

Western Australia

Petroleum Act 1936

This Act was repealed by the *Petroleum Act 1967* s. 3 (No. 72 of 1967) as at 5 Sep 1969 (see s. 2 and *Gazette* 5 Sep 1969 p. 2540). Though repealed, this Act continues to apply to the Barrow Island lease and renewals of it (see No. 72 of 1967 s. 134²).

Petroleum Act 1936

CONTENTS

1.	Short title	1
2.		1
3.	Act divided into Parts	1
Part I — Preliminary		
4.	Interpretation	3
5.	Saving provisions relating to licenses issued prior to this Act	5
5A.	Power to declare certain reserves Crown land for purposes of, and to apply, this Act thereto	6
5B.	Reserve No. A11648 Barrow Island Crown land for purpose of this Act	6
Part II — Administration		
6.	Act administered by the Minister through the Department	8
7.	Warden	8
Part III — General		
9.	Petroleum declared to be property of the Crown	9
10.	Reservation in Crown grants	9
11.	Power to obtain petroleum	9
12.	Land may be resumed	10
13.	Governor to have right of pre-emption of petroleum	11
14.	Helium	12
19.	Permit to explore, license to prospect, etc. not transferable without Minister's approval	12

Contents

19A.	Prohibitions against exploring, prospecting and mining for petroleum	13
20.	Land comprised in a license to prospect or a lease may be entered for certain purposes	13
21.	Power to agree as to amount of compensation	14
22.	Measure of compensation	14
23.	Where no agreement, warden to determine compensation	15
24.	Compensation already received to be deducted	15
25.	Owner of private land in vicinity of lease or license entitled to compensation	15
26.	Compensation for further damage	16
27.	Holder of permit, licensee or lessee not to commence operations on private land until compensation tendered or agreed upon	16
28.	Restriction on granting license or lease in relation to certain private lands	17
28A.	Compensation payable to lessee of pastoral lease for damage to improvements and consequential damage	17
28B.	Determination of partial compensation	18
28C.	Security for compensation	19
28D.	Matters for which compensation not payable	19
30.	Lien for wages	20
31.	Permission given for geological investigations	20

Part IV — Permits, Licenses, and Leases

Division 1 — Permits to Explore

32.	Minister may issue permits to explore	22
33.	Area of land for which permit may be issued	22
34.	Applications	22
35.	Provision where application for permit approved	22
36.	Same person may holder unlimited number of permits to explore	23
38.	Duties of holder permit to explore	23
39.	Minister may direct certain operations to be conducted	25
41.	Permit to explore may be cancelled	25

	Division 2 — Licenses to Prospect	
42.	Minister may grant licenses to prospect	26
44.	Applications	26
45.	Provisions when application for license to prospect approved	27
46.	Effect of license to prospect	28
48.	Fees for licenses to prospect	28
49.	Duties of license	28
54.	License to prospect may be cancelled	30
	Division 3 — Petroleum Leases	
55.	Governor may grant petroleum leases	30
55A.	Holder of license granted after 1 st January 1955, may acquire certain area of land	31
56.	Applications	32
58.	Shape of land in petroleum lease	32
59.	Term of lease	33
60.	Rent of lease	33
60A.	Lessee to furnish bond	34
61.	On approval of application for lease, applicant may enter land	34
62.	Lease instrument to be prepared and registered	34
63.	Covenants and conditions of petroleum leases	35
64.	Acceptance of rent not to be deemed a waiver	37
65.	Forfeiture of leases	37
66.	Lessee may surrender lease	38
69.	Minister to have access to lease	38
70.	Lessee may erect buildings and machinery on lease	38
71.	Royalties	38
72.	Return to be furnished	39
73.	Officers may examine books, etc.	39
74.	Payment of royalty: how enforced	40
75.	Penalties	40
76.	Exemption from labour conditions	40
77.	Lessee not to drill within prescribed distance of another lease	41
78.	Applications for exemption	41
	Division 4 — General	
78A.	Special obligations of licensees and lessees	43
78B.	Governor may create reserves	43

Contents

78C.	Power to include conditions in permit, license or lease to protect native fauna and flora	44
Part V — Caveats		
79.	Provisions relating to caveats	46
80.	No dealing to be registered while caveat in force	47
81.	Parties to a contract of sale may lodge caveat	47
Part VI — Administration of Justice		
82.	Establishment of Warden's Court	48
83.	Warden's Court a court of record	48
84.	Time and place for holding court	48
85.	Matters in respect of which Warden's Court to have jurisdiction	49
86.	Recovery of penalties	50
87.	Procedure	50
88.	Mode of trial: costs	51
89.	Persons under twenty-one may sue and be sued	52
90.	General powers of the court	52
91.	Interim injunction	52
92.	Order for possession	53
93.	How judgments and convictions to be enforced	53
94.	By whom warrants may be served	53
95.	No proceedings to be dismissed for informality	54
96.	Record and formal drawing up of judgments	54
97.	Additional power of the Court	54
98.	Orders may be enforced by commitment	55
99.	Punishment of persons guilty of contempt	55
100.	Interpleader	56
101.	Who may take affidavits	57
102.	Copies of decision or order to be supplied	57
103.	Proof of decision of Warden's court	57
104.	Special case may be reserved for Supreme Court	57
105.	Appeal to Supreme Court	58
106.	Appeal on fact or law	59
107.	Notice and grounds of appeal	59
108.	Setting down appeal	59
109.	Appeal may be by way of rehearing	60
110.	When appeal deemed to be abandoned	60
111.	Proceedings when appeal abandoned	60
112.	Order of appellate court and costs	61

Part VII — Miscellaneous

113.	Offences	62
114.	Recovery of penalties	63
115.	Persons unlawfully on land	63
116.	Regulations	63

Notes

	Compilation table	67
--	-------------------	----

Petroleum Act 1936

AN ACT relating to Petroleum.

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

1. Short title

This Act may be cited as the *Petroleum Act 1936*, and shall come into operation on a day to be fixed by Proclamation¹.

2.

This Act shall be read and construed subject to the provisions of section 4 of the *Western Australia Constitution Act 1890* (Imperial), so far as the same may be applicable.

3. Act divided into Parts

This Act is divided into Parts, as follows: —

PART I. — Ss. 4 and 5: — PRELIMINARY.

PART II. — Ss. 6 to 8: — ADMINISTRATION.

PART III. — Ss. 9 to 31: — GENERAL.

PART IV. — Ss. 32 to 78: — PERMITS, LICENSES, AND
LEASES.

Division 1. — Ss. 32 to 41: — Permits to explore.

Division 2. — Ss. 42 to 54: — Licenses to prospect.

Division 3. — Ss. 55 to 78: — Petroleum leases.

Division 4. — Ss 78A-78B: — General.

PART V. — Ss. 79 to 81: — CAVEATS.

PART VI. — Ss. 82 to 112: — ADMINISTRATION OF
JUSTICE.

PART VII. — Ss. 113 to 116: — MISCELLANEOUS.

[THE SCHEDULE: — Repealed by No. 8 of 1940s. 2.]

[Section 3 amended by No. 8 of 1940 s. 3.]

Part I — Preliminary

4. Interpretation

In this Act, subject to the context —

Aerial survey means the examination of the earth's surface by an observer in an aeroplane or other apparatus capable of maintaining itself in the air without the aid of solid support, and the delineation of features visible on the earth's surface, whether by means of photography or any other method.

Casinghead petroleum spirit means any liquid hydrocarbons obtained from natural gas by separation or by any chemical or physical process.

Crown land means all land which has not been dedicated to any public purpose, or reserved, or which has not been granted in fee or lawfully contracted to be so granted, or which is not held under lease for any purpose except pastoral or timber purposes. The term includes commons, State forests, timber reserves, and any reserve declared by the Governor to be Crown land for the purposes of this Act, and all land between high and low-water mark on the sea shore and on the margin of tidal rivers and below low-water mark, and also includes the sea-bed and subsoil of the submarine areas contiguous to the coast of Western Australia and its Dependencies to the extent seawards to which State jurisdiction for the time being extends.

Department means the Department of Mines.

Drilling means the perforation of the earth's surface crust by mechanical means not involving the descent of workmen into the hole caused by such perforation and whether such hole is vertical, inclined or horizontal. The term also includes all operations for preventing collapse of the sides of the hole made by drilling or for preventing such hole from being filled with extraneous materials including water.

Gas means natural gaseous hydrocarbons, whether associated with oil or not.

Geologist means a person who has received such training in the science of geology as the Minister may require, and who has been approved in writing by the Minister as a fit and proper person to carry out geological surveys under and for the purposes of this Act.

Geological survey includes the examination of areas in the field, the collection of necessary specimens of rocks and other materials, investigations in the laboratory, the preparation of maps and geological sections, and all other operations essential for the determination of the geological structure of any such area.

Geophysical survey means the examination of an area with the aid of accurate instruments of a prescribed type, with the object of determining some or all of the physical constituents of geological formation at or below the surface of the earth in such area.

Minister means the Minister for Mines, or the responsible Minister of the Crown for the time being charged with the administration of the *Mining Act 1904*.

Natural gas means gas obtained from bore holes and consisting primarily of hydrocarbons.

Payable, as applied to petroleum, means petroleum of such quantity and quality that it can under ordinary circumstances be obtained or produced with profit.

Permit to explore means a permit to explore with a view to the discovery of petroleum.

Petroleum includes all naturally occurring hydrocarbons in a free state, whether solid, liquid, or gaseous, and oxidation products thereof, which are contained in the rocks of the earth's crust and which are capable of extraction therefrom by purely mechanical methods not involving the application of heat or chemical processes.

Petroleum deposit means any accumulation of petroleum at or below the surface of the earth.

Private land means any land which has been or may hereafter be alienated from the Crown for any estate of freehold, or is or may hereafter be the subject of any conditional purchase agreement, or of any lease or concession with or without the right of acquiring the fee simple thereof, other than for pastoral or timber purposes.

Producing well means a bore hole drilled with the object of obtaining petroleum from a petroleum deposit.

Prospect or to prospect means to search for a petroleum deposit.

Reconnaissance survey means a rapid preliminary examination of an area in less detail than is required for a geological survey.

Sand includes any geological formation sufficiently porous to contain or absorb appreciable quantities of free petroleum, water, or gaseous substances.

Scout drilling means the drilling of bore holes for the purpose of procuring scientific information, and not with the immediate object of obtaining payable petroleum.

Test well means a bore hole drilled with the object of determining the presence or absence of petroleum at a particular locality.

Warden means the person for the time being holding office as Under Secretary for Mines for the purposes of the *Mining Act 1904*, and includes a stipendiary, police, or resident magistrate to whom the warden may at any time temporarily delegate his powers as warden under and for the purposes of this Act.

Water shut-off means all operations necessary for the exclusion of water from any source from any portion of a bore hole drilled in any area which may contain petroleum.

[Section 4 amended by No. 8 of 1940 s. 4; No. 66 of 1954 s. 2.]

