



Western Australia

**The Commonwealth Oil Refineries, Limited
(Private), Act 1940**

As at 01 Apr 2005

Version 01-a0-10
Published on www.legislation.wa.gov.au

The Commonwealth Oil Refineries, Limited (Private), Act 1940

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Defined terms

Western Australia

The Commonwealth Oil Refineries, Limited (Private), Act 1940

An Act to grant to the Commonwealth Oil Refineries, Limited, powers and provisions for the storage and supply of oil, liquid fuel, petroleum spirits, kerosene and petroleum products, and for other purposes.

Preamble

Whereas the construction of reservoirs and works as hereinafter provided, and the storage, supply and distribution therein, therefrom, and thereby of oil, liquid fuel, petroleum spirits, kerosene and petroleum products within the area hereinafter defined, would be of public and local advantage: And whereas The Commonwealth Oil Refineries, Limited, duly formed and registered as a limited company under the Companies Acts of the State of Victoria, is seized and possessed of or entitled to use and possession of North Fremantle town lot 23, and part of North Fremantle town lot 28 (and may hereafter acquire other lands within the limits hereinafter mentioned), and is willing and proposes at its own expense to construct and erect thereon the necessary storage tanks, reservoirs, and works for the storage, supply, and distribution of oil, liquid fuel, petroleum spirits, kerosene and petroleum products: And whereas it is desirable and expedient to grant to and confer upon the said company the powers, rights, and privileges hereinafter appearing:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled and by the authority of the same, as follows: —

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1. **Short title**

This Act may be cited as *The Commonwealth Oil Refineries, Limited (Private), Act 1940*¹.

2. **Interpretation**

In this Act, unless the context otherwise requires —

Company means The Commonwealth Oil Refineries, Limited², and shall include its assigns.

Crown lands includes lands vested in the Minister for Lands³ or any other Minister or person on behalf of the Crown.

Local authority means, within their respective jurisdictions, the mayor and councillors of the municipality of North Fremantle⁴, the Commissioner of Railways⁵, the Fremantle Port Authority, and The Metropolitan Water Supply, Sewerage, and Drainage Department⁶.

Railway has the meaning defined by the *Government Railways Act 1904*.

Street includes any street, highway, lane, public road, thoroughfare, passage, footpath, pavement, or place within the area hereinafter defined.

Undertaking means the receipt, storage, supply, and distribution of oil, liquid fuel, petroleum spirits, kerosene and petroleum products within the limits herein mentioned, and the making and constructing of all works connected therewith, and all other works authorised by this Act, and the doing of all things necessary or convenient therefor, subject to the provisions of this Act.

Wharf includes any wharf, dock, quay, jetty, landing stage, or other landing place, and approaches thereto.

Works means all buildings, erections, storage tanks, reservoirs, works, plant, machinery, apparatus, equipment, pipes, mains, connections, and all other works connected with and incidental to the undertaking or by this Act or in any other way authorised to be constructed or undertaken by the company.

[Section 2 amended: No. 5 of 1999 s. 21.]

3. Limits of the Act

The limits of this Act shall extend to and include —

- (a) the area within the boundaries of the municipality of North Fremantle⁴;
- (b) so much of the area of the lands and property vested in the Fremantle Port Authority as is contained within the inner harbour in the description of the Port of Fremantle under the *Port Authorities Act 1999*, or which may hereafter be vested in, acquired, or held by the port authority, or which may be placed or be in the custody, possession, or control of the port authority or over which the port authority may exercise authority or control;
- (c) so much of the area of any Crown lands or lands vested or which may become vested in the Honourable the Minister for Railways or the Minister⁷ of the Crown administering the *Government Railways Act 1904*, for the time being respectively as adjoins or abuts on the lands and property of the Fremantle Port Authority above described, or lies between the same lands and property and the boundaries of the municipality of North Fremantle⁴; and
- (d) so much of the area of any Crown lands as is affected by the works authorised by this Act to be carried out by the company.

[Section 3 amended: No. 5 of 1999 s. 21; No. 74 of 2003 s. 117.]

4. Power to construct works

Subject to the provisions and within the limits of this Act, the company may —

- (a) erect, construct, lay down, establish, fix, maintain, and repair all necessary works and do and perform all such other acts and things as may be thought necessary for

receiving, storing, supplying, and distributing oil, liquid fuel, petroleum spirits, kerosene and petroleum products in, on, or under any street or in, on, or under any Crown lands, or in, on, or under any railway or wharf;

- (b) open, break up, and interfere with any Crown lands, street, railway, or wharf, and any sewer, water pipe, drain, or tunnel on or under any Crown lands, street, railway, or wharf and may lay down and place in, on, or under any Crown lands, street, railway, or wharf, mains, conduits, service pipes, and other works for receiving, storing, supplying, and distributing oil, liquid fuel, petroleum spirits, kerosene and petroleum products, and also may from time to time repair, alter, or remove the same and for the purposes aforesaid may remove or use all earth and material in, on, or under such Crown lands, street, railway, or wharf:

Provided that the power to open, break up, or interfere with any Crown lands, railway, or wharf shall not be exercised without the consent of the Minister⁷ administering the *Land Act 1933*⁸, or the *Government Railways Act 1904*, or the *Port Authorities Act 1999*, respectively, subject to such conditions as the Minister may deem expedient:

Provided also, that all plans and specifications for the construction of the necessary works for receiving, storing, supplying, and distributing in, on, or under any street shall first be submitted to and approved of by the Minister for Works⁹.

