

Queensland



# **PETROLEUM AMENDMENT ACT 1995**

**Act No. 22 of 1995**

# Queensland



## PETROLEUM AMENDMENT ACT 1995

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Queensland



## **Petroleum Amendment Act 1995**

**Act No. 22 of 1995**

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*An Act to amend the *Petroleum Act 1923**

*[Assented to 11 April 1995]*

**The Parliament of Queensland enacts—****Short title**

1. This Act may be cited as the *Petroleum Amendment Act 1995*.

**Commencement**

2. Sections 6 and 7 commence on 1 July 1995.

**Act amended**

3. This Act amends the *Petroleum Act 1923*.

**Amendment of s 3 (Definitions)**

4.(1) Section 3(1), definitions “**authority to prospect**”, “**company**”, “**corporation sole**”, “**Crown land**”, “**declared pipeline**”, “**licence**”, “**permit**”, “**permittee**”, “**person**”, “**private land**” and “**State mining engineer**”—

*omit.*

(2) Section 3(1)—

*insert—*

‘ “**access**”, to a facility, means the right to a service provided by the facility, and includes the right to have the facility connected to another facility.

“**access agreement**”, for a facility, means a written agreement between a facility owner and a facility user, or between facility users, for access to the facility.

“**access dispute**” see section 61ZD.<sup>1</sup>

“**access principles**” means tariff setting principles, indicative tariff schedule and indicative access conditions.

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<sup>1</sup> Section 61ZD (What is an access dispute?)

**“access provider”**, for a facility, means an owner or user of the facility who has given, or is able to give, someone else a capacity entitlement under an access agreement for the facility.

**“approved arbitrator”** means an arbitrator approved by the Minister.<sup>2</sup>

**“associated facility”** means a petroleum facility (other than a pipeline) used, or proposed to be used, in association with a pipeline.

**“authority to prospect”** means an authority to prospect under this Act.<sup>3</sup>

**“award”** has the same meaning as in the *Commercial Arbitration Act 1990*.

**“capacity entitlement”** means capacity available to a facility user under an access agreement.

**“corporation sole”** means the corporation sole under this Act.<sup>4</sup>

**“developable capacity”**, of a facility, means the amount by which the facility’s nominal capacity is likely to increase if the facility owner makes economically and technically feasible changes to the facility’s specified configuration.

**“entry permission”** see section 45AA.<sup>5</sup>

**“executive officer”** of a corporation means a person who is concerned with or takes part in the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“facility”** means—

- (a) a licensed pipeline; or
- (b) a pipeline owned by the corporation sole; or
- (c) a proposed pipeline for which access principles have been approved but a licence has not yet been granted; or
- (d) an associated facility declared under a regulation to be a facility

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<sup>2</sup> See section 61ZE (Approved arbitrators).

<sup>3</sup> See section 9A (Authority to prospect).

<sup>4</sup> See section 7 (Incorporation of Minister).

<sup>5</sup> Section 45AA (Permission to enter land)



for this Act;

but does not include a pipeline declared under a regulation not to be a facility for this Act.

**“facility owner”**, for a facility, includes a person (other than the owner) who operates the facility.

**“facility user”**, for a facility, means a person who has access to the facility under an access agreement.

**“indicative access conditions”** means conditions that must be in an access agreement for a facility.<sup>6</sup>

**“indicative tariff schedule”** means the basic tariff schedule for a facility.<sup>7</sup>

**“licence”** means a pipeline licence.

**“nominal capacity”** means a facility’s maximum practical throughput under a specified configuration.

**“non-discriminatory”** see section 3B.<sup>8</sup>

**“on”** land includes within, under and over the land.

**“permit”** means a prospecting petroleum permit under this Act, and, in sections 23 and 24,<sup>9</sup> includes an authority to prospect under this Act.

**“permittee”** means the holder of a permit.

**“pipeline licence”** see section 45AC.<sup>10</sup>

**“private land”** means land other than unallocated State land.

**“proposed facility user”** see section 3C.<sup>11</sup>

**“refinery permission”** see section 45.<sup>12</sup>

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<sup>6</sup> See section 61M (Approval of access principles).

<sup>7</sup> See section 61M (Approval of access principles).

<sup>8</sup> Section 3B (Meaning of “non-discriminatory”)

<sup>9</sup> Section 23 (Rights to water etc.) and section 24 (Private land—compensation before commencement of drilling)

<sup>10</sup> Section 45AC (Pipeline licences)

<sup>11</sup> Section 3C (Meaning of “proposed facility user”)

<sup>12</sup> Section 45 (Oil refineries)

**“related corporation”** has the same meaning as in the Corporations Law.

**“representative”** means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

**“review event”** means—

- (a) for a pipeline licensed before 11 March 1995—a day or event stated in the licence (or, if no day or event is stated, declared under a regulation) to be a review event for the pipeline; or
- (b) for a pipeline licensed on or after 11 March 1995—a day or event stated in the licence as a review event for the pipeline; or
- (c) for a pipeline owned by the corporation sole—a day or event declared under a regulation to be a review event for the pipeline; or
- (d) for an associated facility—a day or event declared under a regulation to be a review event for the facility.

**“shared technical information”**, for a facility, means information it is necessary for an access provider to give to someone else for the facility’s safe, efficient and reliable operation.

**“spare capacity”** see section 3D.<sup>13</sup>

**“specified configuration”** means—

- (a) for a licensed pipeline—a configuration specified in the licence (or, if no configuration is specified, declared under a regulation); or
- (b) for another facility—a configuration declared under a regulation.

**“state of mind”** of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

**“sublease”**, for a lease over land covered by a unitisation arrangement,

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<sup>13</sup> Section 3D (Meaning of “spare capacity”)

means a sublease of all or part of—

- (a) the leased land; or
- (b) petroleum produced under the lease.

**“tariff setting principles”** means principles on which the indicative tariff schedule for a facility must be based.<sup>14</sup>

**“unallocated State land”** has the same meaning as in the *Land Act 1994*.

**“unitisation arrangement”** means an arrangement among lessees, acceptable to the Minister, for—

- (a) ordered production and sharing of petroleum from land covered by the leases; and
- (b) apportionment of entitlements.’.

