

Queensland



ANNO TRICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE

No. 51 of 1988

An Act to amend the Petroleum Act 1923-1986 in certain particulars

[ASSENTED TO 12TH MAY, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short Title. This Act may be cited as the *Petroleum Act Amendment Act 1988*.

2. Citation. (1) In this Act the *Petroleum Act 1923-1986* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Petroleum Act 1923-1988*.

3. Amendment of s. 2. Parts of Act. Section 2 of the Principal Act is amended by inserting after the words "PETROLEUM ADVISORY BOARD" the words "AND PIPELINES TRIBUNAL".

4. Amendment of s. 3. Interpretation. Section 3 of the Principal Act is amended by inserting after the definition "Company" the following definition:—

““Corporation sole”—The corporate entity preserved and continued in existence by section 7 under the name and style “The Secretary for Mines”;

5. Amendment of Part 1A. The Principal Act is amended—

(a) by adding to the heading immediately preceding section 4A the words “AND PIPELINES TRIBUNAL”;

(b) adding to Part 1A the following sections:—

“4B. Appointment of pipelines tribunal. (1) The Governor in Council, on the Minister's recommendation, may appoint one or more persons possessing qualifications and experience that in the Minister's opinion are appropriate to constitute a pipelines tribunal for the purpose of making an inquiry into the operations of any existing or proposed pipeline.

(2) Each member of a pipelines tribunal—

(a) shall be appointed for such term, not exceeding five years as the Governor in Council determines;

(b) shall hold his appointment on such conditions as the Governor in Council determines from time to time; and

(c) shall be eligible for re-appointment.

4C. Disclosure of member's interest. (1) A member of a pipelines tribunal shall promptly give notice in writing to the Minister of any pecuniary or other interest, direct or indirect, had or acquired by him that might conflict in a particular case or generally with the proper discharge by him of his functions as a member of the tribunal.

(2) A member of a pipelines tribunal shall not participate as such a member in an inquiry conducted by the tribunal where the Minister has directed in writing that he not participate therein.

4D. Inquiry by pipelines tribunal. (1) The Minister may require a pipelines tribunal—

- (a) to inquire into any matter or matters concerning—
 - (i) the ownership, maintenance and operation of pipelines constructed or proposed to be constructed, maintained or operated under the authority of this Act or a license;
 - (ii) the compliance by a licensee with conditions of his license;
 - (iii) the throughput entitlements and requirements of persons using or desirous of using any such pipeline and available methods for progressively increasing pipeline capacity, generally or in a particular case, to meet the requirements of persons supplying or desirous of supplying petroleum through a pipeline;
 - (iv) the interests of persons who are desirous of transporting petroleum through any such pipeline;
 - (v) transportation charges or other conditions that a licensee has imposed or proposes to impose relating to transportation of petroleum through a pipeline operated under the authority of a license and financial matters relating thereto;
- and
- (b) to report to the Minister its findings, conclusions and recommendations in respect of the matter or matters inquired into by the tribunal pursuant to his requisition.

(2) Notification shall be published in the Gazette of each requisition issued under subsection (1) and of the matter or matters to be inquired into by a pipelines tribunal pursuant to the requisition.

(3) It is the function and duty of a pipelines tribunal to which a requisition is directed by the Minister under subsection (1) to inquire into the matter or matters specified therein and to report thereon in accordance with the requisition.

In the discharge of its function and duty a pipelines tribunal is authorized to inquire into and report upon all matters considered by the tribunal to be necessary for that purpose.

4E. Inquiry into transportation charges. Matters that a pipelines tribunal shall take into account in the conduct of its

inquiry into transportation charges or other conditions referred to in subparagraph (v) of section 4C (1) include—

- (a) the historical cost of the pipeline or any part thereof;
- (b) the amount of transportation charge necessary to provide the licensee with a reasonable profit;
- (c) competition with the licensee from other modes of transporting petroleum;
- (d) the amount of interest payable on loans to the licensee in relation to his business of transporting petroleum by pipeline and his ratio of debt to equity in relation to that business;
- (e) depreciation and reasonable contingencies in the conduct of the business of transporting petroleum by pipeline;
- (f) expenses properly chargeable against revenue in accordance with generally accepted accounting principles in connexion with the business of transporting petroleum by pipeline;
- (g) any other reasonable expenditure or reasonable provision for expenditure by the licensee in connexion with his business of transporting petroleum by pipeline;
- (h) the efficiency of the licensee's business of transporting petroleum by pipeline;
- (i) any other matter the pipelines tribunal considers necessary for the purposes of its inquiry.

