

South Australia

MOBIL LUBRICATING OIL REFINERY (INDENTURE) ACT 1976

An Act to approve and ratify an Indenture made between the State of South Australia and Mobil Oil Australia Limited; to provide for the carrying into effect of that Indenture; to make consequential amendments to the Oil Refinery (Hundred of Noarlunga) Indenture Act 1958-1976; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **6 December 2001**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

MOBIL LUBRICATING OIL REFINERY (INDENTURE) ACT 1976

being

Mobil Lubricating Oil Refinery (Indenture) Act 1976
No. 78 of 1976 [Assented to 9 December 1976]¹

as amended by

Mobil Lubricating Oil Refinery (Indenture) Act Amendment Act 1986 No. 42 of 1986 [Assented to 4 September 1986]²

Statutes Amendment (Oil Refineries) Act 1994 No. 74 of 1994 [Assented to 1 December 1994]

Statutes Amendment (Mobil Oil Refineries) Act 2001 No. 70 of 2001 [Assented to 6 December 2001]

¹ Came into operation 24 February 1977: *Gaz.* 24 February 1977, p. 491.

² Came into operation 1 February 1986: s. 2.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

SUMMARY OF PROVISIONS

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**SCHEDULE 1
THE INDENTURE**

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LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Mobil Lubricating Oil Refinery (Indenture) Act 1976*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

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

"**the Company**" means Mobil Oil Australia Limited a company incorporated in the State of Victoria and having its registered office at No. 2 City Road, Melbourne, in that State and to the necessary extent includes any person to whom any right, power, benefit or privilege conferred on the Company by the Indenture is pursuant to the Indenture, assigned or otherwise disposed of;

"**the Indenture**" means the Indenture a copy of which is set out in schedule 1 to this Act.

(2) Where an expression used in this Act is defined in Clause 1 of the Indenture that expression shall, for the purposes of this Act, and unless the contrary intention appears, bear the meaning assigned to it by that Clause.

Approval and ratification

4. (1) The Indenture is hereby approved and ratified.

(2) The Government of the State and any authority or instrumentality of the State are hereby authorised, empowered and required to do all things necessary or expedient for the carrying into effect of the Indenture.

Local government rates

5. (1) The rates payable to the council of the local government area in which the lube refinery site is situated in respect of the lube refinery site and the lube refinery shall be—

(a) for the year ending 30 June 2001—the sum of \$995 758;

(ab) for the year ending 30 June 2002—the sum of \$615 000;

(ac) for the year ending 30 June 2003—the sum of \$492 000;

(ad) for the year ending 30 June 2004—the sum of \$410 000;

(b) for each subsequent year—whichever of the following sums is the lesser:

(i) the sum obtained by increasing the amount payable under this section in respect of the immediately preceding financial year by the increase (if any) in the Consumer Price Index (All groups index for Adelaide) during the period of 12 months ending on 31 March in that financial year; or

(ii) the sum obtained in accordance with the following formula:

$$S = X \times \frac{\left(\frac{A}{B}\right)}{\left(\frac{C}{D}\right)}$$

where—

- S = the sum payable in respect of the relevant year, expressed in dollars:
- X = the sum payable in respect of the year immediately preceding the relevant year, expressed in dollars:
- A = the total amount payable to the council in respect of rates declared under Chapter 10 Part 1 of the *Local Government Act 1999* by the council in the relevant year on rateable property within the prescribed area:
- B = the number of rateable properties in relation to which the rates referred to in Item A of this formula were declared:
- C = the total amount payable to the council in respect of rates declared under Chapter 10 Part 1 of the *Local Government Act 1999* by the council in the year immediately preceding the relevant year on rateable property within the prescribed area:
- D = the number of rateable properties in relation to which the rates referred to in Item C of this formula were declared.

(2) Payment of the amounts prescribed in this section shall be a discharge of all liability of the Company for council rates in respect of the lube refinery site and the lube refinery.

(3) In this section "**the prescribed area**" means—

- (a) all that land in the Hundred of Noarlunga bounded by Sullivan Terrace, Baden Terrace, Morrow Road and Galloway Road; and
- (b) all that land contained in section 640 in the Hundred of Noarlunga that was on the first day of January, 1976, zoned "Residential 1"; and
- (c) all that land contained in section 646 in the Hundred of Noarlunga that lies to the east of Vincent Street.