(3) Section 3(2)—

*omit.*

### **Insertion of new ss 3A–3D**

5. After section 3—

*insert—*

#### **‘Words and expressions used in Mineral Resources Act**

**‘3A.** Words and expressions used in the *Mineral Resources Act 1989* have the same respective meanings in this Act.

#### **‘Meaning of “non-discriminatory”**

**‘3B.(1)** Information about access to a facility is given to a person on a **“non-discriminatory”** basis for this Act if each person given information is given substantially the same information about—

- (a) the access principles for the facility; and
- (b) the spare and developable capacity of the person giving the information.

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<sup>14</sup> See section 61M (Approval of access principles).

‘(2) Information is substantially the same for subsection (1) if a person given different information will not be disadvantaged merely because of the difference.

‘(3) Also, information given to a person about spare or developable capacity is substantially the same for subsection (1) even though the capacity has changed since someone else was given the information.

### ‘Meaning of “proposed facility user”

‘3C.(1) A person who gives an access provider for a facility a written notice requiring the access provider to start negotiations with the person, within a stated reasonable time, for access to the facility’s spare or developable capacity is a **“proposed facility user”** for the facility.

‘(2) Also, a facility user for the facility who gives an access provider for the facility a written notice requiring the access provider to start negotiations with the person, within a stated reasonable time, for continuing or increasing the facility user’s capacity entitlement is a **“proposed facility user”** for the facility.

### ‘Meaning of “spare capacity”

‘3D.(1) At a particular time, an access provider for a facility has **“spare capacity”** for the facility if—

- (a) for a facility owner—the facility’s nominal capacity is not fully used; or
- (b) for a facility user—the facility user’s capacity entitlement is not being fully used.

‘(2) However, **“spare capacity”** does not include—

- (a) capacity available to someone else under—
  - (i) an option under an agreement; or
  - (ii) an access agreement for the facility; or
  - (iii) an award that is to be given effect for the facility; or
- (b) capacity that will be available to someone else under an access agreement for the facility that has not been signed; or

- (c) for a facility owner—capacity the facility owner requires for operational, or the owner’s, purposes; or
- (d) for a facility user—capacity the facility user requires for the user’s purposes.’.

**Amendment of pt 1A heading**

- 6.** Part 1A, heading, ‘**AND PIPELINES TRIBUNAL**’—  
*omit.*

**Omission of ss 4B–4H**

- 7.** Sections 4B to 4H—  
*omit.*

**Omission of s 20A (Existing permits continued in force)**

- 8.** Section 20A—  
*omit.*

**Amendment of s 41A (Subleases under unitisation arrangements)**

- 9.** Section 41A(1)—  
*omit.*

**Amendment of s 42 (Forfeiture of excess holding)**

- 10.** Section 42(3), ‘section 41A’—  
*omit, insert—*  
‘a unitisation arrangement’.

**Replacement of s 44 (Reservations in favour of Crown)**

- 11.** Section 44—  
*omit, insert—*

**‘Reservations in favour of State**

‘**44.(1)** Each permit, lease or authority to prospect is taken to contain a reservation to the State of the right to grant the easements or rights of way, over land covered by the permit, lease or authority, the Governor in Council considers desirable for—

- (a) developing or working the land or other land containing petroleum deposits; or
- (b) treating and transporting petroleum deposits by or for the Government, or a lessee or permit or authority holder; or
- (c) another public purpose associated with a purpose mentioned in paragraph (a) or (b).

‘**(2)** Easements and rights of way under this section may be granted for joint or several use.’.

**Replacement of s 45 (Refineries and pipelines)**

**12.(1)** Section 45—

*omit, insert—*

*‘Division 4—Refinery and entry permissions and pipeline licences*

**‘Oil refineries**

‘**45.** The Minister may grant to a person written permission to construct and operate an oil refinery (a “**refinery permission**”) on conditions, stated in the permission, the Minister considers reasonable and appropriate including, for example, conditions about—

- (a) the construction, conduct, control, management and operation of the refinery; and
- (b) fees payable under the permission; and
- (c) circumstances in which the permission may be suspended or cancelled and the procedure for suspension or cancellation.

**‘Permission to enter land**

‘**45AA.(1)** This section applies if the Minister considers it necessary for someone to be able to enter land to investigate and survey it for planning for or constructing a pipeline.

‘(2) The Minister may, by notice, grant to a person permission (an **“entry permission”**) to enter stated land to investigate and survey it for stated purposes.

‘(3) The entry permission is granted on conditions, stated in the notice, the Minister considers reasonable and appropriate.

‘(4) The person, and anyone authorised in writing by the person, may, to the extent reasonable and necessary to achieve the purpose of the entry permission—

- (a) enter land stated in the permission; and
- (b) bring onto the land a reasonable type of transport and equipment; and
- (c) investigate and survey the land.

‘(5) A notice under this section is subordinate legislation.

**‘What happens if someone damages improvements?**

‘**45AB.(1)** If someone claiming to act under an entry permission, or on a permission holder’s authority, damages improvements on land covered by the permission, the permission holder must pay compensation for the damage.

‘(2) The compensation is payable to the owner or, if the land is held under a lease, licence or permit under the *Land Act 1994* or another Act, the occupier.<sup>15</sup>

‘(3) In a proceeding for compensation under this section, it is a defence to prove that the person responsible for the damage was not on the land with the permission holder’s approval, or on the permission holder’s authority, when the damage happened.

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<sup>15</sup> For provisions about compensation see sections 59 (Compensation), 60 (Power to agree as to compensation) and 61 (Measure of compensation).

**‘Pipeline licences**

**‘45AC.(1)** With the approval of the Governor in Council, the Minister may grant to a person a licence to construct and operate a pipeline (a **“pipeline licence”**).

**‘(2)** The Minister may grant the licence only if the Minister approves access principles for the pipeline, unless a regulation declares part 6A does not apply to the pipeline.

**‘(3)** Despite subsections (1) and (2), the Minister must grant a licence for a pipeline to an applicant who is a party to a unitisation arrangement if the pipeline is part of a petroleum-gathering system under the arrangement and is outside land covered by the arrangement.

**‘(4)** A pipeline licence must identify the land covered by the licence.

**‘(5)** A pipeline licence is granted on conditions, stated in the licence, the Minister considers reasonable and appropriate.