5. Saving provisions relating to licenses issued prior to this Act

Every license to occupy Crown land for the purpose of prospecting for mineral oil issued prior to the commencement of

s. 5A

this Act under the provisions of the *Mining Act 1904*, shall, if still subsisting, continue in operation after the commencement of this Act as a license to prospect under this Act; and the holder thereof shall, by virtue of such license, be entitled to all the privileges and be subject to all the obligations of the holder of a license to prospect issued under this Act for the balance of the term of such first-mentioned license.

5A. Power to declare certain reserves Crown land for purposes of, and to apply, this Act thereto

- (1) Notwithstanding the *Land Act 1933*, or any other Act, the Governor, by proclamation, may declare that any land of the Crown or part thereof reserved for or dedicated to any public purpose under any Act and howsoever classified that —
- (a) is not Crown land within the meaning of that expression in section 4 of this Act; and
 - (b) is specified in the proclamation,

is Crown land for the purposes of this Act, and is land to which this Act applies, so long as the proclamation remains in force.

- (2) Subject to this Act, a proclamation made under subsection (1) of this section —
- (a) does not otherwise affect the purpose for which any land specified therein was reserved or dedicated; and
 - (b) may, at any time by proclamation, be revoked or varied.

[Section 5A inserted by No. 85 of 1966 s. 2.]

5B. Reserve No. A11648 Barrow Island Crown land for purpose of this Act

It is hereby declared that —

- (a) the land of the Crown comprising Barrow Island reserved for a public purpose under the *Land Act 1933*, as reserve No. 11648 and classified as of Class “A” shall

- be deemed to be, and to have always been, Crown land for the purposes of this Act;
- (b) a permit to explore or license to prospect issued or granted under this Act or purporting to have been so issued or granted before the commencement of this section in respect of the land comprised in the reserve referred to in paragraph (a) of this section, shall be deemed to have been always lawfully issued or granted under this Act and a petroleum lease may be issued under this Act in respect of that land in such form and containing such additional reservations, covenants and conditions in addition to those prescribed by or under this Act as the governor approves;
- (c) subject to paragraphs (a) and (b) of this section, a permit to explore or license to prospect issued or granted under this Act before the commencement of this section in respect of an area of land that includes any land of the Crown reserved for or dedicated to any public purpose under the *Land Act 1933*, or any other Act, and classified as of Class “A”, and which is not Crown land within the meaning of that expression in section 4 of this Act —
- (i) shall be deemed to have been always lawfully issued or granted under this Act;
 - (ii) shall, subject to this Act, continue to apply to so much of the land in respect of which it is granted that is not so reserved or dedicated and so classified;
 - (iii) shall not apply to the land or any part thereof so reserved or dedicated and so classified, until that land or part is declared pursuant to section 5A of this Act, to be Crown land for the purposes thereof.

[Section 5B inserted by No. 85 of 1966 s. 3.]

Part II — Administration

6. Act administered by the Minister through the Department

This Act shall be administered by the Minister through the department.

7. Warden

- (1) For the purposes of this Act the Governor may appoint persons to be called wardens who shall have the powers, duties and authorities conferred on them by this Act.
- (2) The warden may, with the approval of the Minister, temporarily delegate his powers as warden to any stipendiary, police, or resident magistrate when the warden by reason of absence, illness, or for any other cause is unable to act.
- (3) A stipendiary, police, or resident magistrate to whom the powers of warden are delegated as aforesaid shall, until such delegation is determined by the warden, have and exercise and perform all the powers and duties of the warden under this Act.

[Section 7 amended by No. 66 of 1954 s. 3.]

[8. Repealed by No. 8 of 1940 s. 2.]

Part III — General

9. Petroleum declared to be property of the Crown

Notwithstanding anything to the contrary contained in any Act, or in any grant, lease, or other instrument of title, whether made or issued before or after the commencement of this Act, all petroleum on or below the surface of all land within this State, whether alienated in fee simple or not so alienated from the Crown is and shall be deemed always to have been the property of the Crown.

10. Reservation in Crown grants

All Crown grants and leases under any Act relating to Crown land issued after the passing of this Act shall contain a reservation of all petroleum on or below the surface of the land comprised therein, and also a reservation of the right of access, subject to and in accordance with the provisions hereinafter contained, for the purpose of searching for and for the operations of obtaining petroleum in any part of the land.

11. Power to obtain petroleum

- (1) The Minister may by his officers, agents, or workmen search for petroleum, and conduct all operations deemed necessary for obtaining, refining, and disposing of petroleum produced in Western Australia; and, for such purposes, may enter upon and occupy, either temporarily or permanently —
 - (a) any vacant Crown land; or
 - (b) any land in the grant or subsisting lease of which from the Crown, whether issued before or after the commencement of this Act, petroleum has been reserved, or held under lease, license, or permit for pastoral or timber purposes only, without making any compensation, except for deprivation of the possession of so much of the surface, including any improvements thereon, as is required for the conduct of the said

s. 12

operations and surface rights of way thereto or therefrom; or

- (c) any mining tenement within the meaning of the *Mining Act 1904*, held for the purpose of mining for gold or other mineral, including coal, subject to the payment of compensation for any interference with the operations of the bolder thereof.
- (2) The Minister may by himself and any person acting with his authority, for the purpose of searching for petroleum, enter upon any other land alienated from the Crown for an estate in fee simple before the passing of this Act, or held under a subsisting lease from the Crown issued before the passing of this Act, and conduct all operations deemed necessary for that purpose, subject to the payment of compensation: Provided that the owner or lessee may require the land to be resumed under and subject to the next following section.
- (3) Any claim for payment of compensation under this section shall be made, dealt with, and determined under and in accordance with the provisions of the *Public Works Act 1902*, as if it were a claim for compensation made originally under that Act.

12. Land may be resumed

- (1) The Governor may from time to time under and subject to the *Public Works Act 1902*, resume on behalf of the Crown any land which in his opinion ought to be resumed for the purposes of this Act, and for the purpose of any such proposed resumption may cause the land to be inspected, surveyed, explored, and reported upon by such officers and workmen as he directs, all of whom may thereupon enter upon the land and carry out all necessary operations.
- (2) Upon any such resumption the owner shall be entitled to compensation, and the amount of such compensation shall be determined in the manner prescribed by the *Public Works Act 1902*.

- (3) Whenever it is proved to the satisfaction of the Compensation Court that damage has been sustained by a claimant by reason of the severance of the land resumed from other adjoining land of the claimant, the court may order that such adjoining land or some portion thereof shall also be resumed.

13. Governor to have right of pre-emption of petroleum

- (1) Upon the Governor proclaiming a state of national or State emergency, the Governor shall have the right of pre-emption of all petroleum produced by a lessee from any land held under a petroleum lease issued under this Act, or by the owner of land alienated by the Crown and which is subject to an express reservation of petroleum or an implied reservation under the terms of this Act, and of all the products of such petroleum; and in the event of the Governor exercising such right, the lessee or owner concerned shall take all reasonable steps to facilitate the delivery of the petroleum or products thereof, as the Governor may direct.
- (2) No lessee or owner aforesaid shall sell or otherwise dispose of petroleum produced by him, or the products thereof, without the written consent of the Minister.
Penalty: One thousand pounds.
- (3) Any sale or other disposition of petroleum or the products thereof made in contravention of subsection (2) hereof shall, as against the Governor when exercising the said right, be null and void.
- (4) The price to be paid for petroleum or products thereof purchased by the Governor pursuant to the said right of pre-emption shall, failing mutual agreement between the Minister and the vendor, be determined by arbitration under the provisions of the *Arbitration Act 1895*.

s. 14

14. Helium

- (1) All helium discovered by any licensee of land held under a license to prospect, or by any lessee of land then under a petroleum lease shall be the property of the Crown, and the person discovering the same shall forthwith report such discovery to the Minister.
- (2) If the Minister shall at any time desire any such helium to be developed and recovered the Crown shall reimburse the licensee or lessee a reasonable amount in respect of the cost of discovery (having regard to the estimated value of the helium) and the licensee or lessee shall have the option of undertaking such development and recovery by notice in writing to the Minister within one month of the notification to the licensee or lessee.
- (3) The amount of such reimbursement and the manner and terms of such development by the Minister and the licensee and lessee and in default of agreement shall be determined by arbitration under the provisions of the *Arbitration Act 1895*.

[Section 14 amended by No. 12 of 1951 s. 3.]

[15-18. Repealed by No. 8 of 1940 s. 2.]

19. Permit to explore, license to prospect, etc. not transferable without Minister's approval

- (1) A permit to explore, license to prospect or petroleum lease issued or granted under this Act or any share or interest therein shall not be transferred or assigned without the approval of the Minister being first obtained.
- (2) A transfer of a permit to explore, license to prospect or petroleum lease is of no effect until it is registered in the manner prescribed.
- (3) A transfer or assignment of any right, title, estate or interest in any permit to explore, license or prospect or petroleum lease to any person or corporation, not being a person domiciled within, or a corporation formed and registered within the

Commonwealth, as the case may be, shall not be registered unless the Minister is satisfied that there are exceptional reasons which justify the registration.

- (4) A permit to explore, license to prospect and petroleum lease issued or granted under this Act and the regulations may subject to this Act and the regulations be mortgaged or otherwise encumbered by the holder or lessee of the permit, license or lease and shall, in the case of a judgment or order of any court being obtained against the holder or lessee, or in the event of the death, bankruptcy or liquidation of the holder or lessee, be subject to law in the same manner and to the same extent as other property of the holder or lessee is subject.

[Section 19 inserted by No. 66 of 1954 s. 4.]

19A. Prohibitions against exploring, prospecting and mining for petroleum

Subject to the provisions of this Act, no person shall, after the commencement of this section, explore, or prospect, or mine for petroleum except in pursuance and under the authority of a permit to explore, or a license to prospect, or a petroleum lease, as the case may require, issued under this Act

[Section 19A inserted by No. 8 of 1940 s. 6.]

20. Land comprised in a license to prospect or a lease may be entered for certain purposes

- (1) Subject to the approval and consent in writing of the Minister, any person may enter upon any land comprised in any permit to explore, or any license to prospect or in any petroleum lease, and do any of the following things:—
- (a) erect poles and posts thereon, and carry overhead across or along such land electric lines, and from time to time repair, alter, or remove such poles, posts, or lines; and
 - (b) make or construct any tramways thereon, and from time to time repair, alter, or remove the same; and

s. 21

- (c) construct any road, race, or drain, or lay waterpipes under, over, across, or through such land; and
 - (d) for carrying out any of the said purposes, break or otherwise disturb the surface and soil of such land.
- (2) If the holder of a permit to explore, or of a license to prospect, or of a petroleum lease, suffers any estimable damage by reason of the exercise of any of the powers mentioned in subsection (1) hereof, the person exercising such powers shall be liable to compensate such holder in respect of the damage so caused.
- (3) In default of agreement between the parties concerned, the holder of the permit, or of the license or lease may make application to the warden in the prescribed manner to fix the amount of compensation to be paid, and the decision of the warden shall be final and binding on the parties concerned.

[Section 20 amended by No. 8 of 1940 s. 7.]

21. Power to agree as to amount of compensation

The applicant for any permit, license or lease may agree with the owner and occupier respectively of any private land as to the amount of compensation to be paid for the right to occupy the land in respect of which the application is made.