(4) The rates payable pursuant to this section shall—

- (a) in the case of rates payable for the year ending 30th June, 1977, be due and payable at the expiration of the second month next following the commencement of this Act; and
- (b) in the case of rates payable for any subsequent year be due and payable on the 1st day of February in that year,

and any such rates due and payable may be sued for and recovered by the council as a debt due to it.

(5) The foregoing provisions of this section shall have effect notwithstanding any other Act or enactment or any rate at any time declared or levied by any district or municipal council.

Cargo service charges

6. Notwithstanding any Act or other enactment, whether passed or enacted before, on or after the commencement of this Act, relating to inward or outward cargo service charges, the liability of the Company for inward or outward cargo service charges shall be as determined pursuant to clauses 4, 5, 6, 7, 8 and 9 of the Indenture and as if those clauses were enacted in this Act.

* * * * *

Appropriation

7. Any moneys required to be paid by the State pursuant to the Indenture shall be paid out of the General Revenue of the State which is hereby to the necessary extent appropriated accordingly.

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Entitlement to draw water

9. Notwithstanding any Act or law to the contrary, the Company may draw water from the sea at any place adjacent to the refinery site, as defined in the *Oil Refinery (Hundred of Noarlunga) Indenture Act 1958-1976*, and use such water for cooling and other purposes of the lube refinery.

Pilotage and harbor and navigation charges

10. Clause 8 of the Indenture set out in the schedule to the *Oil Refinery (Hundred of Noarlunga) Indenture Act 1958-1976* shall apply and have effect to and in relation to the Company in the same manner and to the same extent as it applies and has effect to and in relation to the Company as defined in that Act.

Power to dispense with compliance with any Act or by-law

11. (1) The Governor may by regulation dispense with, suspend or vary, so far as is necessary for the carrying out or giving effect to the Indenture any provision of an Act, by-law, rule or regulation or other provision having the force of law (under whatever authority made) and which in the opinion of the Governor prevents or impedes or would prevent or impede the carrying into effect of the Indenture and any such regulation shall apply and have effect as if it were enacted in this Act.

(2) The Governor may from time to time by regulation revoke or vary any regulation made under subsection (1) of this section and that revocation or variation shall have effect as if it were enacted in this Act.

Mobil Lubricating Oil Refinery (Indenture) Act 1976

SCHEDULE 1

THIS INDENTURE made the twenty-ninth day of July, 1976, BETWEEN: THE STATE OF SOUTH AUSTRALIA (hereinafter referred to as "the State") of the one part AND MOBIL OIL AUSTRALIA LIMITED a company incorporated in the State of Victoria and having its registered office at No. 2 City Road, Melbourne, in the State of Victoria (hereinafter with its successors and assigns referred to as "Mobil") of the other part.

WHEREAS Mobil proposes with the approval of the State to construct a lubricating oil refinery on portion of the land comprising the refinery site as defined in the Oil Refinery (Hundred of Noarlunga) Indenture Act 1958-1967, and the Indenture set forth in the Schedule to that Act.

AND WHEREAS the State has agreed subject to the ratification of this Indenture by the Parliament of South Australia to assist Mobil as herein set forth to enable the said lubricating oil refinery to be constructed and operated.

NOW THIS INDENTURE WITNESSETH that the State and Mobil HEREBY COVENANT AND AGREE WITH EACH OTHER as follows:—

1. (1) In this Indenture, unless the context otherwise requires:—

"**cargo service charge**" means a charge payable under the law of the State in respect of goods loaded onto a vessel ("**outward cargo service charge**"), or unloaded from a vessel ("**inward cargo service charge**"), at port facilities provided by or on behalf of the State;

"**lube refinery feedstock**" means any petroleum substance used as a feedstock by and in the manufacturing process carried out in the lube refinery, not being a finished petroleum product;

"**finished petroleum product**" means a petroleum substance—

- (a) that is intended for marketing without further processing or blending; and
- (b) that meets marketing specifications for finished petroleum products;

"**the Act**" means the *Oil Refinery (Hundred of Noarlunga) Indenture Act 1958-1967*;