**‘(6)** The Minister must—

- (a) notify the grant of a pipeline licence by Gazette notice; and
- (b) ensure a plan showing the route of the pipeline, and the land on which it may be constructed under the licence, is available for inspection at the place or places stated in the Gazette notice.

**‘Access principles to be approved before grant of pipeline licence**

**‘45AD.(1)** An applicant for a pipeline licence must give the Minister proposed access principles for the pipeline to which the application relates.

**‘(2)** If the Minister approves the proposed access principles, the Minister may require the applicant to apply the principles to stated access agreements for the pipeline made before the licence is granted.

**‘(3)** The applicant must comply with the requirement.

Maximum penalty—100 penalty units.

**‘(4)** A regulation may declare that this section does not apply to a stated pipeline.



**‘Pipeline licence conditions**

‘45AE. The conditions stated in a pipeline licence may include the following—

- (a) conditions about—
  - (i) the pipeline’s construction, control, management, operation and ownership; or
  - (ii) circumstances in which the corporation sole may take over the pipeline’s construction or operation, or ownership may vest in or be transferred to the corporation sole; or
  - (iii) fees payable under the licence; or
  - (iv) access by facility users to the pipeline; or
  - (v) circumstances in which the licence may be suspended or cancelled and the procedures for suspension or cancellation;
- (b) conditions requiring the licensee to comply with the approved access principles for the pipeline;
- (c) conditions stating what are review events under the licence;
- (d) conditions requiring the review by the Minister of stated licence conditions or the access principles when a stated review event happens;
- (e) conditions requiring the Minister’s approval to the expansion of the pipeline’s capacity beyond its nominal capacity;
- (f) conditions prescribed under a regulation.

**‘What happens on contravention of refinery permission or pipeline licence conditions?**

‘45AF.(1) This section applies if a licensee or refinery permission holder (an “**authority holder**”) contravenes a licence or permission condition for which the licence or permission states it may be suspended or cancelled.

‘(2) The Minister may give the authority holder a written notice requiring the person—

- (a) to remedy a stated contravention of a stated condition to which this section applies within a stated reasonable time; and

(b) to pay to the State—

- (i) an amount of \$2 000, for each day the contravention continues after a stated day; or
- (ii) another amount, stated in the licence, for each period stated in the licence.

‘(3) If the person fails to comply with the notice, the Minister may suspend or cancel the licence or refinery permission by Gazette notice.

‘(4) The Minister may also suspend or cancel a licence or refinery permission in other circumstances stated in the licence or permission.

‘(5) However, if the Minister has given a licensee approval—

- (a) to lease, sublease, or mortgage the licence; or
- (b) to create a trust over land, or an easement or right of way over land, acquired for a pipeline or refinery;

the Minister must not suspend or cancel the licence until after notice of the proposed suspension or cancellation is given to the lessee, sublessee, mortgagee or trustee.

‘(6) In addition, suspension or cancellation of a licence or permission does not affect the authority holder’s liability under subsection (2)(b).

‘(7) Subsections (2), (3) and (4) apply subject to the conditions of the licence or refinery permission.

### **‘Recovery of amounts payable to the State**

‘45AG.(1) An amount payable to the State under this part may be recovered as a debt in a court having jurisdiction up to the amount of the debt.

‘(2) The starting of a proceeding to recover an amount owing to the State does not limit the right of the State to recover another amount that may become payable under this part because the failure continues.

‘(3) If the State starts a proceeding to recover part only of an amount payable at a particular time, the State is taken to have abandoned the remainder of the amount payable at the time.

**‘Assignment etc. of refinery permission, pipeline licence or interests in certain land**

**‘45AH.(1)** This section applies to—

- (a) a refinery permission; and
- (b) a pipeline licence; and
- (c) land, or an easement or right of way over land, acquired for use for a refinery or pipeline.

**‘(2)** A person must not directly or indirectly assign, transfer, lease, sublease, mortgage or create a trust in relation to a permission, licence, land, or an easement or right of way over land, to which this section applies without the Minister’s written consent.

**‘(3)** An assignment, transfer, lease, sublease, mortgage or trust in contravention of subsection (2) is void.

**‘(4)** The Minister may require an applicant for consent under this section to give to the Minister stated reasonable information about the proposed assignment, transfer, lease, sublease, mortgage or trust.

**‘(5)** The Minister may consent or refuse to give the consent.

***Division 5—Other provisions about pipelines*****Amendment of s 45F (Petroleum product pipelines)**

**13.(1)** Section 45F(1)—

*omit, insert—*

**‘45F.(1)** For encouraging, facilitating and regulating the construction of a particular petroleum product pipeline being, proposed or planned to be, constructed, the Governor in Council may, under a regulation, declare the pipeline to be a pipeline to which all or any of sections 45AA to 45E apply.<sup>16</sup>.

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<sup>16</sup> Sections 45AA to 45E are provisions relating to pipeline licences.

(2) Section 45F(2A)—  
*omit.*

### **Insertion of new pt 6A**

14. After part 6—  
*insert—*

## **‘PART 6A—PROVISIONS ABOUT ACCESS TO FACILITIES**

### *‘Division 1—Objects*

#### **‘Objects**

‘61D. The objects of this part are—

- (a) to facilitate competitive markets in the petroleum industry for the benefit of the public and industry; and
- (b) to promote efficiency in the petroleum industry; and
- (c) to provide for access to facilities on fair commercial terms.

### *‘Division 2—Application of part*

#### **‘Application of part to pipelines**

‘61E.(1) This part applies to all licensed pipelines, and pipelines owned by the corporation sole, unless a regulation declares this part does not apply to a stated pipeline.

‘(2) However, if this part does not apply to a pipeline that would be a facility if it was licensed, the pipeline is taken to be a facility to which this part applies if—

- (a) a person voluntarily complies with this part; or
- (b) a person is an applicant for a pipeline licence.

‘(3) Also, this part does not apply to a licensed pipeline if it is part of a petroleum gathering system under a unitisation arrangement and is outside the land covered by the arrangement.