No such agreement shall be valid unless the same is in writing and signed by the parties thereto and filed in the Department of Mines.

[Section 21 amended by No. 8 of 1940 s. 8.]

22. Measure of compensation

Such compensation to be made to the owner and occupier shall be compensation for being deprived of the possession of the surface or any part of the surface of the private land, and for damage to the surface of the whole or any part thereof, and to any improvements thereon, which may arise from the carrying on of operations thereon or thereunder, and for the severance of

such land from other land of the owner or occupier, and for rights-of-way and for all consequential damages.

In assessing the amount of compensation no allowance shall be made to the owner or occupier for any gold, minerals, or mineral oil known or supposed to be on or under the land.

[Section 22 amended by No. 66 of 1954 s. 5.]

23. Where no agreement, warden to determine compensation

If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid, either party may upon a plaint in that behalf have the amount determined by the warden.

24. Compensation already received to be deducted

In determining the amount of compensation, the warden shall take into consideration the amount of any compensation which the owner and occupier or either of them have or has already received in respect of the damage for which compensation is being assessed, and shall deduct the amount already so received from the amount which they would otherwise be entitled to for such damage.

25. Owner of private land in vicinity of lease or license entitled to compensation

If any private land or improvement thereon adjoining or in the vicinity of the land the subject of any permit, license or lease under the provisions of this Act is injured or depreciated in value by any operations carried on by the lessee or his agents, or the licensee or his agents, or by reason of the occupation of any portion of the surface, or the enjoyment by the lessee or licensee of any right-of-way, the owner and occupier of such private land or improvements thereon shall severally be entitled to compensation for all loss and damage thereby sustained, and the amount of such compensation shall be ascertained in the same

s. 26

manner as is hereinbefore prescribed and the provisions of section 22 shall apply with the necessary modifications.

[Section 25 amended by No. 8 of 1940 s. 9.]

26. Compensation for further damage

If while in occupation of any land pursuant to the terms of any permit or to the terms of any license or pursuant to the terms of any lease the licensee or lessee or his agents cause any damage to the surface of any private land comprised within the boundaries of the land the subject of the permit, or of the license or lease belonging either to the same or any other owner, or to any improvement on any such private land, not being damage already assessed under the provisions hereinbefore contained, the owner and occupier of such private land or improvement shall severally be entitled to compensation for the damage sustained by each of them, and the amount of such compensation shall be ascertained in accordance with the provisions of section 22, which shall apply, with the necessary modifications.

[Section 26 amended by No. 8 of 1940 s. 10.]

27. Holder of permit, licensee or lessee not to commence operations on private land until compensation tendered or agreed upon

- (1) A holder of a permit to explore or license to prospect or the lessee of a petroleum lease shall not commence any operations on private land unless or until he has paid or tendered to the owner and to the occupier of the land the amount of compensation, if any, which he is required to pay under and as ascertained in accordance with this Act or he has made an agreement in writing with the owner or occupier as to the amount, times and mode of payment of the compensation, if any.
- (2) Where the owner is dead or cannot be found any payment of compensation may be made to the Minister in trust for the owner.

[Section 27 inserted by No. 66 of 1954 s. 6.]

28. Restriction on granting license or lease in relation to certain private lands

No license or lease shall be granted in respect of any private land which is —

[(a) deleted]

- (b) of less extent than half an acre within the limits of any municipality or township; or
- (c) used as a cemetery or burial place; or
- (d) at a less distance than 150 yards laterally from any cemetery or burial place or reservoir or substantial improvement,

unless in every case the consent in writing of the owner or trustee, as the case may be, of the land in question has first been obtained.

In this section the expression *reservoir* means any natural or artificial storage or accumulation of water, and includes a spring, dam, bore, and artesian well.

In every case the Minister shall be the sole judge whether any improvement is substantial.

[Section 28 amended by No. 8 of 1940 s. 12; No. 66 of 1954 s. 7.]

28A. Compensation payable to lessee of pastoral lease for damage to improvements and consequential damage

- (1) Where —
 - (a) the holder of a permit to explore;
 - (b) the holder of a license to prospect; or
 - (c) the lessee of a petroleum lease,

s. 28B

has by himself, his agent or employee or the exercise or purported exercise of any of the powers conferred by or under this Act or by reason of any operation conducted or other action taken by him or any of them caused damage to any improvements on land leased for pastoral purpose under the provisions of the *Land Act 1933*, he is liable, subject to the provisions of section 28D of this Act, to pay compensation to the lessee of the land so leased for the damage and for any damage which the lessee may in the opinion of the warden suffer as a consequence of the damage to the improvements.

- (2)(a) A person liable to pay compensation to a lessee under the provisions of this section may agree with the lessee as to the amount of compensation including compensation for consequential damage.
- (b) An agreement under paragraph (a) of this subsection is not valid unless it is in writing and signed by the parties or their agents and filed in the Department.
- (3) If an agreement is not made under subsection (2) of this section the lessee may commence an action for compensation before the warden or the person liable to pay compensation may so commence an action claiming a declaration as to the amount of compensation payable.

[Section 28A inserted by No. 66 of 1954 s. 8.]

28B. Determination of partial compensation

In an action under section 28A of this Act, if the warden considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction for the damage sustained by the lessee to the improvements and consequential damage, he may on the application of a party or of his own motion give judgment or make a declaration as to the compensation payable in respect of any specified period and in respect of the whole or part of the total claim or compensation.

[Section 28B inserted by No. 66 of 1954 s. 8.]

28C. Security for compensation

A warden before whom proceedings in relation to compensation have been commenced may, at any stage of those proceedings make an order against the person concerned in them and from whom compensation is sought, from commencing or as the case may be, continuing any operations under this Act until he has given such security as the warden thinks fit for payment of any compensation for which he may be or become liable.

[Section 28C inserted by No. 66 of 1954 s. 8.]

28D. Matters for which compensation not payable

- (1) Except where and then only to the extent agreed to by the parties or authorized by the warden compensation is not payable under the provisions of this Act to the lessee of land leased for pastoral purposes of the *Land Act 1933* —
 - (a) for deprivation of the possession of the surface of the land or any part of the surface;
 - (b) for damage to the surface of the land;
 - (c) where the lessee is deprived of the possession of the surface of any land, for severance of the land from any other land of the lessee;
 - (d) for surface rights of way and easements;
 - (e) for any diminution of or interference with the right of the lessee to the reasonable comfort and enjoyment or the peaceful and quiet occupation of the homestead or any other structure on or in the land; or
 - (f) for any disturbance of cattle, sheep or other stock whatsoever or any damage suffered by the lessee as a consequence of the disturbance.
- (2) Compensation is not payable for any gold, minerals or petroleum known or supposed to be on or under the land.

[Section 28D inserted by No. 66 of 1954 s. 8.]

s. 30

[29. *Repealed by No. 66 of 1954 s. 9.*]

30. Lien for wages

- (1) The amount for the time being due to all managers, clerks, miners, artisans, and labourers employed in or about any petroleum lease by or on behalf of the owner thereof in respect of their wages or other earnings in relation thereto, not exceeding four weeks' wages or earnings to each such person, shall be a first charge upon the mining tenement in priority to any mortgage, charge, or other encumbrance; and, in the winding up of a company, the amount due at the date of the winding-up order to such persons in respect of such wages or earnings, not exceeding four weeks' wages or earnings to each such person, shall be paid in priority to all other debts, secured or unsecured, of the company.

But until the expiration of one year from the commencement of this Act, such lien shall not prevail against any mortgage, charge, or other encumbrance entered into or incurred and registered before the commencement of this Act.

- (2) Such first charge shall include all costs awarded against any person or company in any proceeding before a court to recover such wages or earnings, and any costs, charges, or expenses properly incurred in enforcing such order.
- (3) The debts so charged upon a petroleum lease, and the debts so payable in priority to all other debts of a company, shall rank equally amongst themselves, and, if necessary, shall abate in equal proportions between themselves.

[Section 30 amended by No. 8 of 1940 s. 13.]

31. Permission given for geological investigations

Notwithstanding the grant of any permit, license or lease under this Act any geologist, with the written approval of the Minister, may enter on the area the subject of the permit, license or lease and make geological investigations in such manner as he thinks

fit, provided that he does not encroach within a quarter of a mile of any workings being conducted by the permit holder, licensee or lessee and that he has given previous written notice in the prescribed manner to the permit holder, licensee or lessee.

Part IV — Permits, Licenses, and Leases

Division 1 — Permits to Explore

32. Minister may issue permits to explore

- (1) Subject to this Act the Minister may —
 - (a) issue, or cause to be issued, permits to explore, and
 - (b) cancel any permit to explore issued under this Act.
- (2) The Minister may authorise any officer in the Department to issue permits to explore.

[Section 32 amended by No. 8 of 1940 s. 14.]

33. Area of land for which permit may be issued

The area of land for which a permit to explore may be issued shall comprise not less than one thousand square miles.

[Section 33 inserted by No. 8 of 1940 s. 15.]

34. Applications

- (1) Application for a permit to explore shall be made by the applicant in writing in the prescribed form, addressed to the Minister, and left at or sent to the office of the Under Secretary for Mines at Perth together with a fee of \$200.
- (2) Every application shall contain therein the prescribed particulars in relation to such application.

[Section 34 amended by No. 8 of 1940 s. 16.]

35. Provision where application for permit approved

- (1) Upon approval of an application for a permit to explore, the applicant shall be notified, and shall, within 14 days after such notification, deposit with the Under Secretary for Mines, in the prescribed form, a bond of the amount of \$2 000, executed by sureties of the prescribed number and who are approved by the

Minister as security for the due compliance by the permittee with the conditions of the permit.

- (2) Upon lodgment and acceptance of such bond, a permit to explore in the prescribed form signed by the Minister or an officer authorised by the Minister in that behalf shall be issued to the applicant.
- (3) A permit to explore shall remain in force for 2 years from the date of the issue thereof, but the Minister, upon receipt of an application in writing from the holder, may grant renewals of a permit successively for further periods of 12 months each for the whole or part of the area the subject of the application.
- (4) The holder of a permit to explore shall be entitled thereunder to the exclusive right to explore for petroleum the are of land specified in the permit.
- (5) The holder of a permit to explore may at any time with the consent of the Minister surrender his permit to explore either in respect of the whole or of any part of the area of land mentioned in the permit.

[Section 35 inserted by No. 8 of 1940 s. 17; amended by No. 46 of 1967 s. 2.]

36. Same person may holder unlimited number of permits to explore

There shall not be any limit to the number of permits to explore which may be granted to the same person.

[Section 36 inserted by No. 8 of 1940 s. 18.]

[37. Repealed by No. 8 of 1940 s. 2.]