[Section 4 amended: No. 5 of 1999 s. 21.]

5. Notice to be served and plan deposited before breaking up streets etc.

Before the company proceeds to open, break up, or interfere with any Crown lands, street, railway, wharf, sewer, water pipe, drain, or tunnel, it shall give to the Minister for Works⁹ and/or to the local authority concerned notice in writing of its intention

so to do not less than 3 clear days before commencing such work, and shall at the same time deposit with the Minister or local authority a plan setting forth the extent to and the manner in which it proposes to carry out such work, and the time at which it is intended to commence the same, and (except as hereinafter provided) no Crown lands, street, railway, wharf, sewer, water pipe, drain, or tunnel shall be opened, broken up, or interfered with unless under the superintendence of the Minister or local authority, and in accordance with the plan deposited as aforesaid:

Provided always, that if no officer appointed by the Minister or local authority attends at the time fixed in such notice and remains during the opening, breaking up, or interference with any street, railway, wharf, sewer, water pipe, drain, or tunnel the company may perform the work specified in such notice and set out in such plan without such superintendence:

Provided further, that in cases of emergency arising from accidents to or defects in the works necessitating the opening, breaking up of, or interference with any street, railway, wharf, sewer, water pipe, drain, or tunnel, such accidents or defects may be repaired without previous notice and without the deposit of any plan, but such notice shall be given and such plan shall be deposited as soon as possible after the commencement of the work or the necessity for the same has arisen.

6. Streets, etc., broken up to be reinstated without delay

Whenever the company opens, breaks up, or interferes with any Crown lands, street, railway, wharf, sewer, water pipe, drain, or tunnel, it shall, with all convenient speed, complete the work and fill in the ground and reinstate and make good the same to the satisfaction of the Minister or local authority, and carry away all rubbish occasioned by the work, and whilst any street, railway, or wharf shall be opened, broken up, or interfered with, the company shall cause the same to be properly guarded and sufficiently lighted for the warning of the public, and shall, when and as required by the Minister or the local authority, keep

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so much of any street, railway, or wharf as has been opened, broken up, or interfered with in good repair for 6 months after replacing and making good the same.

7. Penalty for breaking up without notice or delay in reinstating

If the company commits, permits, or suffers any act, delay, neglect, or omission contrary to the provisions of sections 5 and 6, it shall be guilty of an offence against this Act and be liable to a penalty not exceeding \$100 for every such offence, and an additional penalty of \$4 for each day during which any such neglect, omission, or delay shall continue after notice thereof by the Minister or local authority:

Provided that nothing in this section contained shall relieve the company from liability in respect of the right of action or remedy of any person for any act, delay, neglect, or omission on the part of the company contrary to the provisions of sections 5 and 6.

[Section 7 amended: No. 113 of 1965 s. 8(1).]

8. In cases of delay other parties may reinstate and recover expenses

If any such delay, neglect, or omission as aforesaid take place, the Minister or local authority may cause the work so delayed, neglected, or omitted, to be executed and performed, and all expenses so incurred shall be repaid to such Minister or local authority by the company:

Provided that nothing in this section contained shall render it compulsory for the Minister or local authority to execute or perform any such work, or render it liable for delay, neglect, or failure so to do.

9. Company to make compensation for any damage

The company shall do as little damage and cause as little inconvenience as may be in the execution of the powers conferred by this Act, and shall make compensation for any physical damage which may be done in the execution of such powers.

10. Power to local authority to alter situation of pipes etc.

If at any time the Minister or the local authority deems it fit, necessary, or expedient to require the company to raise, sink, or otherwise alter the situation of any works which shall have been erected, constructed, laid down, or fixed contrary to any of the provisions of this Act, or in breach of any condition imposed by the Minister as provided in section 4, or for any other reason, then the company shall, within a reasonable time, after being required so to do by notice in writing, raise, sink, or otherwise alter the situation of such works accordingly, and in default it shall be lawful for the Minister or the local authority to cause such works to be so raised, sunk, or the situation thereof otherwise altered, and the expenses thereof shall, if rendered necessary by reason of a breach by the company of any of the provisions of this Act, or of any such condition as aforesaid, or any other default of the company, be borne and paid by the company, and shall in any other case be borne and paid by the Minister or the local authority:

Provided that if in raising, sinking, or otherwise altering the situation of any of the works for any reason other than a breach by the company of any of the provisions of this Act, any injury shall be done to the same by any person employed by the local authority, full compensation shall be made by the local authority to the company for such injury.