‘(4) A regulation under subsection (1) may be made only if, in the Minister’s opinion—

- (a) it will not—
  - (i) inhibit competition; or
  - (ii) have a significant adverse effect on transportation and handling of petroleum; or
- (b) another pipeline can be economically developed to provide a service similar to the service the pipeline to be declared provides.

#### **‘Application of part to associated facilities**

‘61F.(1) A regulation may declare an associated facility to be a facility to which this part applies.

‘(2) However, subsection (1) applies only if the Minister considers—

- (a) the declaration will promote competition; and
- (b) the service the associated facility provides—
  - (i) is essential for transporting and handling petroleum; and
  - (ii) can be provided safely and is economically feasible; and
- (c) it would be uneconomical to develop an associated facility to provide a service similar to a service provided by the facility proposed to be declared.

‘(3) Also, if this part does not apply to an associated facility that would be a facility if a regulation declared this part to apply to it, and the owner of the facility voluntarily complies with this part, the thing is taken to be an associated facility to which this part applies and the owner is taken to be a facility owner.

#### **‘Part does not apply to some access agreements**

‘61G.(1) This part does not apply to an access agreement for a capacity

within, or less than, a range prescribed under a regulation.

‘(2) Despite subsection (1), division 5 applies to an access agreement for a capacity within a range prescribed under a regulation.

‘(3) This part does not apply to an access agreement made—

- (a) before the commencement of this section for a pipeline in existence immediately before the commencement—until 1 January 2002; or
- (b) for a pipeline declared not to be a facility if the declaration is repealed—for 5 years after the repeal; or
- (c) for an associated facility declared to be a facility—for 5 years after the declaration.

‘(4) However, if an access agreement mentioned in subsection (3) is amended, this part applies to the agreement, unless the Minister is satisfied it does not affect access to the facility to which it relates, and the Minister approves the amendment.

#### ‘Application of part to joint venturers

‘61H.(1) If a facility owner or user consists of 2 or more corporations participating in a joint venture, the following provisions apply—

- (a) anything that may be done under this Act by a facility owner or user may be done by 1 of the corporations for the facility owner or user;
- (b) a reference to a related corporation of a facility owner or user is a reference to a related corporation of any of the corporations;
- (c) a requirement that the facility owner or user bear costs for something is a requirement that the corporations bear the costs jointly and severally;
- (d) a provision of this Act that requires a facility owner or user to do something or prohibits a facility owner or user doing something also applies to a corporation participating in the joint venture.

‘(2) A regulation may declare that this section, or a stated provision of this section, does not apply to a stated facility owner or user.

***Division 3—Access principles*****‘Access principles to be given to Minister**

**‘61I.(1)** This section applies if—

- (a) a person voluntarily complies with this part; or
- (b) a person is an applicant for a pipeline licence.

**‘(2)** If subsection (1)(a) applies, the person may give to the Minister the proposed access principles for the facility.

**‘(3)** If subsection (1)(b) applies, the person must give to the Minister the proposed access principles for the facility.

Maximum penalty for subsection (3)—100 penalty units.

**‘Access principles for existing pipelines**

**‘61J.(1)** This section applies to a pipeline in existence before the commencement of this section, unless a regulation declares this part does not apply to the pipeline.<sup>17</sup>

**‘(2)** Also, if a regulation declaring this part does not apply to a pipeline is repealed, this section applies to the pipeline after the regulation is repealed.

**‘(3)** Within 3 months after this section first applies to a pipeline, or a longer period approved by the Minister, the owner of the pipeline must give to the Minister the proposed access principles for the pipeline.

Maximum penalty—100 penalty units.

**‘(4)** If, within 6 months after this section first applies to a pipeline, or a longer period approved by the Minister, the Minister does not approve proposed access principles for the pipeline, the Minister must decide the access principles for the pipeline.

**‘Access principles for associated facilities**

**‘61K.(1)** This section applies to an associated facility only if a regulation

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<sup>17</sup> See section 61E (Application of Part to pipelines)

declares it applies to the facility.<sup>18</sup>

‘(2) Within 3 months after this section first applies to an associated facility, the owner of the facility must give to the Minister the proposed access principles for the facility.

Maximum penalty—100 penalty units.

‘(3) If, within 6 months after this section first applies to an associated facility, the Minister does not approve proposed access principles for the facility, the Minister must decide the access principles for the facility.

### ‘Access principles may provide for different indicative tariffs

‘61L.(1) Access principles may provide for access agreements to be made providing for different tariffs for the same service.

‘(2) Access principles mentioned in subsection (1), and agreements made under the principles, are authorised for the *Trade Practices Act 1974* (Cwlth).

### ‘Approval of access principles

‘61M.(1) The Minister may approve access principles for a facility.

‘(2) Before approving the access principles, the Minister must consider the following—

- (a) the objects of this part;
- (b) the legitimate business interests of the facility owner;
- (c) the legitimate business interests of existing facility users and possible future facility users;
- (d) fair and efficient market conduct with respect to tariff arrangements and access conditions for the facility;
- (e) the operational and technical requirements for the facility’s safe and reliable operation;
- (f) amounts invested in constructing and operating the facility;

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<sup>18</sup> See section 61F (Application of part to associated facilities)



- (g) the reliability of the service offered;
- (h) the cost to the facility owner of providing access, but not costs associated with losses from increased competition in upstream and downstream markets;
- (i) contractual obligations of the facility owner and facility users;
- (j) efficiency and economy in the facility's construction, operation and use;
- (k) any additional investment in the facility by someone other than the facility owner.

‘(3) The Minister may approve an indicative tariff schedule only if—

- (a) it is consistent with the facility's tariff setting principles; and
- (b) it gives a proposed facility user enough information to reasonably enable the proposed user to understand the charging arrangements for the facility.

‘(4) The Minister may, by written notice, ask a facility owner to give to the Minister, within a stated reasonable time, stated reasonable information necessary to enable the Minister to properly consider the access principles.

‘(5) The facility owner must comply with the request, unless the person has a reasonable excuse for not complying.

Maximum penalty—300 penalty units.

‘(6) It is a reasonable excuse for subsection (5) that giving the information may tend to incriminate the person.

‘(7) The Minister must notify the access principles by Gazette notice.

‘(8) This section also applies if the Minister decides the access principles for a facility.

