Commencement Date: 1.12.86: Government Gazette 26.11.86 p. 4455
Current State: All of Act in operation

Petroleum (Submerged Lands) (Amendment) Act 1990, No. 12/1990

Assent Date: 8.5.90
Commencement Date: S. 19(5)(6) on 14.10.86: s. 2(2); rest of Act on 1.7.90: Government Gazette 24.6.90 p. 1862
Current State: All of Act in operation

Petroleum (Submerged Lands) (Further Amendment) Act 1990, No. 83/1990

Assent Date: 11.12.90
Commencement Date: 15.5.91: Government Gazette 15.5.91 p. 1274
Current State: All of Act in operation

Petroleum (Submerged Lands) (Amendment) Act 1993, No. 82/1993

Assent Date: 3.11.93
Commencement Date: 3.11.93: s. 2
Current State: All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 98) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982

Endnotes

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. 1 item 90) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Petroleum (Submerged Lands) (Amendment) Act 2001, No. 91/2001

Assent Date: 11.12.01
Commencement Date: Pt 3 (ss 15–71) on 12.12.01: s. 2(1); Pt 2 (ss 4–14) on 1.1.03: s. 2(3)
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 52) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Monetary Units Act 2004, No. 10/2004

Assent Date: 11.5.04
Commencement Date: S. 16(Sch. 2 items 1.1–1.22) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Petroleum (Submerged Lands) (Amendment) Act 2004, No. 11/2004

Assent Date: 11.5.04
Commencement Date: 1.1.05: s. 2(2)
Current State: All of Act in operation

Geothermal Energy Resources Act 2005, No. 7/2005

Assent Date: 27.4.05
Commencement Date: S. 173 on 4.4.06: Special Gazette (No. 104) 4.4.06 p. 1
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 91) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Petroleum (Submerged Lands) Act 1982**

Petroleum (Submerged Lands) Act 1982
No. 9772 of 1982

Endnotes

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 41) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Petroleum (Submerged Lands) Act
1982**

Fair Work (Commonwealth Powers) Amendment Act 2009, No. 74/2009

Assent Date: 1.12.09
Commencement Date: S. 17 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s
amending the **Petroleum (Submerged Lands) Act
1982**

Traditional Owner Settlement Act 2010, No. 62/2010

Assent Date: 21.9.10
Commencement Date: S. 143 on 23.9.10: Special Gazette (No. 382) 22.9.10
p. 1
Current State: This information relates only to the provision/s
amending the **Petroleum (Submerged Lands) Act
1982**

Subordinate Legislation Amendment Act 2010, No. 78/2010

Assent Date: 19.10.10
Commencement Date: S. 24(Sch. 1 item 23) on 1.1.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Petroleum (Submerged Lands) Act
1982**

3. Explanatory Details

¹ S. 36: Section 7(2)–(5) of the **Petroleum (Submerged Lands) (Amendment) Act 1990**, No. 12/1990 reads as follows:

7 New sections 36 and 37 substituted

(2) Where—

- (a) at the commencement of this section, a nomination had been made under section 36 of the Principal Act; and
- (b) at that commencement, a declaration had not been made under section 37 as a result of the making of the nomination—

sections 36, 37 and 38 of the Principal Act, as in force immediately before the commencement of this section, continue to have effect in relation to that nomination and the block or blocks that would be affected by a declaration as if this Act had not been enacted.

- (3) A declaration made under section 37 of the Principal Act as continued in force by subsection (2) has effect, and the Principal Act, as amended by this Act, applies to the declaration, as if the declaration had been made under that section as amended by this Act.
- (4) A declaration in force under section 37 of the Principal Act immediately before the commencement of this section has effect after that commencement as if it were a declaration under section 37 of the Principal Act, as amended by this Act.
- (5) Where—
 - (a) the permittee under a permit granted before the commencement of this section applies under section 40 of the Principal Act, as amended by this Act, for a licence; and

- (b) the location that includes the block or blocks to which the application relates was declared under section 37 of the Principal Act, as amended by this Act; and
 - (c) the location consists of not more than 8 blocks; and
 - (d) the Minister notifies the applicant in writing that, in the opinion of the Minister, the number of blocks specified in the notification represents the maximum number of blocks that the applicant would have been entitled to have declared as a location instead of the block or blocks constituting the location referred to in paragraph (b) if this Act had not been enacted; and
 - (e) the number of blocks specified in the notification exceeds the number of blocks in the location referred to in paragraph (b)—
- section 40(1) of the Principal Act, as amended by this Act, applies as if the first-mentioned location were constituted by the number of blocks specified in the notification referred to in paragraph (d).