38. Duties of holder permit to explore

- (1) The holder of a permit to explore shall, subject to this Act and the regulations —

- (a) within 3 months from the date of the issue of such permit, employ and arrange for a geologist to commence a reconnaissance, aerial, geological or geophysical survey within the oil province in respect whereof the permit is issued; and
- (b) furnish to the Minister within 30 days after the end of each quarterly a written report in the prescribed form of operations conducted during each quarter ending the last day of March, June, September and December of each year and, within a reasonable time after the end of each quarter, geological maps of the portion of the area of land which has been surveyed as aforesaid; and
- (c) carry out survey operations within the area of land specified in the permit to explore with due diligence and to the satisfaction of the Minister during the currency of such permit; and
- (d) keep an adequate record of all operations conducted, collect geological specimens of outcrops, fossils, rocks, materials encountered in drilling, take all reasonable precautions to ensure that all such materials and records shall be clearly and permanently labelled and stored in such a way as to prevent deterioration or loss thereof, and shall at all reasonable times allow the Minister or any person authorised by the Minister or the Under Secretary for Mines to examine and inspect the same;
- (e) immediately and firstly inform the Minister of the occurrence of any petroleum encountered during the course of any scout drilling on the land in respect of which the permit is issued;
- (f) immediately furnish to the Minister in writing full details of —
 - (i) the composition and physical properties of the petroleum encountered during the course of any scout drilling on the land in respect of which drilling on the land in respect of which the permit

is issued as determined by standard commercial methods and analyses;

- (ii) the nature and extent of the oil bearing formation so encountered and its geological age.
- (2) The holder of a permit to explore shall not undertake any drilling operations without the consent in writing of the Minister, and such consent shall not provide for other than scout-drilling operations. In the event of scout-drilling operations being approved, the core from the bore, which must consist of 66 per centum of the depth drilled, shall, unless the Minister shall otherwise approve, be preserved intact in the custody of some person and in such manner as may be prescribed for a period of not less than 12 months.

[Section 38 amended by No. 8 of 1940 s. 19; No. 12 of 1951 s. 4; No. 66 of 1954 s. 10.]

39. Minister may direct certain operations to be conducted

The Minister may, at any time during the term of a permit to explore, by notice in writing direct that the holder of such permit shall conduct further operations, to be specified in the notice, in connection with or as part of the survey operations to be conducted by such holder in accordance with this Act.

[Section 39 amended by No. 12 of 1951 s. 5.]

[40.] *Repealed by No. 8 of 1940 s. 2.]*

41. Permit to explore may be cancelled

If the holder of a permit to explore shall by any act or omission make default in the due observance of or compliance with his duties and obligations under this Act or the regulations the Minister may forthwith, by notice in writing in the prescribed form, cancel the permit to explore, and thereafter such permit shall cease and determine.

[Section 41 amended by No. 12 of 1951 s. 6.]

Division 2 — Licenses to Prospect

42. Minister may grant licenses to prospect

- (1) Subject to this Act, the Minister may —
 - (a) grant or cause to be granted to the holder of a permit to explore, who has carried out his duties and obligations as such holder under this Act to the satisfaction of the Minister, a license to prospect for petroleum upon any area of land, being portion of the area of land specified in his permit to explore, and to be defined and described in the license;
 - (b) grant or cause to be granted one or more licenses to prospect to the same person in respect of different areas of land at the same time;
 - (c) cancel any license to prospect granted under this Act.
- (2) The Minister may authorise any officer in the department to grant licenses to prospect.

[Section 42 amended by No. 8 of 1940 s. 20.]

[43. Repealed by No. 8 of 1940 s. 2.]

44. Applications

- (1) Application for a license to prospect shall be made by the applicant in writing in the prescribed form, addressed to the Minister, and left at or sent to the office of the Under Secretary for Mines at Perth.
- (2) Every application shall contain therein the prescribed particulars in relation to such application, and shall be accompanied by a plan or sketch of the area of land for which the license to prospect is required.
- (3) A license to prospect shall not be granted in respect of an area of —
 - (a) more than 200 square miles; or

- (b) except with the approval of the Minister, less than 8 square miles.
- (4) Before a license is granted by the Minister, the applicant shall furnish a bond in the prescribed form, with such surety as the Minister approves, in such sum as the Minister determines, not being less than \$2 000.

[Section 44 amended by No. 8 of 1940 s. 21.]

45. Provisions when application for license to prospect approved

- (1) When an application for a license to prospect is approved, notice thereof shall be given to the applicant, and, upon payment of the fee for the same as hereinafter prescribed, the license to prospect shall be granted to the applicant.
- (2) Every license to prospect shall be in the prescribed form, signed by the Minister or the authorised officer granting the same, and shall state therein the date and place of the granting thereof, the oil province within which and the area of land for which it is granted.
- (3) Every license to prospect granted before the 1st day of January 1955 shall remain in force for 4 years from the date of issued thereof, but the holder may apply to the Minister for, and the Minister may grant, 2 renewals thereof for a further period of one year each.
- (3a) A license to prospect granted on or after the 1st day of January 1955 shall remain in force for a period of 2 years from the date it is issued, but the holder may apply to the Minister for, and the Minister may grant, 3 renewals of the license for a further period of 1 year each.
- (4) The holder of a license to prospect may at any time with the consent of the Minister surrender his license to prospect either in respect of the whole or of any part of the area of land mentioned in the license.

[Section 45 amended by No. 8 of 1940 s. 22; No. 66 of 1954 s. 11.]

46. Effect of license to prospect

A license to prospect shall, subject to this Act and the regulations, entitle the holder thereof to the exclusive right during the continuance thereof to prospect for petroleum within the area of land in respect whereof the license is granted.

[Section 46 amended by No. 8 of 1940 s. 23.]

[47. Repealed by No. 8 of 1940 s. 2.]

48. Fees for licenses to prospect

The fee to be paid for and in respect of a license to prospect shall, in respect of the first year of the currency of the license, be five shillings for every square mile of the area of land specified in the license, with a maximum fee of twelve pounds ten shillings, and in respect of every subsequent year of the currency of the license, be ten shillings for every square mile aforesaid per annum, with a maximum fee of twenty-five pounds per annum.

[Section 48 inserted by No. 8 of 1940 s. 24.]

49. Duties of license

- (1) The holder of a license to prospect shall, subject to this Act and the regulations —
 - (a) within 6 months from the date of the granting of the license to prospect, or within such further time as the Minister may allow, commence and thereafter carry out a detailed geological survey of the area of land in respect of which the license was granted, and also perform and carry out such other operations upon the said area as the Minister may reasonably require; and
 - (b) keep an adequate record of all surveys made and all operations conducted, collect geological specimens of

outcrops, fossils, rocks, and materials encountered, take all reasonable precautions to ensure that all such materials and records shall be clearly and permanently labelled and stored in such a way as to prevent deterioration or loss thereof, and shall at all reasonable times allow the Minister or any person authorised by the Minister or the Under Secretary for Mines to enter upon the said area of land to inspect the operations then being conducted thereon and to examine and inspect the said records and materials; and

- (c) furnish to the Minister on the prescribed form within 30 days after the end of each month a written report giving particulars of the work done during such month;
 - (d) immediately and firstly inform the Minister of the occurrence of any petroleum encountered during the course of any drilling operations on the land in respect of which the license is granted;
 - (e) immediately furnish to the Minister in writing full details of —
 - (i) the composition and physical properties of the petroleum encountered during the course of any drilling operations on the land in respect of which the license is granted;
 - (ii) the nature and extent of the oil bearing formation so encountered and its geological age.
- (2) The holder of a license to prospect shall not undertake any drilling operations or drill any test well without the consent in writing of the Minister, which consent shall not be reasonably withheld. The equipment, materials and technique to be used in such drilling shall be in conformity with recognized oilfield practice.

[Section 49 amended by No. 12 of 1951 s. 7; No. 66 of 1954 s. 12.]

[50-53. Repealed by No. 8 of 1940 s. 2.]

54. License to prospect may be cancelled

If the holder of a license to prospect shall by any act or omission make default in the due observance of or compliance with his duties and obligations under this Act or the regulations and such default shall continue for a period of 90 days after the Minister shall have given to such holder notice in writing, to remedy the same then, unless such holder shall furnish the Minister with reasons acceptable to the Minister for his inability to do so the Minister may forthwith, by notice in writing in the prescribed form, cancel the license to prospect, and thereafter such license shall cease and determine.

[Section 54 amended by No. 12 of 1951 s. 9.]

Division 3 — Petroleum Leases

55. Governor may grant petroleum leases

- (1) Subject to the provisions of this Act and the regulations, the Governor may grant to any person who has complied with the provisions of Divisions 1 and 2 of this Part of this Act a petroleum lease of land for the purpose of obtaining petroleum from the land.
- (2) Unless the Governor is satisfied, that exceptional circumstances justify the grant, transfer or assignment of it, a petroleum lease shall not be granted, transferred or assigned to any —
 - (a) person not domiciled; or
 - (b) company not formed,within the Commonwealth.
- (3) A petroleum lease shall not be granted in respect of any area of land —
 - (a) exceeding 100 square miles; or
 - (b) unless approved by the Minister, of less than 4 square miles.

- (4) Where the holder of a license to prospect discovers petroleum in the area of land in respect of which the license is granted, if the license is granted on or before the 1st day of January 1955, he shall be entitled as a right by force of the provisions of this subsection, to select within 6 months of the discovery or within such further time as the Minister may in his discretion allow, so much of that area as he requires to hold under petroleum lease, and

upon making application in the manner and paying the fees prescribed,

to a grant of such number of petroleum leases of that land as shall be necessary to comply with that entitlement.

[Section 55 inserted by No. 25 of 1949 s. 3; amended by No. 12 of 1951 s. 10; No. 66 of 1954 s. 13.]

55A. Holder of license granted after 1st January 1955, may acquire certain area of land

- (1) When the holder of a license to prospect discovers petroleum in the area of land in respect of which the license is granted, if the license is granted after the 1st day of January 1955, he is entitled to select within 6 months of the discovery or within such extended time as the Minister may allow, so much of that area not exceeding one-half as he requires to hold under petroleum lease.
- (2) The remaining one-half of the area of the land together with any other part of the area which the holder does not require by force of this Act is reserved to Her Majesty to be disposed of in accordance with the provisions of this Act and thereupon the license to prospect granted in respect of the area so reserved shall so far as it relates to the area so reserved forthwith lapse and be of no force and effect.
- (3)(a) Where, under the provisions of section 78B of this Act, the Minister disposes of any land which is reserved pursuant to the provisions of subsection (2) of this section, it shall be disposed

of upon such terms and conditions including the title by which the land may be held, as the Governor may determine.

- (b) The Minister shall notify in writing the person who held the license to prospect in respect of the land at the time it was so reserved, of the terms and conditions upon which the land is to be disposed of and that person has the first right to acquire the land or any part of it upon those terms and conditions.
- (c) If the person decides to exercise the right granted to him under the provisions of paragraph (b) of this subsection, he shall notify the Minister in writing of his decision within 90 days of the receipt by him of the notice referred to in that paragraph.

[Section 55A inserted by No. 66 of 1954 s. 14.]

56. Applications

- (1) Every application for a petroleum lease shall be made in the prescribed form, and shall be lodged with the Under Secretary for Mines at his office in Perth together with the prescribed rent and survey fee.
- (2) The applicant shall state in his application —
 - [(a) deleted]*
 - (b) the name by which the lease is to be known; provided that such name shall be subject to the approval of the warden.