### ‘Review of access principles

‘61N.(1) This section applies to a facility if a review event happens.

‘(2) Within 3 months after a review event for a facility happens, the facility owner must review the access principles for the facility and give the Minister the proposed new access principles.

Maximum penalty—100 penalty units.

‘(3) The Minister may, by written notice, ask the facility owner to give to the Minister, within a stated reasonable time, stated reasonable information necessary to enable the Minister to properly consider the proposed new access principles.

‘(4) The facility owner must comply with the request, unless the person has a reasonable excuse for not complying.

Maximum penalty—100 penalty units.

‘(5) It is a reasonable excuse for subsection (4) that giving the information may tend to incriminate the person.

‘(6) The Minister may approve or refuse to approve the proposed new access principles for the facility.

‘(7) If, within 6 months after a review event happens for a facility, the Minister does not approve new access principles, the Minister must decide the access principles for the facility.

‘(8) However, the Minister may include in the access principles a requirement that the facility owner must pay all or part of the cost of increasing the facility’s capacity only if the facility owner agrees or a licence condition requires the increase in the capacity.

‘(9) The Minister must notify the access principles by Gazette notice.

#### **‘Effect of approval of access principles**

‘610. Within 6 months after notice of the access principles for a facility is gazetted, the parties to an access agreement that is inconsistent with the access principles must amend the agreement to remove the inconsistency, unless the Minister otherwise approves.

Maximum penalty—500 penalty units.

### *‘Division 4—Negotiating access to facilities*

#### **‘Information to be provided on non-discriminatory basis**

‘61P. A facility owner or user for a facility must ensure information

given to someone else interested in negotiating access to the facility is given on a non-discriminatory basis.

Maximum penalty—100 penalty units.

#### **‘Provision of information**

**‘61Q.** Within 21 days after receiving a request, an access provider for a facility must give anyone who reasonably requires it—

- (a) a copy of the access principles for the facility; and
- (b) information about current and anticipated future spare and developable capacity of the access provider.

Maximum penalty—100 penalty units.

#### **‘Right to negotiate**

**‘61R.(1)** An access provider must negotiate with a proposed facility user for making an access agreement for the spare or developable capacity of the access provider.

**‘(2)** The access provider and the proposed facility user must negotiate in good faith for reaching a fair and reasonable access agreement on terms consistent with the access principles for the facility.

**‘(3)** This section also applies to an amendment of an access agreement to remove an inconsistency with the access principles for a facility.

#### **‘Negotiations with persons holding options**

**‘61S.(1)** If a proposed facility user wants access to a capacity entitlement for which someone else has an option under an agreement made after the commencement of this section—

- (a) the proposed facility user must negotiate with the access provider who granted the option; and
- (b) the access provider must give the option holder written notice of intention to negotiate.

**‘(2)** An option holder given notice under subsection (1) may take part in negotiations between the access provider and the proposed facility user.

‘(3) If the option holder agrees to the proposed facility user being given access to all or part of the capacity to which the option relates, the access provider who granted the option may make an access agreement with the proposed facility user in accordance with the terms of the agreement with the option holder.

‘(4) However, an access dispute is taken to have arisen if—

- (a) the option holder refuses to negotiate; or
- (b) if the option holder takes part in negotiations—the parties to the negotiations cannot reach agreement about access to the capacity to which the option relates.

### **‘Priority in negotiation**

‘61T.(1) An access provider for a facility must ensure, as far as is practicable, negotiations with a proposed facility user, for an access agreement for the facility, are not unreasonably affected by negotiations with someone else started after the proposed facility user started negotiations for the agreement.

Maximum penalty—100 penalty units.

‘(2) Despite subsection (1), a facility user has priority for negotiations with the facility user’s access provider, for access to spare or developable capacity when the facility user’s existing access agreement ends—

- (a) to the extent the capacity sought is not more than the existing capacity entitlement in the last year before the agreement ends; and
- (b) if a new access agreement is made at least 2 years before the existing agreement ends.

### **‘Access agreements**

‘61U.(1) If an access provider and a proposed facility user agree in writing to make an access agreement, the capacity proposed to be available under the agreement stops being spare or developable capacity on the day the access provider and proposed facility user agree in writing to make the access agreement.

‘(2) However, subsection (1) ceases to apply if an access agreement is not made within 3 months after the day the capacity stops being spare or developable capacity or a longer period, of not more than 6 months, approved by the Minister.

#### **‘Facility user must give access provider information**

‘61V.(1) A facility user for a facility must, as soon as is practicable, give the user’s access provider the information the access provider reasonably requires for the safe and reliable operation of the facility.

‘(2) If the person given information under subsection (1) is also a facility user, the person must ensure the information is passed on to the person’s access provider as soon as is practicable.

Maximum penalty—100 penalty units.

#### **‘Responsibilities in providing access**

‘61W.(1) An access provider for a facility must not refuse to give a facility user access to the facility in accordance with the access agreement between the access provider and the facility user.

Maximum penalty—500 penalty units.

‘(2) If the access provider is also a facility user, the access provider must ensure, as far as is reasonably practicable, the access provider’s facility user complies with the facility owner’s requirements about the facility’s use, including the quality of petroleum the facility may be used to transport or process.

Maximum penalty—500 penalty units.

‘(3) This section does not prevent an access provider refusing or restricting access in an emergency or for safety reasons.

#### **‘Restrictions on access agreements**

‘61X.(1) A person must not make an access agreement for a facility that prejudices access to a facility by a facility user who is not a party to the agreement.

Maximum penalty—100 penalty units.

‘(2) A person must not make an access agreement for a facility that—

- (a) provides for access in a way inconsistent with the access principles for the facility; or
- (b) contains a provision restricting, or tending to restrict, a facility user from making access agreements, unless the Minister otherwise approves; or
- (c) provides for access that is not technically feasible or is likely to adversely affect the facility’s safe and reliable operation; or
- (d) gives access to a related corporation of the access provider and gives the related corporation an unfair commercial advantage over another facility user or proposed facility user.

Maximum penalty—500 penalty units.

‘(3) A person must not make an access agreement for a facility that contains a provision preventing a party to the agreement renegotiating it if new access principles or changed licence conditions have a potentially adverse impact on the party’s rights under the agreement, unless the Minister otherwise approves.