² S. 37: See note 1.

³ S. 38: See note 1.

⁴ S. 40(1): See note 1.

⁵ S. 81(4): Section 14(2)(3) of the **Petroleum (Submerged Lands) (Amendment) Act 1990**, No. 12/1990 reads as follows:

14 Approval of dealings

- (2) If, when the first regulations made for the purposes of section 81(4)(b) of the Principal Act, as amended by this Act, take effect, an application for approval of a dealing has been made but the Minister has neither approved nor refused to approve the dealing—

- (a) the Minister must give to the applicant written notice that the applicant is entitled to lodge an instrument for the purpose of section 81(4)(b) in relation to the application; and
 - (b) the applicant may lodge an instrument for the purpose of section 81(4)(b); and
 - (c) the application must not be dealt with by the Minister until after the end of 30 days after the day on which notice is given for the purpose of paragraph (a); and
 - (d) where the applicant lodges an instrument under paragraph (b), the applicant must lodge with the instrument 2 copies of the instrument.
- (3) An instrument lodged under subsection (2) must be taken, for the purposes of section 81(13) of the Principal Act, as amended by this Act, to have accompanied the application when the application was lodged.

⁶ S. 81(13): See note 5.

⁷ S. 92: Section 35(3) of the **Petroleum (Submerged Lands) (Amendment) Act 1986**, No. 68/1986 reads as follows:

35 New section 92 inserted in Principal Act

- (3) The Principal Act continues to apply in relation to transfers to which section 78 of the Principal Act continues to apply by virtue of the operation of section 26(3) of this Act.

⁸ S. 93: See note 7.

⁹ S. 101: Section 38(5)(6) of the **Petroleum (Submerged Lands) (Amendment) Act 1986**, No. 68/1986 reads as follows:

38 Directions

- (5) A direction in force under section 101 of the Principal Act immediately before the commencement of this section shall, after that commencement, continue to apply to the person or persons to whom it applied before that commencement as if it were a direction under section 101 of the Principal Act as amended by this Act.
- (6) A registered holder is not required by section 101(2A) of the Principal Act as amended by this Act to cause a copy of the direction to which subsection (2) of this section applies to be given to another person or to cause a copy of such a direction to be exhibited at a place frequented by that other person if the direction or a copy of the direction was served, within the meaning of the Principal Act, on the person before the commencement of this section.

¹⁰ S. 103(1): Section 16(2)(3) of the **Petroleum (Submerged Lands) (Amendment) Act 1990**, No. 12/1990 reads as follows:

16 Exemption

- (2) Where—
 - (a) before the commencement of this section, an application was made for the purpose of section 103(1)(j) of the Principal Act; and
 - (b) the application was made by a permittee, lessee, licensee or pipeline licensee; and

- (c) at the commencement of this section, the Minister had not granted the variation, suspension or exemption sought by the application and had not informed the applicant that the application was refused—
- section 103 of the Principal Act, as amended by this Act, applies as if—
- (d) this section had been in operation when the application was made; and
- (e) the application has been made for the purposes of section 103 of the Principal Act, as amended by this Act.
- (3) A variation, suspension or exemption in force under section 103 of the Principal Act immediately before the commencement of this section has the same operation after that commencement as it would have had if—
- (a) this section had been in operation when the variation, suspension, or exemption was granted; and
- (b) the variation, suspension or exemption had been granted under section 103 of the Principal Act, as amended by this Act.

¹¹ S. 112(4)(c)(ii): The amendment proposed by section 57(1)(e)(iv) of the **Petroleum (Submerged Lands) (Amendment) Act 2001**, No. 91/2001 is not included in this publication because the word "him" does not appear in this paragraph.

Section 57(1)(e)(iv) reads as follows:

57 Special prospecting authority, access authority and sale of property

- (1) In the Principal Act—
- (e) in section 112(4)—
- (iv) in paragraph (c)(ii), for "him" substitute "the person";