[Section 56 amended by No. 8 of 1940 s. 26; No. 66 of 1954 s. 15.]

[57. Repealed by No. 66 of 1954 s. 16.]

58. Shape of land in petroleum lease

The shape of the area of land in respect of which application is made for a petroleum lease shall be that of a rectangle with boundaries in the direction of the meridian and at right angles to the meridian and the length shall not exceed twice the width but

if by reason of other boundaries or physical features this shape cannot be observed, the shape shall be as nearly in accordance with the requirements of this section as circumstances permit.

[Section 58 inserted No. 66 of 1954 s. 17.]

59. Term of lease

- (1) Subject to the provisions of this Act and the regulations —
 - (a) a petroleum lease shall be for a term of 21 years;
 - (b) on the expiration of that term the lessee of a petroleum lease shall be entitled to a renewal of the lease for any further period during which petroleum in payable quantities is produced from at lease one well on the land if —
 - (i) at any time during the last 6 months of the term referred to in paragraph (a) of this subsection, he make application in the prescribed manner to the Minister for the renewal and pays the prescribed fees; and
 - (ii) he has, during that term, observed the provisions of this Act and the regulations and the lease.
- (2) The term of a petroleum lease shall commence on the date of notification of the approval of the application for such lease in the *Government Gazette*.

[Section 59 amended by No. 8 of 1940 s. 28; No. 25 of 1949 s. 4.]

60. Rent of lease

The rent payable for a petroleum lease shall be calculated at the rate of \$20 per annum for every square mile or portion of a square mile of the area of land comprised in the lease, and such annual rent shall be payable in advance at the beginning of each year of the currency of the lease.

[Section 60 inserted No. 8 of 1940 s. 29.]

60A. Lessee to furnish bond

The lessee of a petroleum lease shall, within one month after publication of the notice of approval in the *Government Gazette*, deposit with the Under Secretary for Mines, in the prescribed form, a bond of the amount of \$2 000, executed by sureties of the prescribed number who are approved by the Minister, as security for the due compliance by the lessee with the conditions of the lease.

[Section 60A inserted No. 8 of 1940 s. 30.]

61. On approval of application for lease, applicant may enter land

When an application for a petroleum lease has been approved, notice of such approval shall be published in the *Government Gazette* and also be given to the applicant; and upon receipt of such notice and compliance by the applicant with the provisions of section 60A of this Act, the applicant shall be at liberty to enter upon the land in respect of which the lease is approved for the purpose of such lease as if he were already the lessee thereof, but such entry shall be subject to the terms and conditions of the lease to the same extent as if the instrument of lease had already been executed and issued to the applicant:

Provided that, if the land the subject of such approved application has not already been surveyed prior to the application being approved, the application shall be deemed to have been approved subject to the condition that such land is found to be available after a survey thereof is made.

[Section 61 amended by No. 8 of 1940 s. 31.]

62. Lease instrument to be prepared and registered

As soon as reasonably may be after an application for a petroleum lease has been approved, a lease of the land applied for shall be prepared in the prescribed form in duplicate and executed by the Minister and registered in the department. One

copy thereof shall be endorsed "Original" and shall be filed in the department, and the other copy shall be endorsed with the word "Duplicate" and shall be issued to the applicant upon payment of the fee of one pound for the same.

63. Covenants and conditions of petroleum leases

- (1) A petroleum lease of whatever nature shall contain the following reservations, covenants, and conditions, namely:—
- (a) A reservation of power to authorise mining on the land under the provisions of the *Mining Act 1904*, for any purpose other than the production or obtaining of petroleum but not such as to interfere with, encroach upon or endanger the petroleum operations;
 - (b) A covenant by the lessee to pay rent in the amount, in the manner, and at the times provided in this Act or the regulations;
 - (c) A covenant by the lessee to pay in respect of petroleum produced or obtained from the land royalty as assessed under and in accordance with the provisions of section 71 of this Act;
 - (d) A covenant by the lessee to work the land in accordance with recognized oilfield practice and in compliance with the regulations, unless exemption or partial exemption is granted in such manner as may be prescribed;
 - (e) A covenant by the lessee that so long as any petroleum or any product thereof obtained from any land held by him under the petroleum lease, can be consumed in Australia, he shall, if so required by the Minister, ensure that that petroleum and product thereof shall be disposed of only consumption in Australia;
 - (f) A covenant by the lessee that, if so required by the Minister, the lessee shall, at his option, refine or cause to be refined, or offer for sale for refining —
 - (i) in the State within a time to be mutually agreed between the Minister and the lessee; or

- (ii) elsewhere in Australia —
such of the petroleum produced from the land held by him under the petroleum lease as is required for consumption in Australia: Provided that such requirement shall not extend to any production of petroleum of a nature which would not normally be refined;
- (g) A covenant by the lessee to comply with this Act and the regulations;
- (h) A covenant by the lessee, unless prevented from doing so by circumstances beyond the power and control of the lessee, to use the land continuously and bona fide exclusively for the purpose for which it is demised and in accordance with this Act and the regulations;
- (i) A covenant by the lessee not to assign, underlet, or part with the possession of the land or any part thereof without the previous consent in writing of the Minister, or an officer acting with his authority which consent shall not be reasonably withheld;
- (j) A condition for the forfeiture of the lease in the event of any breach of any covenant or condition by the lessee and the failure of the lessee to remedy the same within 90 days after the Minister shall have given to the lessee notice in writing to make good the same;
- (2) When an application for a petroleum lease has been approved, and notwithstanding that the lease instrument has not been executed, and whether or not the applicant shall have entered upon the land as provided for in section 61 of this Act, the applicant and his assigns shall be deemed to have entered into the covenants and to have accepted the reservations and conditions provided for in subsection one hereof, and shall in all respects be bound thereby.
- (3) For the purposes of this section, the expression “Australia” includes the whole of the Commonwealth of Australia,

including any territory governed by the Commonwealth of Australia under mandate or trusteeship.

[Section 63 amended by No. 8 of 1940 s. 32; No. 25 of 1949 s. 5; No. 12 of 1951 s. 11.]

64. Acceptance of rent not to be deemed a waiver

The demand or acceptance of rent by the Minister in respect of any petroleum lease shall not be deemed to be a waiver of the right of the Crown or the Minister to enforce the observance of any covenant, condition, or regulation under or subject to which such lease is held, or the right of forfeiture of such lease for breach of any such covenant, condition, or regulation committed before the receipt of such rent.

65. Forfeiture of leases

In case any petroleum lease shall be liable to voidance, cancellation, or forfeiture for breach of covenant or otherwise, the Governor may, subject to this Act, declare such lease void, and upon publication of notice of such declaration in the *Government Gazette*, all the estate and interest in the lease of the lessee and every person claiming under him shall cease and determine; and the production of the *Government Gazette* containing a notice as aforesaid shall be conclusive evidence in all courts of a breach of covenant by the lessee or of other cause sufficient to authorise such declaration, and that all the estate and interest in the lease of the lessee and every person claiming under him have been lawfully determined by re-entry:

Provided that the Governor may, for any cause which he may deem sufficient, by any subsequent notice in the *Government Gazette* cancel any notice of voidance, cancellation, or forfeiture, and reinstate the lease for the benefit of the lessee, or any person lawfully claiming under him, as of his former estate.

66. Lessee may surrender lease

A lessee may at any time with the consent of the Governor surrender his lease.

[67, 68. Repealed by No. 66 of 1954 s. 16.]

69. Minister to have access to lease

The Minister and officers authorised by him in that behalf shall at all reasonable times have access to any lease, buildings situated thereon, and workings therein, and to all books and records of the lessee relating to such lease, and the operations carried on thereon, for the purpose of examining and inspecting the same.

[Section 69 amended by No. 12 of 1951 s. 12.]

70. Lessee may erect buildings and machinery on lease

The lessee of a petroleum lease may erect thereon any buildings or machinery required for use by him in connection with such lease or the operations to be carried on thereon.

71. Royalties

- (1) Subject to the provisions of this section, lessee of a petroleum lease shall pay to the Crown royalty computed at the rate specified in the lease on the gross value of all crude petroleum, casinghead petroleum spirit, and natural gas produced or obtained from the land comprised in the lease.

For the purpose of this subsection, the gross value of the products mentioned therein respectively shall be such gross value as from time to time at intervals of not less than 12 months is mutually agreed upon by the Minister and the lessee, or, in default of such agreement, is determined by reference to arbitration under the provisions of the *Arbitration Act 1895*.

- (2) Such royalty shall not be payable in respect of —

- (a) casinghead petroleum spirit or natural gas, which is unavoidably lost or is returned to the natural reservoir;
 - (b) crude petroleum, casinghead petroleum spirit, or natural gas, which is used by the lessee for the purposes of mining operations as approved by the Minister;
 - (c) any natural gas or product thereof which is not sold.
- (3) The rate of royalty to be specified in the lease shall be fixed by the Minister at the time of granting the lease, and shall not be less than 5 per centum or more than 15 per centum of the gross value determined as aforesaid of the product in relation to which the royalty is to be payable.
- (4) There shall be set off against the amount of royalty payable in any year under this section the amount of any rent paid by the lessee under the lease in respect of that year; and, where the amount of rent so paid exceeds the amount of royalty so payable, no royalty shall be payable in that year.

[Section 71 inserted by No. 8 of 1940 s. 33; amended by No. 66 of 1954 s. 18.]

72. Return to be furnished

The lessee of every petroleum lease in respect of which royalties are payable shall, during the first week of every month, forward to the Under Secretary for Mines a return in the prescribed form showing the amount of crude petroleum casinghead petroleum spirit and natural gas obtained from such lease and sold during the last preceding month, together with such other particulars as may be necessary to ascertain the amount of the royalty payable, together with the amount due as royalty thereon.

[Section 72 amended by No. 8 of 1940 s. 34.]

73. Officers may examine books, etc.

Any officer appointed for that purpose by the Minister shall at any reasonable time have access to the books and accounts of such petroleum lease, and may examine the same, for the

purpose of ascertaining the amount of royalty payable in respect of the petroleum obtained from such lease.

[Section 73 amended by No. 8 of 1940 s. 35; No. 12 of 1951 s. 13.]

74. Payment of royalty: how enforced

If the amount of royalty due upon any products obtained from any petroleum lease is not paid within 30 days after such amount has been ascertained, any officer appointed for that purpose by the Minister may seize and take possession on behalf of the Crown of any products obtained from such lease, and the lease itself may be cancelled by the Governor, and the amount of royalty due shall, until paid or enforced as aforesaid, be a debt due from the lessee to the Crown.

[Section 74 amended by No. 8 of 1940 s. 36.]

75. Penalties

Any lessee of a petroleum lease who neglects or refuses to furnish returns to the Under Secretary for Mines as hereinbefore required, or who wilfully makes a false return, and any person who impedes or obstructs any officer appointed by the Minister to perform any duty under section seventy-three or seventy-four of this Act, shall be guilty of an offence.

Penalty: \$200.