Maximum penalty for subsection—100 penalty units.

‘(4) A provision of an access agreement in contravention of subsection (1) or (3) is void.

‘(5) Subsection (2)(a) does not apply to an inconsistency, because of the approval of new access principles for a facility, until 6 months after the gazettal of the approval.

### **‘Register to be kept**

‘61Y.(1) A facility owner must keep a register of access agreements made for the facility as required by subsection (3).

Maximum penalty—20 penalty units.

‘(2) A facility user must keep a register of access agreements made by the facility user as required by subsection (3).

Maximum penalty—20 penalty units.

‘(3) The register—

- (a) must be kept at a place approved by the Minister; and
- (b) must include each facility user’s name and address and agreed capacity entitlement.

‘(4) An access provider must allow anyone who reasonably requires information from the register to inspect it free of charge during the access provider’s ordinary hours of business.

Maximum penalty—20 penalty units.

### ‘Development of facility capacity

‘61Z.(1) This section applies if a facility’s nominal capacity is insufficient to meet the needs of facility users and proposed facility users.

‘(2) The facility owner must give the Minister a written request for approval to increase the facility’s nominal capacity.

‘(3) Before approving the request, the Minister must consider the extent to which the facility’s capacity may be increased.

‘(4) If the Minister decides to approve the request, the Minister must, by written notice, require the facility owner to give to the Minister, within 3 months after a stated day, proposed access principles for the increased capacity.

‘(5) The facility owner must comply with the request.

Maximum penalty—100 penalty units

‘(6) If the Minister does not approve the proposed access principles within 6 months after the day stated in the notice under subsection (4), the Minister may decide the access principles for the increased capacity.

‘(7) However, the Minister may include in the access principles a requirement that the facility owner must pay all or part of the cost of increasing the capacity only if the facility owner agrees.

‘(8) Also, if a review event happens for the facility for the nominal capacity before the increase, the facility owner is not required to review the access principles for the increased capacity merely because the review event happens.

**‘Restrictions on facility owner**

**‘61ZA.(1)** A facility owner who owns a pipeline must not carry on a business other than the business of—

- (a) designing, constructing, maintaining, operating or owning pipelines; or
- (b) providing consultancy and support services for someone who designs, constructs, maintains, operates or owns a pipeline; or
- (c) investing in, or having an interest in, a corporation that carries on a business mentioned in paragraph (a) or (b).

Maximum penalty—100 penalty units.

**‘(2)** A facility owner must not trade in petroleum (other than to the extent necessary for the proper operation of the facility).

Maximum penalty—100 penalty units.

**‘(3)** A facility owner must—

- (a) ensure separate financial records are kept for each facility; and
- (b) except to the extent necessary to comply with any other Act or law—ensure confidential information in its records about the facility’s business (other than shared technical information) is not made available to a related corporation; and
- (c) keep the records in a way enabling information about the operation of the facility to be easily extracted; and
- (d) ensure the facility’s business and management is kept separate from that of a related corporation.

Maximum penalty—100 penalty units.

**‘(4)** A regulation may declare that this section, or a stated provision of this section, does not apply to a stated facility owner or a stated type of business or both.

**‘Assignment of access agreements**

**‘61ZB.(1)** A facility user may assign all or part of the facility user’s interest in an access agreement, unless a regulation declares it may not be assigned.



‘(2) However, the facility user’s obligations under the access agreement continue, unless the assignee and the other parties to the agreement otherwise agree.

### *‘Division 5—Arbitration*

#### **‘Application of division**

‘61ZC. This division applies if there is an access dispute about a facility.

#### **‘What is an access dispute?**

‘61ZD.(1) An “**access dispute**” exists for a facility if—

- (a) an access provider and a proposed facility user cannot agree about the conditions for access to the facility; or
- (b) an access provider and a proposed facility user cannot agree about spare capacity for the facility; or
- (c) an access provider and a facility user cannot agree about something when renegotiating an access agreement for the facility because of new access principles or licence conditions; or
- (d) a person who wants to make an access agreement for the facility for which, because of a regulation, this division applies, questions the tariff an access provider proposes to charge for transporting the person’s petroleum<sup>19</sup>; or
- (e) an access provider refuses to negotiate or deal with a proposed facility user about something mentioned in paragraph (a), (b) or (c).

‘(2) However, an access dispute does not exist merely because a proposed facility user does not accept the access principles or an access agreement consistent with the access principles for a facility.

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<sup>19</sup> These are access agreements to which this part does not generally apply because they are for a limited capacity.

**‘Approved arbitrators**

‘61ZE.(1) The Minister may, by Gazette notice, appoint a panel of persons as approved arbitrators for this Act.<sup>20</sup>

‘(2) The appointment may be for all access disputes or only stated access disputes.

**‘When may arbitrator be appointed?**

‘61ZF.(1) If, within 1 month after a person gives an access provider written notice of an access dispute, the parties to the dispute still cannot resolve the dispute, any party may, in writing, require the other party to join in appointing an arbitrator.

‘(2) The appointment must be made within 21 days after a requirement under subsection (1) is given.

‘(3) If the Minister has appointed an approved arbitrator or arbitrators, the arbitrator must be an approved arbitrator.

**‘Principles of arbitration**

‘61ZG.(1) An arbitrator must take the following into account when arbitrating an access dispute for a facility—

- (a) the objects of this part;
- (b) the access principles for the facility;
- (c) the entitlements, obligations, capacity needs and legitimate business interests of the access provider involved in the dispute;
- (d) the capacity needs and legitimate business interests of a proposed facility user involved in the dispute;
- (e) any special access criteria approved under a regulation that apply to the facility;
- (f) fair and efficient market conduct with respect to tariff arrangements and access conditions for the facility;

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<sup>20</sup> General rules about arbitrators and arbitration are in the *Commercial Arbitration Act 1990*.

- (g) the operational and technical requirements necessary for the facility's safe and reliable operation;
- (h) the licence conditions (if any) for the facility.