"**the Consumer Price Index**" means the Consumer Price Index (all groups index-weighted average, eight capital cities) published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth;

"**the original Indenture**" means the Indenture set forth in the Schedule to the Act;

"**the lube refinery**" means the refinery established on the lube refinery site including any additions and changes made thereto from time to time;

"**the lube refinery site**" means that piece of land situated in the Hundred of Noarlunga County of Adelaide being the land comprised in Certificate of Title Register Book Volume 3948 Folio 4;

"**P.R.A.**" means the Company as defined in the original Indenture and which is now named Petroleum Refineries (Australia) Pty. Limited;

"**the P.R.A. refinery**" means the oil refinery established pursuant to the original Indenture, including any additions and changes made thereto from time to time;

"the marine installations" means the anchorage, submarine pipelines, wharves, jetties, landing places, and other marine facilities provided by P.R.A. in St. Vincent Gulf and being within and in the vicinity of the place defined and named "Port Stanvac" by proclamation dated the 7th day of July, 1960, and published in the *Government Gazette* of the same day at page 1;

"Port Adelaide" has the same meaning as in the *Harbors and Navigation Act 1993*.

(2) This Indenture shall be interpreted according to the laws for the time being in force in the State.

2. (1) The Government of the State will, as soon as practicable after the execution of this Indenture, introduce a Bill into the Parliament of South Australia to approve and ratify this Indenture and to provide for carrying it into effect.

(2) If such a Bill is not passed before the 31st day of December, 1977, the clauses of this Indenture other than this clause shall not come into operation.

3. (1) This Indenture is made subject to Mobil having already completed, or within such period as the State may allow, completing the construction on the lube refinery site of a lubricating oil refinery having a designed production capacity of not less than 3 000 barrels of lubricating oil per day.

(2) Until such time as the said lubricating oil refinery is constructed and commences to operate, the clauses of this Indenture, other than Clauses 1, 2 and 3, shall not commence to operate and if the lubricating oil refinery is not constructed as provided in Clause 3(1), the clauses of this Indenture other than Clauses 1, 2 and 3 shall have no effect.

(3) Mobil shall in the design, erection, equipment and operation of the lube refinery, comply with accepted modern oil refinery practice and standards.

4.¹ (1) A charge is payable to the Minister for Transport in respect of lube refinery feedstock unloaded by means of the marine installations.

(2) The charge applies only in respect of the volume of such feedstock that equals the volume of petroleum products produced at the lube refinery from that feedstock and distributed for use only in the State by land to any place in the State or by sea to Port Adelaide.

(3) The charge is payable each month on the basis of petroleum products distributed in the previous month.

(4) Mobil must make available to the South Australian Department of Transport customs or audited figures for the purpose of calculating the charge payable.

(5) Subject to subclause (6), the charge is \$2.0076 per kilolitre.

(6) If the rate of inward cargo service charge payable under the scale fixed in respect of bulk liquid cargo unloaded at Port Adelaide is increased or decreased, the rate fixed by subclause (5) will be taken to have been increased or decreased by the percentage of that increase or decrease.

(7) This clause expires on 1 February 1996 if Mobil has complied with clause 9(8) of the original Indenture.

5. (1) Notwithstanding anything contained in this Indenture or in the original Indenture, for the purpose of calculating the amount of the charge payable under clause 4 in respect of lube refinery feedstock unloaded by means of the marine installations except as mentioned in Clause 5(2) petroleum products shall be understood not to be distributed whilst they are inside or on the way to either the lube refinery site, the P.R.A. site or any other site owned by Mobil in which petroleum products may lawfully be kept or stored or temporarily placed and being within five kilometres of the nearest boundary of the lube refinery site.

¹ Clause 4 expired on 1 February 1996: cl. 4(7).

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(2) The exception is where petroleum products are passed from one such site to another such site and are consumed there other than as refinery feedstock.