76. Exemption from labour conditions

- (1) Subject to this Act and the regulations, total or partial exemption from the covenants to work the land in respect of any petroleum lease may be granted for any period not exceeding in any one instance a period of six months in any year to the lessee, upon satisfactory proof by him that any of the following grounds exist:—
 - (a) Time is required for the erection of machinery;
 - (b) Scarcity of labour;

- (c) The death of the lessee or one of several joint lessees;
 - (d) The lease is for some other cause temporarily unworkable;
 - (e) The title to the lease is in dispute;
 - (f) Want of capital after a fair sum has been spent on the lease in erection of machinery, or for work, labour and material;
 - (g) Bankruptcy or liquidation proceedings against the lessee are pending.
- (2) For the purposes of this section, a year shall be the year commencing on the first day of January.

77. Lessee not to drill within prescribed distance of another lease

- (1) The holder of a petroleum lease shall not drill within three hundred and thirty feet of the boundary of any other leased area without the approval in writing of the Minister.
- (2) When a well is defined by the Minister's adviser to be a gas-well it shall be closed down by the lessee immediately, and shall be operated only under instructions from the Minister.
- (3) Non-observance by a lessee of the provisions of this section shall be deemed a breach of the conditions of this lease.

78. Applications for exemption

- (1) A lessee desiring exemption from covenants to work the lands the subject of any petroleum lease shall make application in the prescribed form, stating the period of time for which such exemption is required, and in relation to such application the following provisions shall apply:—
 - (a) Where exemption is required for a period not exceeding fourteen days, and no previous exemption has been granted in the year in which the application is made, the application shall be made to the warden at his office, and

the warden may grant such exemption upon such evidence by the lessee as he may deem sufficient;

- (b) Where exemption is required for a period not exceeding fourteen days, and previous exemption has been granted in the year in which the application is made, or where exemption is required for a period of time exceeding fourteen days, the application shall be made to the warden in the Warden's Court;
 - (c) Where the application for exemption is made in the Warden's Court, any person may appear and oppose such application, and in such case the application shall be heard in accordance with the procedure prescribed for the hearing of ordinary applications in the Warden's Court. Evidence for and against the application shall be taken on oath, reduced to writing by the warden, and signed by the witness;
 - (d) The warden shall not give any decision on any such application, but shall refer to the Minister the evidence taken, together with his own notes thereon, and together with such recommendation in relation to the granting or refusing of the application as he thinks just in the circumstances;
 - (e) Upon receipt of such recommendation and accompanying documents, the Minister may grant or refuse, either wholly or in part, the application for exemption, and his decision shall be absolutely final;
 - (f) The decision of the Minister shall be communicated to the lessee by the Under Secretary for Mines in the prescribed manner.
- (2) Notwithstanding anything to the contrary contained in subsection one hereof, a lessee may apply direct to the Minister for exemption for a period not exceeding fourteen days, and, provided no previous exemption has been granted in the year in which such application is made, the Minister may grant such

exemption upon such evidence by the lessee as the Minister shall deem sufficient.

Division 4 — General

[Heading inserted by No. 8 of 1940 s. 37.]

78A. Special obligations of licensees and lessees

- (1) Every licensee and lessee shall maintain all apparatus and appliances and all wells capable of producing petroleum on the land comprised in his license or lease in good repair and condition and shall execute all mining operations on the land in a proper and workmanlike manner, in accordance with methods and practice customarily used in good oil field practice, and, particularly, shall take all practical steps in order —
 - (a) to control the flow and to prevent the escape or waste of petroleum discovered in or found on the said land;
 - (b) to preserve the said land for production operations;
 - (c) to prevent damage to adjacent petroleum-bearing strata;
 - (d) to prevent the entrance of water through wells to petroleum-bearing strata ; and
 - (e) to prevent the escape of petroleum into any water well, spring, stream, river, lake, reservoir, estuary, or harbour.
- (2) Every licensee and lessee shall comply with any directions from time to time given to him in writing by the Minister relating to any of the matters mentioned in subsection (1) hereof.

[Section 78A inserted by No. 8 of 1940 s. 37.]

78B. Governor may create reserves

- (1) The Governor may from time to time by notice in the *Gazette* reserve to Her Majesty any Crown land defined in the notice.
- (2) Where land is reserved under the provisions of subsection (1) of this section or under the provisions of section 55A of this Act, a person shall not apply for or be granted a permit to explore, a

license to prospect or a petroleum lease in respect of the land whilst it remains so reserved.

(3) (a) Land reserved under —

- (i) this section; or
- (ii) section 55A of this Act and in respect of which land the first right of acquisition granted under subsection (3) of that section has not been exercised,

may be disposed of by the Minister subject to this Act, by sealed tender or public auction, on such terms and conditions, at such times and such places as he thinks fit.

- (b) Notice of the calling of tenders or the holding of an auction under this section, shall be advertised by the Minister once in the *Gazette* and once in a newspaper circulating throughout the State.
- (c) Where land is to be disposed of under this section by tender the Minister is not required to accept the highest or any other tender that may be received in respect of the land.
- (4) Where land is disposed of under the provisions of this section it ceases to be reserved and the purchaser shall be granted such title to the land under this Act as is approved by the Minister, and the title so granted is subject in all respects to the provisions of this Act and the regulations for the time being in force.

[Section 78B inserted by No. 66 of 1954 s. 19.]

78C. Power to include conditions in permit, license or lease to protect native fauna and flora

- (1) Where land is declared to be Crown land for the purposes of this Act pursuant to section 5A thereof, no permit to explore, license to prospect or petroleum lease shall be issued or granted under this Act in respect to that land, or having been so issued or granted shall apply thereto as provided in section 5B(c)(iii) of this Act, unless the permit, license or lease complies with this section.

- (2) A permit, license or lease referred to in subsection (1) of this section shall contain in addition to any other conditions that may be imposed under this Act, such conditions, if any, as the Governor may impose in accordance with subsection (3) of this section, on the joint recommendation of the Minister and the respective Ministers charged with the administration of the *Native Flora Protection Act 1935* and the *Fauna Protection Act 1950*.
- (3) Conditions may be imposed under this section for the purpose of ensuring so far as is practicable, that any mining operations carried out on the land under the authority of the permit, license or lease are carried out in such a manner as to minimise the risk of damage to any native fauna or flora on the land.

[Section 78C inserted by No. 85 of 1966 s. 4.]

Part V — Caveats

79. Provisions relating to caveats

Any person claiming any interest in any license to prospect, or in any petroleum lease, or in any application for a petroleum lease, or in any land comprised in such license, lease or application, may, on payment of the prescribed fee, lodge a caveat in the prescribed form forbidding the registration of any transfer or other instrument affecting such interest, but the lodging of such caveat shall be subject to the regulations and to the following conditions: —

- (a) Every caveat shall state the name and address of the person by whom or on whose behalf the same is lodged, and shall be signed by the caveator or his agent;
- (b) Every caveat shall contain an address within the city of Perth at which notices and proceedings relating thereto may be served;
- (c) Every notice relating to a caveat and any proceedings in respect thereof, if left or sent by post, to the address appointed as aforesaid shall be deemed to be duly served;
- (d) Upon receipt of a caveat the Under Secretary for Mines or other officer authorised in that behalf shall send notification to the person against whose interest the caveat is lodged as aforesaid that such caveat has been lodged, by letter sent by post to the last known address of such person;
- (e) The person against whose interest the caveat is lodged as aforesaid may summon the caveator to attend before the warden to show cause why such caveat should not be removed, and upon proof that the caveator has been summoned, and after hearing evidence, the warden may make such order as he thinks fit;
- (f) Every caveat shall be deemed to have lapsed upon the expiration of fourteen days after notice given to the

caveator that application has been made for the registration of a transfer or other dealing in respect of the interest against which the caveat is lodged;

- (g) A caveat which has lapsed shall not be renewed by or on behalf of the same caveator in respect of the same estate or interest, except by leave of the warden.

[Section 79 amended by No. 8 of 1940 s. 38.]

80. No dealing to be registered while caveat in force

So long as any caveat remains in force, no change in the proprietorship of the estate or interest in respect to which such caveat is lodged shall be registered, and no transfer or other instrument purporting to transfer or otherwise deal with or affect the same shall be lodged or received for registration.

81. Parties to a contract of sale may lodge caveat

When a contract for the sale of any estate or interest in a permit to explore or in a license to prospect, or petroleum lease, or application for a petroleum lease or the land comprised therein has been made, the purchaser under the contract may, on payment of the prescribed fee, lodge a caveat in the prescribed form and register a copy of the contract of sale therewith, and such caveat shall remain in force for the full term specified in the contract of sale, or for such other shorter term as the said contract remains in force, unless sooner removed by the consent of the caveator.

[Section 81 amended by No. 8 of 1940 s. 39.]

Part VI — Administration of Justice

82. Establishment of Warden's Court

- (1) For the purposes of this Act the Governor may, by Order in Council, establish Warden's Courts at such places as he deems necessary and may assign to a Warden's Court such district as he thinks fit.
- (2) A Warden's Court has jurisdiction throughout the whole of the district for the time being assigned to it.
- (3) The Governor may from time to time alter or amend the boundaries of any district, abolish any district or re-assign any district from one Warden's Court to another.

[Section 82 inserted by No. 66 of 1954 s. 20.]

83. Warden's Court a court of record

- (1) The Warden's Court shall be a court of record, and for such court there shall be a seal.
- (2) All summonses, judgments, orders, warrants, and other processes issued out of the court shall be signed by the warden or the clerk of the Warden's Court.

[Section 83 amended by No. 66 of 1954 s. 21.]

84. Time and place for holding court

- (1) The Warden's Court may be held before the warden at such times as the warden from time to time appoints.
- (2) The hearing of any matter or proceeding before the court may be adjourned by the warden at any time from any one place to any other place in which the court may be held.
- (3) In the absence for any reason of the warden, the clerk of the Warden's Court may adjourn the court.

[Section 84 amended by No. 66 of 1954 s. 22.]

85. Matters in respect of which Warden's Court to have jurisdiction

The Warden's Court shall have jurisdiction to hear and determine all such actions, suits, and other proceedings cognisable by any court of civil jurisdiction as shall arise in the district assigned to it concerning the following matters, that is to say: —

- (a) Area, dimensions, and boundaries of lands the subject of permits to explore licenses to prospect, and petroleum leases;
- (b) Title to and ownership or possession of areas of land comprised in permits to explore licenses to prospect, and petroleum leases, and to petroleum or other materials obtained therefrom;
- (c) Encroachments upon, infringement of, or damage to petroleum leases or areas of land comprised in permits to explore, or in licenses to prospect;
- (d) Specific performance of contracts relating to petroleum leases or licenses to prospect or permits to explore;
- (e) Transfers and other dispositions of or charges upon petroleum leases or licenses to prospect or permits to explore;
- (f) Trusts relating to petroleum leases and licenses to prospect and permits to explore;
- (g) Partnerships relating to petroleum leases and licenses to prospect, the formation and dissolution thereof, the taking of accounts connected therewith, and the determination of all questions arising between the partners;
- (h) As to contribution between joint lessees or holders, or persons holding shares in any petroleum lease towards the rent or expenses of working the lease, or towards the payment of royalty;

s. 86

- (i) Encroachment upon or damage to land by reason of prospecting for petroleum or carrying on operations for obtaining petroleum, whether held under the provisions of this Act or otherwise;
- (j) Encroachment upon, damage to, and the determination of all questions concerning roads, tramways, railroads, or fences constructed, held or occupied under this Act;
- (k) And, generally, concerning all contracts, torts, questions or disputes of any kind relating to petroleum leases or licenses to prospect or permits to explore, or to prospecting for petroleum, or producing or obtaining petroleum, or to any matter in respect whereof jurisdiction is elsewhere by this Act conferred upon the court or the warden, whether the parties thereto are or are not engaged in exploring or prospecting for petroleum, or in carrying on operations for the purpose of producing or obtaining petroleum.