11. Offences

Any person who —

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- (a) lays or causes to be laid any pipe to connect with any pipe belonging to the company without the consent of the company first had and obtained for that purpose; or
- (b) wilfully or by negligence removes, destroys, or damages any part of the works or other property of the company; or
- (c) alters the index to any meter or other recording or measuring apparatus for registering the quantity of oil, liquid fuel, petroleum spirits, kerosene or petroleum products supplied; or
- (d) erects or keeps erected any apparatus or fitting whereby oil, liquid fuel, petroleum spirits, kerosene or petroleum products may be obtained from any part of the works of the company without the consent in writing of the company first had and obtained for that purpose,

shall be guilty of an offence against this Act, and shall, without prejudice to any other right or remedy of the company to recover damages, be liable to a penalty not exceeding \$10 for every such offence.

[Section 11 amended: No. 113 of 1965 s. 8(1).]

12. Damages for accidentally damaging works etc.

Every person who unlawfully or wrongfully breaks, throws down, or damages any of the works the property of the company or under its control, shall pay to the company full compensation for such damage, which compensation may be recovered by the company in any Court of competent jurisdiction.

13. Court in which proceedings to be taken

All penalties in respect of offences under this Act may be recovered in a Court of summary jurisdiction.

14. Payment in lieu of rates etc.

- (1) The mains, conduits, service pipes, and other works of the company in, on, or under any Crown lands, street, railway, or wharf shall be deemed to be rateable land, but in lieu of the provisions of the *Municipal Corporations Act 1906*¹⁰, relating to the valuation of land and the making of rates in respect thereof, the company shall pay to the council in each and every year of the company's operations subsequent to the date on which it shall commence to construct its works and undertakings, a sum of \$70.
- (2) The amount to be paid by the company under this section shall be paid by half-yearly payments, the first of which shall be made on the expiration of 6 months from the date on which the company shall commence to construct its works and undertakings, and shall be in full satisfaction and discharge of all rates and rents, if any, payable to the council in respect of such mains, conduits, service pipes, and other works in, on, or under any Crown lands, street, railway, or wharf as aforesaid, or the easement or rights conferred by this Act with regard to such mains, conduits, service pipes, and other works.
- (3) In this section council means the mayor and councillors of the municipality of North Fremantle⁴.

[Section 14 amended: No. 113 of 1965 s. 8(1).]

15. Act to be deemed a public Act for certain purposes

- (1) This Act shall, for the purpose of evidence only, be judicially noticed as if it were a public Act and need not be specially pleaded.
- (2) This Act shall be amended only by a private Act, unless otherwise determined by a resolution of both Houses of the Parliament.

16. Deposit

The money deposited by the company with the Treasurer, in accordance with the Joint Standing Orders relating to Private Bills, shall be held by the Treasurer until completion of the work aforesaid, and thereupon be returned to the company.

17. Works completed or commenced before the commencement of the Act to be authorised works

Any works already completed or commenced by the company prior to the commencement of this Act shall for all purposes be deemed to be works authorised by this Act.

Notes

¹ This is a compilation of *The Commonwealth Oil Refineries, Limited (Private), Act 1940* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>The Commonwealth Oil Refineries, Limited (Private), Act 1940</i>	1940 (4 and 5 Geo. VI)	30 Dec 1940	30 Dec 1940
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Port Authorities (Consequential Provisions) Act 1999</i> s. 21	5 of 1999	13 Apr 1999	14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 117	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Reprint 1: *The Commonwealth Oil Refineries, Limited (Private), Act 1940* as at 1 Apr 2005 (includes amendments listed above)

² As at the date this reprint was prepared the company was called BP Australia Pty Ltd.

³ At the date this reprint was prepared the title of the Minister responsible for land administration was the Minister for Planning and Infrastructure.

⁴ The Municipality of North Fremantle became part of the City of Fremantle on 1 Nov 1961.

Under the *Local Government Act 1995* Sch. 9.3, municipal districts existing as at 1 July 1996 continued as districts under that Act and municipalities continued as local governments. Under Sch. 9.3 cl. 3(2) a reference to a municipality may, where the context so requires, be read as if it had been amended to include or be a reference to a local government under that Act.

⁵ The former Commissioner of Railways has been replaced by the Public Transport Authority of Western Australia.

⁶ At the date this reprint was prepared the title of the agency responsible for water supply, sewerage and drainage was the Water Corporation.

⁷ As at the date this reprint was prepared the title of the Minister administering these Acts was the Minister for Planning and Infrastructure.

⁸ Repealed by the *Land Administration Act 1997*.

⁹ At the date this reprint was prepared, the former Minister for Works was known as the Minister for Housing and Works.

¹⁰ Repealed by the *Local Government Act 1960* the relevant provisions of which were repealed by the *Local Government Act 1995*.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Company	2
Crown lands	2
Local authority	2
Railway	2
Street	2
Undertaking	2
Wharf	2
Works.....	2