6. (1) Subject to this clause, where, for any year ending on 1 February, the total amount paid for that year under clause 4(1) of this Indenture and clause 9(1) of the original Indenture in respect of lube refinery feedstock and feedstock for the P.R.A. refinery unloaded by means of the marine installations in respect of—

- (a) lube refinery feedstock; and
- (b) feedstock for the P.R.A. refinery to the extent that it is calculated on the volume of Mobil owned petroleum products manufactured at the P.R.A. refinery and distributed by Mobil (which shall include distribution by P.R.A. of such petroleum products by means of P.R.A.'s pipeline to Mobil's Birkenhead Terminal),

exceeds the prescribed amount, the State shall pay to Mobil, as soon as practicable, the amount of the excess.

(1a) For the purposes of subclause (1), "the prescribed amount" means—

- (a) in respect of each year up to and including the year ending on 1 February, 1986—\$476 000; and
- (b) in respect of the year ending on 1 February, 1987—\$520 000; and
- (c) in respect of the year ending on 1 February, 1988—a sum that bears to \$600 000 the same proportion as the Consumer Price Index for the June quarter of 1986 bears to the Consumer Price Index for the June quarter of 1985; and
- (d) in respect of the year ending on 1 February, 1989—a sum that bears to \$690 000 the same proportion as the Consumer Price Index for the June quarter of 1987 bears to the Consumer Price Index for the June quarter of 1985; and
- (e) in respect of the year ending on 1 February, 1990—a sum that bears to \$790 000 the same proportion as the Consumer Price Index for the June quarter of 1988 bears to the Consumer Price Index for the June quarter of 1985; and
- (f) in respect of each of the years ending on 1 February in 1991, 1992, 1993, 1994, 1995 and 1996—a sum that bears to \$850 000 the same proportion as the Consumer Price Index for the June quarter of the preceding calendar year but one bears to the Consumer Price Index for the June quarter of 1985.

(2) In calculating any amount to be paid by the State pursuant to sub-clause (1) of this clause, no account shall be taken, in any such year, of any amount paid under clause 4(1) of this Indenture or clause 9(1) of the original Indenture based on any excess portion of the volume of Mobil owned petroleum products manufactured at the P.R.A. refinery in respect of which a charge under those clauses is calculated, if such Mobil owned volume exceeds, in any such year:—

- (i) 76% (seventy six per cent) of the maximum yearly production capacity of the P.R.A. refinery at the time the lube refinery comes into operation

plus

- (ii) a volume equal to any increase in Mobil's share of the maximum yearly production capacity of the P.R.A. refinery beyond that calculated in accordance with Clause 6(2)(i), which increase results from an expansion of the P.R.A. refinery after the time the lube refinery comes into operation.

(3) For the purposes of paragraphs (i) and (ii) of sub-clause (2) of this clause, the maximum yearly production capacity of the P.R.A. refinery shall be such capacity as certified by P.R.A. and approved by the Treasurer of the State of South Australia.

* * * * *

7. No charge is payable to the Minister for Transport in respect of—

- (a) petroleum products produced at the lube refinery and loaded at the marine installations; or
- (b) petroleum products produced at the lube refinery and loaded at Port Adelaide if the products are—
 - (i) transported by pipeline or other means of land transport to Port Adelaide; and
 - (ii) transported by sea from Port Adelaide and subsequently unloaded at port facilities provided by or on behalf of the State.

8. (1) Petroleum products produced at the lube refinery and transported by sea to Port Adelaide are not liable to an inward cargo service charge at that port unless harbor works and facilities additional to those in existence at the time of the execution of this Indenture are provided at that port by or on behalf of the State and are used for unloading or landing such products.

If such facilities are so used, inward cargo services charges appropriate to the amount expended by or on behalf of the State on the provision of such additional facilities will be payable.

(2) A charge is payable in respect of—

- (a) petroleum products unloaded at Port Pirie, Port Lincoln or at any other port in the State (other than Port Adelaide) if the products were produced at the lube refinery and transported to that port by sea; and
- (b) petroleum products unloaded at any port in the State if the products were produced at the lube refinery and—
 - (i) are transported to Port Adelaide by pipeline or other means of land transport; and
 - (ii) are transported by sea from Port Adelaide to the port at which they are unloaded.

(3) A charge under subclause (2) is payable at a rate equal to the rate of inward cargo service charge under the scale fixed from time to time in respect of bulk liquid cargo unloaded at that port and is payable to the authority who has the care, control and management of the port.