[Section 85 amended by No. 8 of 1940 s. 40; No. 66 of 1954 s. 23.]

86. Recovery of penalties

Whenever by this Act or the regulations a penalty is imposed for any breach thereof, the proceedings for the recovery of such penalty may be taken in a summary way in the Warden's Court and according to the provisions of the *Justices Act 1902-1932*, which provisions shall apply in like manner as if the warden were sitting as a resident magistrate under that Act, or before any two justices in petty sessions.

[Section 86 amended by No. 66 of 1954 s. 24.]

87. Procedure

The procedure of the Warden's Court shall be in accordance with this Act and the regulations; but the warden, or, in his absence, the clerk of the Warden's Court may, at the request in writing of the parties concerned, hear and determine any

question in dispute within the jurisdiction of the warden summarily and without requiring any formal proceeding to be commenced, and the decision of the warden or the clerk of the Warden's Court, as the case may be, may be entered upon and enforced as an order of the court, and shall be final and conclusive.

[Section 87 amended by No. 66 of 1954 s. 25.]

88. Mode of trial: costs

With respect to all proceedings in the Warden's Court, the following provisions shall apply: —

- (a) The hearing shall be in open court, at the time and place appointed in that behalf:

Provided that, if for any reason the court cannot be held at the time and place appointed, the clerk of the Warden's Court may adjourn it to some other time or place as the warden or, in his absence, as the said principal registrar appoints in that behalf;

- (b) The hearing may be adjourned by the court from time to time, or from place to place, in such manner and on such terms as to costs or otherwise as the court thinks fit;
- (c) The warden may administer oaths;
- (d) Every witness shall be examined on oath;
- (e) If any person, being duly summoned to attend as witness, fails duly to attend at the time and place named in the summons, or, attending refuses to be sworn or to answer ally lawful question put to him, the court may forthwith inflict on him a penalty not exceeding ten pounds, unless reasonable cause for such failure or refusal is made to appear to the court;
- (f) The court, upon such terms as to costs or otherwise as it thinks fit, may by order grant time to any party for any purpose, add or strike out parties, and generally do whatever it deems expedient for the purpose of

s. 89

effectively disposing of the matter before it, according to the substantial merits of the case;

- (g) The costs shall be in the discretion of the warden, and he shall fix them, or may direct them to be taxed.

[Section 88 amended by No. 66 of 1954 s. 26.]

89. Persons under twenty-one may sue and be sued

Any person under the age of 21 years may sue and be sued in the Warden's Court, in the same manner and in all respects as if he were of full age.

[Section 89 amended by No. 66 of 1954 s. 27.]

90. General powers of the court

In all matters within its jurisdiction the Warden's Court shall have power to enforce contracts, award damages, appoint receivers, grant prohibitions, injunctions, attachment orders and charging orders; to add, join, substitute, or strike out parties; to impose penalties; to cause any chattels to be restored to any person or place whence they have been improperly or unlawfully removed, or to be deposited for safe custody with any person or in any place, or to be summarily seized; to summon witnesses, award costs, and generally make such orders and give such judgments as it deems proper.

[Section 90 amended by No. 66 of 1954 s. 28.]

91. Interim injunction

If by reason of the pressing emergency of any particular case it shall seem proper to the warden so to do, he may, on the application of any party to any action or other proceeding, without notice to any other party, grant an interim injunction, to be in force for a period not exceeding seven days, or until the same shall be sooner discharged.

92. Order for possession

If any action or proceeding in the Warden's Court shall be for the possession or recovery of any land, or any petroleum, or any share or interest in any land or petroleum, the court shall determine the right to the same, and may fix the boundaries of any land, if necessary to do so, for the purpose of terminating the dispute, and shall determine whether any and what sum in the nature of mesne profits may be paid to the claimant; and the warden may order possession of such land or petroleum to be delivered to the claimant and any such sum to be paid to him, and may cause the claimant to be put in possession of any land, and any defendant or his servants to be ejected therefrom.

[Section 92 amended by No. 66 of 1954 s. 28.]

93. How judgments and convictions to be enforced

Subject to the express provisions of this Act in that behalf, every judgment, decision, or order of the court in civil proceedings may be carried out and enforced in like manner in all respects as if it had been given or made in civil proceedings in a local court; and every conviction or order of the court in criminal proceedings, or proceedings imposing a penalty, shall be carried out and enforced in like manner in all respects as if it had been obtained or made in summary proceedings before justices of the peace.

94. By whom warrants may be served

Every warrant, order, or other process of the Warden's Court may be served or executed and put in force by any bailiff of the Warden's Court, or of a local court, without it being necessary for him to be specifically named therein, or by any other person to whom it is, whether before or after issue, specially directed by the warden or the clerk of the Warden's Court.

[Section 94 amended by No. 66 of 1954 s. 28.]

95. No proceedings to be dismissed for informality

No action or proceeding shall be dismissed or vitiated because of any informality; nor shall any objection be taken or allowed on the ground of any alleged defect or misnomer or inaccurate description, or of any variance between the relief claimed and the relief to which the claimant appears to be entitled, or between the claim or complaint and the evidence adduced in support thereof ; but in every instance the proceedings shall be amended by the court so that the actual subject-matter in dispute may plainly appear and be re-adjudicated upon, according to the substantial rights of the parties:

Provided that, whenever it appears that any of the parties is deceived or misled, or that any injustice would be done by proceeding at once with the hearing, the court may adjourn the proceedings upon such terms as to costs or otherwise as it thinks fit.

96. Record and formal drawing up of judgments

With respect to every judgment, conviction, or order of the court, the following provisions shall apply:—

- (a) A minute thereof shall be entered in a register kept for the purpose, and no other record thereof shall be necessary;
- (b) If any of the parties so requests, or if the warden thinks fit, or if notice of appeal is given, it may at any time thereafter be formally drawn up under the hand of the warden;
- (c) it shall not be void, quashed, or vacated for want of form.

97. Additional power of the Court

For the purpose of enabling a Warden's Court the more effectually to exercise the jurisdiction and powers conferred upon it by this Act, and to enforce obedience to its judgments

and orders, and to punish disobedience thereof, it is hereby declared that, in so far as no sufficient provision in that behalf is elsewhere contained in this Act, the court and the warden shall be deemed to have and may exercise all the powers of the Supreme Court or a Judge thereof.

[Section 97 amended by No. 66 of 1954 s. 29.]

98. Orders may be enforced by commitment

For the purpose of enforcing compliance with any judgment or order of a Warden's Court directing not the payment of money but the doing or refraining from the doing of any act, the following provisions shall apply:

- (a) If any person makes any default in complying with any such judgment or order, or in any way impedes or prevents the compliance therewith, he commits an offence, and is liable to a penalty not exceeding twenty pounds and to be imprisoned in default of payment, or to be imprisoned without the infliction of any such penalty; and the court may issue a warrant of commitment accordingly;
- (b) The person named in such warrant shall be taken to some convenient prison named therein and delivered to the keeper of such prison, who shall there detain him until he pays such penalty (if any) and gives security to the satisfaction of the court that he will refrain from repeating such offence, or until he is released by order of the court:

Provided that no person shall be imprisoned under this section for any term exceeding six months.

[Section 98 amended by No. 66 of 1954 s. 30.]

99. Punishment of persons guilty of contempt

Whenever in the course of any proceedings before a Warden's Court any person insults the warden or any officer of the court, or interrupts the proceedings, or in any other manner is guilty of

s. 100

contempt in the face of the court, the following provisions shall apply:—

- (a) Such person may, by written or verbal direction of the court, be taken into custody by the bailiff or any police officer or constable, with the assistance, if necessary, of other persons, and be detained until the rising of the court;
- (b) Instead of discharging such person at the rising of the court, the warden may inflict any penalty not exceeding \$10, and in default of payment commit him to prison for any term not exceeding 7 days, or may commit him to prison for any such term without inflicting any such penalty.

[Section 99 amended by No. 66 of 1954 s. 31.]

100. Interpleader

If any claim shall be made to or in respect of any goods or chattels taken in execution under process from the Warden's Court, or in respect of the proceeds or value thereof, by any person, not being the party against whom such process shall have been issued, the warden may, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, issue a summons calling before the warden as well the party issuing such process as the party making such claim. Thereupon any action which shall have been brought in any court in respect of such claim shall be stayed, and the court in which such action shall have been brought, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings taken therein after the service upon him of such summons, and the warden shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as to him shall seem fit.

[Section 100 amended by No. 66 of 1954 s. 32.]

101. Who may take affidavits

Any affidavit to be used in a Warden's Court or before the warden may be sworn before any commissioner for taking affidavits, or before the warden, any mining registrar of the department, or a justice of the peace.

[Section 101 amended by No. 66 of 1954 s. 33.]

102. Copies of decision or order to be supplied

Any person may, on payment of the prescribed fee, obtain a copy of any judgment, decision, or order of the warden.

103. Proof of decision of Warden's court

A document purporting to be a copy of a judgment, order, or decision of the warden, or of any document filed by, or of any entry in a register kept for the purposes of this Act, and certified by the clerk of the Warden's Court as a true copy thereof, shall be admitted in all courts as sufficient evidence of such judgment, order, decision, document or entry, and the signature of the warden and clerk of the Warden's Court to any document shall be judicially noticed.

[Section 103 amended by No. 66 of 1954 s. 34.]

104. Special case may be reserved for Supreme Court

At any stage of any civil proceedings before it a Warden's Court may reserve any question of law for the opinion of the Supreme Court, and, with respect to every question so reserved, the following provisions shall apply:—

- (a) The warden shall prepare a special case, setting forth the question so reserved, and shall transmit such case to the Master of the Supreme Court;
- (b) The Master shall set a special case down for argument before a Judge of the Supreme Court, and the Judge's opinion on the special case shall, when given, be drawn up and transmitted by the Master to the warden;

s. 105

- (c) The costs of the proceedings shall be in the discretion of the Judge;
- (d) Upon receipt of such opinion the Warden's Court shall act in accordance therewith, and in the meantime no judgment or order of the court shall affect the question so reserved;
- (e) When reserving any such question, or at any time before acting on the Judge's opinion thereon, the warden, on the application of any party to the proceedings, and on such terms as he thinks fit, may make such order for an injunction or a receiver or for payment of money into court, or for giving security for damages and costs or otherwise, and on such terms as he may think fit.