4F. Pipelines tribunal deemed a Commission of Inquiry. For the purpose of conducting any inquiry that it is required or authorized to undertake a pipelines tribunal shall be deemed to be a Commission within the meaning of the *Commissions of Inquiry Act 1950-1987* and the provisions of that Act, other than sections 4, 4a, 5a, 5b, 10 (3), 13, 14 (1a), 19a, 19b, 19c and 26, shall apply in respect of the conduct of the inquiry.

The person for the time being nominated by the Governor in Council as chairman of a pipelines tribunal shall be the chairman of the Commission that the tribunal is deemed to be for the purpose of conducting an inquiry.

4G. Governor's powers following inquiry. (1) When a pipelines tribunal has reported to the Minister in respect of any matter or matters inquired into by it as required by the Minister the

Governor in Council on the Minister's recommendation, by Order in Council, may, as the case requires—

- (a) fix a maximum charge or maximum charges for transporting petroleum by a pipeline or a section of a pipeline;
- (b) prohibit the imposition by a licensee of a condition or class of condition relating to the transporting of petroleum by pipeline;
- (c) determine the throughput entitlements of each person using or desirous of using a pipeline;
- (d) take such action as he thinks appropriate with respect to any license or licensee including adding to or varying the conditions of a license;

and every such Order in Council shall be given effect by all persons concerned.

(2) A licensee who contravenes or fails to comply with an Order in Council purporting to have been made under subsection (1) and to be applicable to him commits an offence against this Act.”.

6. Repeal of and new s. 7. The Principal Act is amended by repealing section 7 and substituting the following section:—

“**7. Incorporation of Minister.** (1) The corporate entity established by section 54A of *The Petroleum Acts, 1923 to 1929* is hereby preserved and continued in existence as a corporation sole constituted by the Minister under the name and style “The Secretary for Mines”.

(2) The corporation sole—

- (a) has perpetual succession and an official seal;
- (b) is capable in law of suing and being sued;
- (c) has power to take, acquire, hold, sell, lease, let and exchange land, goods and property of every description;
- (d) has power to make and perform contracts, to employ agents and servants and to do such other acts as are necessary or convenient to the proper discharge and performance of the functions, powers and duties committed to it by this Act,

and shall be deemed always to have had such capacity and powers.

(3) In the discharge and performance of its functions, powers and duties under this Act the corporation sole represents the Crown.

(4) All courts, judges and persons acting in a judicial capacity shall take judicial notice of the seal of the corporation sole affixed to any document and, until the contrary is proved, shall presume that the seal has been duly affixed.”.

7. **New ss. 7A, 7B, and 7C.** The Principal Act is amended by inserting after section 7 the following sections:—

“7A. General authority of corporation sole. (1) The corporation sole is and shall be deemed always to have been authorized—

- (a) to search for, recover, acquire and refine petroleum;
- (b) to dispose of petroleum and petroleum products;
- (c) to construct, own, maintain and operate pipelines and oil refineries;
- (d) to distribute petroleum and petroleum products;
- (e) to do all acts necessary or convenient to the effectual exercise of any of the foregoing authorities.

(2) It is not competent to the corporation sole to exercise an authority referred to in paragraph (a), (b), (c) or (d) of subsection (1) until it has obtained the approval of the Governor in Council, by way of Order in Council, to the exercise of that authority.

(3) Where an approval relates to the construction, maintenance or operation of a pipeline or an oil refinery, the Order in Council shall include a description of the lands on, over or under which the pipeline or refinery is to be situated sufficient in the opinion of the Governor in Council to identify those lands.

Such description may be expressed by means of or be supplemented by reference to a plan or map of the lands concerned.

(4) The rights, powers, authorities and entitlements had by the corporation sole under this Act may be exercised by it or on its behalf on, over or under any land in Queensland or within the coastal waters of the State (within the meaning of the Coastal Waters (State Powers) Act 1980 of the Commonwealth or that Act as amended and in force for the time being).

7B. Corporation sole to have powers etc. of holder of authority etc. (1) Where the corporation sole engages or proposes to engage in an activity for which any other person so engaging would be required by this Act to hold an authority to prospect or a lease or license then, in addition to all rights, powers, authorities and entitlements expressly conferred on it by this Act the corporation sole has and may exercise for the purpose of so engaging all the rights, powers, authorities and entitlements conferred by this Act on the holder of an authority to prospect or, as the case may be, of a lease or license in relation to such activity as if—

- (a) the corporation sole were that holder;
- and

- (b) the land on, over or under which the activity is or is to be engaged in were land specified in the authority to prospect, lease or, as the case may be, the license.