‘(2) Also, the arbitrator must take the following into account to the extent they are relevant and consistent with subsection (1)—

- (a) amounts invested in constructing and operating the facility;
- (b) the cost to the access provider involved in the dispute, but not the costs of the access provider associated with losses from increased competition in upstream and downstream markets;
- (c) the legitimate business interests of—
  - (i) facility users; and
  - (ii) the holder of an option under an agreement; and
  - (iii) persons with whom there is an agreement to make an access agreement for the facility; and
  - (iv) persons in whose favour an award has been made that has not yet been, but is to be, given effect;<sup>21</sup>
- (d) contractual obligations of the facility owner and facility users;
- (e) efficiency and economy in the facility's construction, operation and use;
- (f) the economic value to the facility owner of additional investment the proposed facility user is willing to make, but not costs associated with losses from increased competition in upstream and downstream markets.

‘(3) The arbitrator may take into account anything else the arbitrator considers appropriate and reasonably consistent with subsection (1) or (2).

### ‘Notice to facility owner

‘**61ZH.(1)** This section applies only if an access dispute exists for a facility and the facility owner is not a party to the dispute.

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<sup>21</sup> See section 61ZL (Giving effect to arbitrator's award).

‘(2) If the arbitrator considers the interests of the facility owner may be adversely affected by an access dispute, the arbitrator must give the facility owner written notice of the dispute.

‘(3) The notice must state that the facility owner may take part in the arbitration as if the facility owner were a party to the dispute.

### **‘Giving of relevant information to arbitrator**

‘61ZI.(1) An arbitrator may, by written notice, direct a party to an access dispute to give to the arbitrator, within a stated reasonable time, a copy of all documents (including confidential documents) the arbitrator considers relevant to the dispute.

‘(2) The party must comply with the direction, unless the party has a reasonable excuse for not complying.

Maximum penalty—100 penalty units.

‘(3) It is a reasonable excuse for subsection (2) that production of a stated document may tend to incriminate the person.

### **‘Arbitrator may require confidentiality to be observed**

‘61ZJ.(1) A person who gives the arbitrator information, or produces a document, may ask the arbitrator to keep the information or the contents of the document confidential.

‘(2) After considering representations from the parties, the arbitrator may impose conditions limiting access to, or disclosure of, the information or document.

‘(3) A person must not—

- (a) contravene a condition imposed under subsection (2); or
- (b) use the information other than in the arbitration.

Maximum penalty for subsection (3)—100 penalty units.

### **‘Ending arbitration**

‘61ZK.(1) An arbitrator may end an arbitration of an access dispute without making an award if—

- (a) the arbitrator reasonably believes—
  - (i) it is not a genuine dispute; or
  - (ii) it has previously been decided by arbitration and there has been no material change in the circumstances since then; or
- (b) the parties to the dispute agree to its ending by written notice given to the arbitrator.

‘(2) In addition, the arbitrator must return documents produced in an arbitration to the party who produced them after the arbitration ends.

‘(3) However, subsection (2) does not prevent an arbitrator keeping the documents until after the time for appealing against the arbitrator’s decision or any appeal is decided.

#### **‘Arbitrator’s power when making an award**

‘61ZL.(1) An arbitrator may make the award the arbitrator considers appropriate for an access dispute for a facility.

‘(2) The arbitrator may, in an award, deal with any issue about access relevant to the dispute.

‘(3) Without limiting subsection (1), the arbitrator may—

- (a) require a facility owner or facility user to give a proposed facility user access to the facility; or
- (b) state the conditions of access for a proposed facility user; or
- (c) if the award overrides an earlier award—give directions about the relationship between the awards; or
- (d) make an award that affects an option for access to a capacity entitlement.

‘(4) However, an arbitrator must not make an award that—

- (a) is inconsistent with the access principles or licence conditions for the facility; or
- (b) reduces, or may reduce, a facility user’s capacity entitlement (other than under an option for access); or
- (c) restricts, or may restrict, a facility user’s access in a way that

prevents the facility user meeting the user's reasonably anticipated capacity requirements known when the access dispute arose; or

- (d) prevents, or may prevent, a facility user exercising the user's right to negotiate for increased capacity under an access agreement (other than under an option for access); or
- (e) makes, or may make, a facility user an owner of any part of the facility without the facility owner's consent.

'(5) Also, an arbitrator may only make an award that adversely affects a person's existing access to a facility or an option under an agreement—

- (a) if the arbitrator has considered the likely effect of the award; and
- (b) if it is reasonably appropriate—if the arbitrator orders a stated person to pay a stated amount of compensation to a stated adversely effected person within a stated time.

'(6) An award made in contravention of subsection (4) or (5) is of no effect.

'(7) A regulation may prescribe things an arbitrator must or must not have regard to when making an award affecting an option for access.

### **'Giving effect to arbitrator's award**

'61ZM.(1) This section applies if an arbitrator makes an award for an access dispute.

'(2) After an award is made, the award stops being enforceable if a proposed facility user does not give an access provider a written notice accepting the award within 28 days after the award is made, or a longer period (of not more than 3 months) agreed between the parties.

'(3) Unless an award stops being enforceable, the parties to the award must make an access agreement giving effect to the award within 3 months after the award is made, or, with the Minister's approval, a longer period (of not more than 6 months).

Maximum penalty—100 penalty units.

'(4) In a proceeding against a person for an offence against this section, it is a defence for the person to prove that the contravention happened even though the person used reasonable endeavours to avoid the contravention.

**‘Costs of arbitration**

‘61ZN.(1) The parties to an arbitration must pay their own costs.

‘(2) Subsection (1) has effect despite the *Commercial Arbitration Act 1990*, section 34.

***‘Division 6—Provisions aiding enforcement of part*****‘Responsibility for acts or omissions of representatives**

‘61ZO.(1) This section applies in a proceeding for an offence against this part.

‘(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is sufficient to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the Act or omission.

***‘Division 7—General*****‘Minister to be given information**

‘61ZP.(1) Within 3 months after the end of each financial year, the facility owner for a facility must give to the Minister the prescribed required information about the facility for the financial year.

Maximum penalty—100 penalty units.

‘(2) Also, the Minister may, by written notice, ask a facility owner to give to the Minister, within 3 months after a stated date, the prescribed required information for each financial year of a stated period.

‘(3) The facility owner must comply with the request, unless the person has a reasonable excuse for not complying.

Maximum penalty—100 penalty units.