[Section 104 amended by No. 66 of 1954 s. 33.]

105. Appeal to Supreme Court

Except as hereinafter provided, an appeal at the instance of any party aggrieved shall lie to the Supreme Court from any final judgment or order of a Warden's Court: Provided that there shall be no appeal —

- (a) in any case where at or before the hearing the parties by a memorandum in writing lodged in the warden's office agree that the decision of the court shall be final;
- (b) from any judgment or order of the Warden's Court where the value of the subject-matter or interest in dispute shall not exceed two hundred pounds, except by leave of the Supreme Court or a Judge;
- (c) from any decision or recommendation of the warden or the Minister upon any application for a petroleum lease or a license to prospect, the forfeiture thereof, or exemption from labour or other conditions.

[Section 105 amended by No. 66 of 1954 s. 35.]

106. Appeal on fact or law

Every such appeal may, as the appellant thinks fit, be on matter of fact alone, or of law alone, or of both fact and law:

Provided that there shall be no appeal on matter of fact from any summary conviction imposing a penalty, except as provided by the *Justices Act 1902*.

107. Notice and grounds of appeal

With respect to every appeal, the following provisions shall apply:—

- (1) Within ten days after the decision to be appealed from has been given, the appellant shall file in the Warden's Court and serve on the other party notice of intention to appeal, and shall lodge with the warden, as deposit by way of security for the costs of appeal, the sum of twenty pounds;
- (2) Such notice of appeal shall specify whether the appeal is on matter of fact alone, or of law alone, or of both fact and law, and shall also state briefly the matters of law (if any) forming the grounds of appeal.

108. Setting down appeal

- (1) If the appeal is on matter of fact alone, or of both fact and law, the appellant shall, within fourteen days after notice of appeal was filed, set down the appeal for hearing by filing with the Master of the Supreme Court a copy of the notice of appeal, the notes of evidence and exhibits in the original proceedings, and the judgment or order appealed from certified as correct under the hand of the warden or the clerk of the Warden's Court.
- (2) If the appeal is on matter of law alone, the following provisions shall apply: —
 - (a) The appeal shall be in the form of a special case, to be agreed on by the parties, or if within seven days after

s. 109

notice of appeal they cannot agree, then to be settled by the warden at the request of either of them;

- (b) The special case, when agreed on or settled as aforesaid, shall be transmitted to the Master by the appellant, who shall also, within thirty days after the notice of appeal was filed as aforesaid, set the special case down for rehearing and give notice thereof to the other party.

[Section 108 amended by No. 66 of 1954 s. 36.]

109. Appeal may be by way of rehearing

If the appeal is on matter of fact alone, or of both fact and law, and the Supreme Court so orders, or the parties agree, the appeal shall be by way of rehearing, but otherwise the appeal shall be heard and determined upon the evidence and proceedings before the warden.

110. When appeal deemed to be abandoned

The appeal shall in every case be deemed to be abandoned if the appellant —

- (a) fails duly to file or serve such notice of appeal, or duly to lodge such deposit within the time hereinbefore limited in that behalf; or
- (b) fails duly to set down the appeal or special case for hearing within the time hereinbefore respectively limited in that behalf, or such extended time as the Supreme Court or a Judge thinks fit to grant on application made by the appellant before the expiration of the time limited as aforesaid.

111. Proceedings when appeal abandoned

Whenever an appeal is abandoned, the same proceedings may be had and taken in respect of the judgment or order appealed against as if no notice of appeal had been given.

112. Order of appellate court and costs

With respect to the proceedings in the appeal, the following provisions shall apply:—

- (a) The Supreme Court, after hearing the appeal, shall make such order reversing or varying the decision appealed against, or dismissing the appeal, as it thinks fit;
- (b) Such order may also contain such directions with respect to the costs of the appeal and of the original proceedings as the court thinks fit;
- (c) Every appeal to the Supreme Court shall be heard by a single Judge.

Part VII — Miscellaneous

113. Offences

- (1) Every person shall be guilty of an offence against this Act who —
 - (a) is found doing any act or thing upon any land for the purpose of prospecting for or obtaining petroleum therefrom, and whether such land is comprised in a license to prospect, or a petroleum lease or not, unless he is the holder of a license to prospect or of a petroleum lease which authorises him to enter upon and do such act or thing upon such land; or
 - (b) is found removing petroleum from any land, whether comprised in a petroleum lease or not, unless he is the holder of a petroleum lease of such land, or is so removing petroleum with the permission of the person who holds a petroleum lease of such land; or
 - (c) assaults, obstructs, interferes with, or resists a warden or any person duly authorised by a warden, or any bailiff or other officer, or any clerk or assistant of such bailiff or other officer, or other person lawfully entering upon any land or area which is the subject of a license to prospect, or of a petroleum lease, or in the performance of any act or duty, or in the exercise of any powers under this Act or the regulations;
 - (d) by any act or omission contravenes any of the provisions of this Act or the regulations.
- (2) Any person guilty of any offence against this Act or the regulations in respect whereof no special penalty is provided by this Act or the regulations, shall be liable on conviction to a penalty not exceeding fifty pounds or to imprisonment for a period not exceeding six months.

[Section 113 amended by No. 66 of 1954 s. 37.]

114. Recovery of penalties

All fees, charges, and sums of money which shall or may be imposed or made payable by or under this Act, and all penalties incurred under this Act or the regulations, for which no other mode of recovery is prescribed, may be recovered, carried out, or enforced by a warden in the manner in which justices of the peace are now by law authorised to enforce any conviction or order of a court of petty sessions.

[Section 114 amended by No. 66 of 1954 s. 38.]

115. Persons unlawfully on land

Any person found unlawfully upon any land the subject of a license to prospect, or of a petroleum lease, may be forcibly removed therefrom by any police officer or constable, or by any person authorised by a warden in that behalf.

[Section 115 amended by No. 66 of 1954 s. 39.]

116. Regulations

The Governor may make regulations, not being contrary to the provisions of this Act, for all or any of the matters following, that is to say —

- (a) for determining the dimensions, boundaries, form, position and extent of any land comprised or to be comprised in any petroleum lease or license to prospect, or permit to explore and the subsequent adjustment of the same where necessary, and the time when such determination shall take effect;
- (b) for determining the manner in which persons desirous of taking possession of or acquiring petroleum leases or licenses to prospect or permits to explore shall mark out the same, and the requirements to be complied with by such persons;

s. 116

- (c) for regulating the time or times within which and the method by which any objection may be lodged, and the manner of dealing with the same;
- (d) for providing for the registration and the mode of obtaining and effecting the registration of petroleum leases and licenses to prospect, or permits to explore and any share or interest therein, and of the transfer, assignment, or sublease thereof, and of any share or interest therein, and of any lien or encumbrance thereon, and of the discharge of any such lien or encumbrance thereon, and for providing for the registration and the mode of effecting and obtaining the registration of any such encumbrance, transfer, assignment or sublease in the case of death, bankruptcy, liquidation (in the case of a company), or insanity or of. sale under the decree, judgment or order of any court;
- (e) for prescribing the labour and other conditions not herein provided for, subject to which any petroleum lease or license to prospect or permit to explore shall be held, and the conditions on which exemption from the performance thereof may be applied for, granted, and obtained, and generally for prescribing the manner in which and with what incidents, rights, and obligations any petroleum lease or license to prospect or permit to explore shall be taken possession of, held, occupied, used, worked, and enjoyed;
- (f) for determining the events on which the title to any petroleum lease or license to prospect or permit to explore shall become forfeited, and for imposing any penalty on the happening of any one or more events in lieu of such forfeitures;
- (g) for limiting the time within which and prescribing the mode in which proceedings for any such forfeiture or penalty may be taken;

- (h) for the prevention of nuisances in or about any petroleum lease, and for cleansing and keeping clean the same;
- (i) for enabling persons to enter on land for the purpose of erecting electric telegraph or telephone posts or wires;
- (j) for prescribing the form of lease (including such other reservations, covenants, and conditions as the Governor may think necessary, in addition to those prescribed by section 63), license to prospect, certificates, applications, permits to explore, objections, notices, and other documents granted, issued, or used under or for the purposes of this Act;
- (k) for determining the time and mode of ascertaining the amount of any royalty and the time for payment thereof;
- (l) for the prescribing returns to be furnished by lessees and licensees and permittees of work done and production of petroleum or any other products of holdings under this Act;
- (m) for prescribing the fees (if any) payable for the several matters mentioned hereunder: —
 - (i) applications, surveys, processes, exemptions from performance of labour and other conditions;
 - (ii) registration of any mortgage, lien, or encumbrance, or any transfer or discharge thereof;
 - (iii) registration of transmission by death or under the laws relating to bankruptcy or insanity;
 - (iv) the registration of any other matter or thing required by this Act or the regulations to be registered;
- (n) for prescribing safety precautions, treatment of water underground or at the surface, and prevention of waste of gas or petroleum;

s. 116

- (o) for specifying drilling machinery, materials, and casing which is to be used in operations to which this Act and the regulations apply;
- (p) for regulating the separation, storage, transportation and exploration of any of the products of petroleum leases or licenses to prospect or permits to explore;
- (q) for providing for the cessation of operations on petroleum leases or areas comprised in licenses to prospect, or permits to explore and the precautions to be undertaken in regard to any operations upon the same;
- (r) for regulating the spacing of oil wells;
- (s) for ensuring that precautions shall be taken against flooding, and for providing methods to be adopted upon abandonment of oil wells;
- (t) for providing that drilling operations are carried out with due diligence and by safe and satisfactory methods;
- (u) for any other act, matter, or thing requisite or necessary or expedient for the purpose of carrying out or properly giving effect to the provisions and objects of this Act.

Notes

¹ This is a compilation of the *Petroleum Act 1936* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any previous reprints.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Petroleum Act 1936</i>	36 of 1936	11 Dec 1936	1 May 1937 (see s. 1 and <i>Gazette</i> 23 Apr 1937 p. 580)
<i>Petroleum Act Amendment Act 1940</i>	8 of 1940	8 Oct 1940	8 Oct 1940
<i>Petroleum Act Amendment Act 1949</i>	24 of 1949	22 Oct 1949	22 Oct 1949
<i>Petroleum Act Amendment Act 1951</i>	12 of 1951	20 Nov 1951	20 Nov 1951
Reprint approved 14 Jul 1954 in Volume 7 of Reprinted Acts			
<i>Petroleum Act Amendment Act 1954</i>	66 of 1954	30 Dec 1954	30 Dec 1954
Reprint approved 26 Jul 1955 in Volume 9 of Reprinted Acts			
<i>Petroleum Act Amendment Act 1966</i>	85 of 1966	12 Dec 1966	12 Dec 1966
<i>Petroleum Act Amendment Act 1967</i>	46 of 1967	24 Nov 1967	24 Nov 1967

² The *Petroleum Act 1967* s. 134 reads as follows:

134. Transitional provisions relating to Barrow Island lease

Notwithstanding the repeal effected by section 3, the former provisions shall, by force of this section, be deemed to subsist and enure in their application to or in relation to the Barrow Island lease and to any renewal thereof.