(2) Where the rights, powers, authorities and entitlements of a holder of an authority to prospect or of a lease or license

in relation to any activity are subject to any prescribed strictures or conditions, the corporation sole, in the exercise of any of those rights, powers, authorities or entitlements, shall be subject to and shall comply with such strictures and conditions: Provided that in no case shall the corporation sole be liable—

- (a) to pay royalty;
 - (b) to pay compensation to the Crown;
 - (c) to suffer any penalty or forfeiture or to be prosecuted for an offence against this Act;
 - (d) to have any authority conferred on it by this Act withdrawn otherwise than by an Act;
- or
- (e) to act as a common carrier in relation to a pipeline.

7C. Entry by corporation sole. (1) For the purpose of searching for or recovering petroleum the corporation sole, by its agents and servants, may enter upon and occupy temporarily or permanently—

- (a) Crown land;
- (b) land held from the Crown on any tenure or used under licence from the Crown.

The authority conferred by this subsection includes authority to be accompanied in the exercise thereof by such persons, animals, vehicles, plant and equipment as are necessary or desirable to attain the object of the entry.

Nothing in this section shall be taken to authorize entry by the corporation sole upon land that is subject to a subsisting authority to prospect or lease granted under this Act, except with the agreement of the holder for the time being of the authority or lease.

(2) Compensation shall not be payable in respect of entry or occupation (pursuant to subsection (1)) upon or of land held or used under an instrument of title or licence that reserves to the Crown petroleum in or on the land, except on account of permanent deprivation of possession of such portion of the surface thereof and of improvements on such portion as is required by the corporation sole for any purpose other than the actual searching for or recovering petroleum and the exercise of surface rights of ingress to and egress from the site of such activity.”.

8. New s. 7D. The Principal Act is amended by inserting after section 7C the following section:—

“7D. Extent of liability of corporation sole. (1) The corporation sole shall incur no liability in law to any person on account of loss or injury caused by anything done or omitted by the corporation sole or its servants in connexion with the exercise of any of the rights, powers, authorities and entitlements of the

corporation sole unless negligence on the part of the corporation sole or its servants is proved.

(2) A person shall not be entitled to recover against the corporation sole or its servants damages in respect of loss or injury caused by—

(a) anything done or omitted by the corporation sole or its servants for the purpose of discharging or performing any of the functions, authorities, powers or duties of the corporation sole under this Act;

or

(b) anything arising out of employment by the corporation sole for the purpose of discharging or performing any of the functions, authorities, powers or duties of the corporation sole under this Act,

unless—

(c) in the case of injury to the person, when so required by the corporation sole, the person alleged to be injured submits to examination by a legally qualified medical practitioner nominated by the corporation sole and furnishes to the medical practitioner all information that he requires to enable him to assess the full extent and nature of the injury;

or

(d) in the case of loss of property, when so required by the corporation sole, the plaintiff permits a person nominated by the corporation sole to have access to and to inspect the property in respect of which loss is alleged to have been suffered and furnishes to that person all facilities and information that he requires to enable him to assess the full extent and nature of the loss and the amount (if any) expended or required to be expended in repairing the property.

(3) Non-compliance with the provisions of subsection (2) shall not prejudice the recovery of damages if the court that is hearing the action for damages finds that there was reasonable excuse for the non-compliance.

(4) The legally qualified medical practitioner to whose examination a person is required by paragraph (c) of subsection (2) to submit is authorized to make all relevant examinations of that person, to carry out all relevant tests on that person and to take all relevant specimens from that person that he requires to enable him to assess the full extent and nature of the injury to that person.”.

9. Repeal of and new s. 8. The Principal Act is amended by repealing section 8 and substituting the following section:—

“**8. Land resumptions.** The Minister may cause land proposed to be taken for any purpose of this Act to be inspected by such persons as he thinks fit.

(2) A person authorized by the Minister to inspect land proposed to be taken is authorized to enter upon the land and to carry out thereon such inspection or other activity as is necessary or expedient to that person's reporting on the land's suitability for the purpose for which it is proposed to be taken.