‘(4) It is a reasonable excuse for subsection (3) that giving the information may tend to incriminate the person.

‘(5) If a facility owner makes or amends an access agreement, the facility owner must give the Minister a copy of the agreement or amendment within 28 days after it is made or amended.

Maximum penalty—100 penalty units.

‘(6) If an access provider who is a facility user makes an access agreement with another facility user, or amends the agreement, the access provider must give the Minister a copy of the agreement or amendment within 28 days after it is made or amended.

Maximum penalty—100 penalty units.

‘(7) Within 28 days after a regulation declares a facility to be a facility to which this part applies, the facility’s owner must give the Minister a copy of each access agreement in effect immediately before the day of the declaration.

Maximum penalty—100 penalty units.

‘(8) In this section—

“**financial year**”, for a facility, means the facility owner’s financial year.

“**required information**”, for a facility owner for a facility, means the following information—

- (a) a statement of the facility’s capital spending, operating costs and revenue, audited by a person acceptable to the Minister;
- (b) details of financial arrangements between the facility owner and related corporations of the facility owner;
- (c) other stated reasonable information relevant to the administration of this part.’.



**Amendment of s 62B (Interference with pipeline etc.)**

15. Section 62B, at the end—

*insert—*

‘Maximum penalty—200 penalty units.’.

**Amendment of s 62C (Interference with access)**

16. Section 62C, at the end—

*insert—*

‘Maximum penalty—200 penalty units.’.

**Omission of s 67 (Existing statutory rules)**

17. Section 67—

*omit.*

**Insertion of new ss 68–71**

18. After section 67—

*insert—*

**‘Application of Acts Interpretation Act, s 20A**

‘68.(1) Section 67 is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

‘(2) This section expires on the day this section commences.

**‘Transitional provisions about Pipelines Tribunal**

‘69.(1) In this section—

“repealed provisions” means sections 4B to 4G as in force immediately before 1 July 1995.

‘(2) The Pipelines Tribunal as constituted immediately before 1 July 1995 may continue and complete an inquiry under the repealed provisions that is started but not completed before 1 July 1995, as if the *Petroleum*

*Amendment Act 1995*, section 7 had not been enacted.

‘(3) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

‘(4) This section expires on 1 July 1995.

#### **‘Transitional provisions about adjustment of pipelines charges**

‘70.(1) Despite its repeal by the *Petroleum Amendment Act 1995*, section 4H continues to apply for making adjustments to pipeline charges for the year starting 1 August 1993 and ending 31 July 1994.

‘(2) This section expires on the day it commences.

#### **‘Numbering and renumbering of Act**

‘71. In the next reprint of the Act produced under the *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions) of the *Reprints Act 1992* must be used.’.

**SCHEDULE****MINOR AMENDMENTS**

section 3 of the Act

**1. Section 1—***omit, insert—***‘Short title****‘1. This Act may be cited as the *Petroleum Act 1923*.’.****2. Section 4A(4)—***omit.***3. Heading before section 5—***omit.***4. Section 6, ‘Crown grants’—***omit, insert—***‘grants’.****5. Sections 6, 7C(1)(a), 45A(2), 45C(1) and 52(2), ‘Crown land’—***omit, insert—***‘unallocated State land’.****6. Heading before section 14—***omit.*

## SCHEDULE (continued)

**7. Section 14(3) and (5), heading—**

*omit.*

**8. Heading before section 17—**

*omit.*

**9. Section 18(3), ‘Director-General, Department of Mines, Brisbane’—**

*omit, insert—*

‘chief executive’.

**10. Section 23(2)—**

*omit.*

**11. Section 24(4), heading—**

*omit.*

**12. Section 32(1A)—**

*omit.*

**13. Section 34(1B), ‘under section 41A’—**

*omit.*

**14. Section 37(1)(c), heading—**

*omit.*

## SCHEDULE (continued)

**15. Section 37(2), ‘vacant Crown land’—***omit, insert—*

‘unallocated State land’.

**16. Sections 39(1), 42(1) and (2) and 64, ‘Mining Act’—***omit, insert—*‘*Mineral Resources Act 1989*’.**17. Before section 40—***insert—*‘*Division 1—Signing applications*’.**18. Before section 40A—***insert—*‘*Division 2—Royalties*’.**19. Section 40E(1), ‘Director-General, Department of Mines’—***omit.***20. Section 40E(2), (3), (4) and (6), ‘Director-General’—***omit, insert—*

‘chief executive’.

**21. Before section 41—***insert—*‘*Division 3—Assignments and other dealings with permits and leases*’.

## SCHEDULE (continued)

**22. Section 42(4), ‘under section 41A’—**

*omit.*

**23. Sections 45A(1) and 45B(3), ‘Crown lands’—**

*omit, insert—*

‘unallocated State land’.

**24. Section 45B(4), ‘pursuant to section 45(3J) or (3L)’—**

*omit, insert—*

‘under this part’.

**25. Section 45B(6), ‘or section 45(2E)’—**

*omit, insert—*

‘or 45AB’.

**26. Section 45C(1), from ‘but, unless the land’ to ‘connected therewith’—**

*omit, insert—*

‘(1A) However, if the licensee damages any improvements on land (other than land, or an easement or right of way over land, acquired for use for the pipeline) the licensee must pay compensation under this Act to—

- (a) the owner; or
- (b) for land held under a lease, licence or permit under the *Land Act 1994* or another Act—the occupier; or
- (c) for unallocated State land—the State.’.

## SCHEDULE (continued)

**27. Section 45D(2A)(a)—**

*omit, insert—*

‘(a) for a State-controlled road under the *Transport Infrastructure Act 1994*—the chief executive (of the department in which that Act is administered); or’.

**28. Section 45D(9)—**

*omit, insert—*

‘(9) In subsections (4) to (6), “**lake**”, “**spring**” and “**watercourse**” has the same meaning as in the *Water Resources Act 1989*.’.

**29. Section 45E(3), ‘of Public Works’—**

*omit.*

**30. Section 60(2), heading—**

*omit.*

**31. Section 60(3)—**

*omit.*

**32. Section 63(6)—**

*omit, insert—*

‘(6) This section is in addition to the Corporations Law.’.