(3) In assessing compensation payable to any person on account of a taking of land for any purpose of this Act no allowance shall be made for petroleum known or supposed to be in or on the land."

10. Amendment of s. 45. Refineries and pipe-lines. Section 45 of the Principal Act is amended in subsection (3)—

(a) by inserting after the provisions designated (a) the following provision:—

"(aa) A pipeline constructed under the authority of a license shall at all times be such as will permit the proper operation of the pipeline in accordance with the terms and conditions of the license and in accordance with every Order in Council made under section 4G in relation to the pipeline.";

(b) by omitting from the provisions designated (b) the first and second paragraphs to and including the words "cancel the license:" and substituting the following paragraphs:—

"A license granted under this subsection, whether before or after the commencement of the *Petroleum Act Amendment Act 1988*, shall be subject to the condition that the licensee shall accept and discharge the obligations of a common carrier and, as a common carrier, shall transport for reward, by means of the pipeline authorized by the license, petroleum the property of any other person.

If a licensee fails to comply with such condition the Governor in Council may, by Order in Council, cancel the license that authorizes the pipeline:";

(c) by omitting from the provisions designated (e) the reference "The Crown Remedies Acts, 1874 to 1956" and substituting the words "*the Crown Proceedings Act 1980*".

11. Amendment of s. 45A. Construction, etc., of pipeline. Section 45A of the Principal Act is amended—

(a) by omitting subsection (4) and substituting the following subsection:—

"(4) a licensee may, subject to this Act and with the prior approval of the Governor in Council, declared by Order in Council,—

(a) construct, maintain and use a pipeline on, over or under land described in the license and specified in the approval;

and

- (b) for any of those purposes or purposes incidental to those purposes, enter upon and occupy temporarily such land,

notwithstanding that at the time of such entry, occupation, construction or use the licensee has not acquired any right pertaining to or any estate or interest in the land in question other than the right conferred by this subsection.

The authority conferred by this subsection includes authority to be accompanied in the exercise thereof by such persons, animals, vehicles, plant and equipment as are necessary or desirable to attain the purpose in question.”;

- (b) by adding at the end of the section the following subsection:—

“(5) A person other than the corporation sole shall not undertake the construction of a pipeline of which any part extends beyond the boundaries of a lease, except under and in accordance with the authority of a license granted under this Act.”.

12. Amendment of s. 45B. Acquisition of land for pipeline purposes.

Section 45B of the Principal Act is amended in subsection (3)—

(a) by omitting from the first paragraph thereof all words from and including the words “Co-ordinator-General of Public Works” to and including the words “extend accordingly” and substituting the words “corporation sole as if the construction, maintenance or use of the pipeline were for the purposes of this Act”;

(b) by omitting from the second paragraph thereof the words “Co-ordinator-General” where they twice occur and substituting in each case the words “corporation sole”;

(c) by, in the third paragraph—

(i) omitting the words “Co-ordinator-General” and substituting the words “corporation sole”;

(ii) omitting the word “him” where it first occurs and substituting the word “it”;

(iii) omitting the word “his” and substituting the word “its”.

13. Repeal of and new s. 54A. Power of Minister to construct, etc., pipe-lines. The Principal Act is amended by repealing section 54A and substituting the following section:—

“54A. **Minister’s powers concerning petroleum.** The Minister shall have and may exercise such powers and authorities with respect to controlling the recovery or distribution of petroleum as are for the time being conferred on him by Order in Council.”.

14. Amendment of s. 59. Compensation. Section 59 of the Principal Act is amended in subsection (1) by omitting the word “Minister” and substituting the words “corporation sole”.

15. New ss. 62B and 62C. The Principal Act is amended by inserting after section 62A the following sections:—

“62B. Interference with pipeline etc. A person who destroys, damages, interferes with or operates any pipeline or refinery or part thereof or any thing on the site where the search for or recovery of petroleum is carried on commits an offence against this Act, unless he does so under the authority of the owner of the pipeline, refinery or, as the case may be, thing.

62C. Interference with access. A person who—

(a) erects or places any building or structure in, on or over land that is occupied for any purpose of this Act or that is subject to an easement for pipeline purposes or for right of way held by the corporation sole or any other person;

or

(b) turns over or digs in land such as is specified in paragraph (a), except for the purpose of cultivating the land in accordance with recognised good land husbandry,

commits an offence against this Act, unless he does so with permission in writing of the occupier of the land or, as the case may be, the holder of the easement first had and obtained and in accordance with the conditions (if any) of the permission.”.