9. Except as expressly provided, this Indenture does not confer any exemption from charges payable under the law of the State for the use of port facilities, or services provided by or on behalf of the State at such facilities.

* * * * *

12. (1) With the written consent of the State, Mobil may assign or otherwise dispose of, to any person, any right, power, benefit, or privilege conferred on Mobil by this Indenture.

(2) A person to whom any right, power, benefit or privilege is so assigned or disposed of may, with the written consent of the State, further assign or dispose of it.

(3) Mobil may with the written consent of the State cause any of its obligations or duties under this Indenture to be performed by any other Company, but notwithstanding such consent Mobil shall remain liable for any failure to perform such obligations or duties.

(4) No consent shall be required for the assignment of any right, power, benefit or privilege conferred on Mobil by this Indenture to, or for the performance of Mobil's obligations or duties under this Indenture by, a company more than 50 per cent of the issued shares of which are owned directly or indirectly by Mobil Oil Corporation, a company incorporated in the State of New York, U.S.A.

Mobil Lubricating Oil Refinery (Indenture) Act 1976

(5) The State shall not arbitrarily or unreasonably withhold consent to any assignment or disposition under this clause.

13. Any consent or permission to be given by the State under this Indenture shall be deemed to be duly given if given by notice in writing to Mobil signed by the Premier or Acting Premier of the State.

- 14. (1)— (a) Mobil may, subject to the consent of P.R.A. use and occupy the foreshore adjacent to the refinery site and the marine installations and the Bill referred to in Clause 2 of this Indenture shall provide for the amendment of Sections 6 and 7 of the Act to such extent as may be necessary to give effect to the provisions of this paragraph.
- (b) Mobil may, subject to the consent of P.R.A. use the facilities constructed and provided or to be provided in accordance with paragraphs (c), (d), (e) and (f) of Clause 5 of the original Indenture but the State shall not be obliged to construct, maintain or arrange for any such facilities to any greater extent than the original Indenture provides.
- (c) Mobil may draw water from the sea as provided for in paragraph (c) of sub-clause (1) of Clause 6 of the original Indenture.
- (d) Mobil shall be entitled to the benefit of the provisions of Clause 8 of the original Indenture.

(2) It is confirmed that the expression "the refinery" as used in the Act and the original Indenture has the same meaning as "the P.R.A. refinery" as herein defined.

(3) Except as is expressly provided by this Indenture, nothing herein contained shall affect any of the provisions of the original Indenture nor impose any obligation upon the State or the Government of the State to introduce any Bill into the Parliament of South Australia to vary the original Indenture or to amend any provisions of the Act.

IN WITNESS whereof the parties hereto have executed these presents the day and year first hereinbefore written.

HIS EXCELLENCY THE GOVERNOR OF SOUTH AUSTRALIA
caused the public seal of the State to be hereto affixed and signed this
Indenture on the twenty-ninth day of July 1976 in the presence of:
D.J. HOPGOOD

} M.L. OLIPHANT
L.S.

THE COMMON SEAL of MOBIL OIL AUSTRALIA, LIMITED
was hereto affixed in the presence of:
N.W. MORRISON, Secretary

} J.B. LESLIE, Director
L.S.

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APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 5(1):	amended by 70, 2001, s. 5(a)-(c)
Section 5(2):	amended by 70, 2001, s. 5(d)
Section 6(1): (previously section 6)	redesignated as s. 6(1) by 42, 1986, s. 3; amended by 74, 1994, s. 5
Section 6(2):	inserted by 42, 1986, s. 3; deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted
Section 8:	deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted
Schedule 1	
Indenture	
Clause 1(1):	definition of "cargo service charge" inserted by 74, 1994, s. 6(a) definition of "lube refinery feedstock" amended by 42, 1986, s. 3 definition of "finished petroleum product" inserted by 42, 1986, s. 3 definition of "the Consumer Price Index" inserted by 42, 1986, s. 3
Clause 4:	definition of "Port Adelaide" substituted by 74, 1994, s. 6(b)
Clause 5(1):	amended by 42, 1986, s. 3; substituted by 74, 1994, s. 6(c)
Clause 6(1):	amended by 74, 1994, s. 6(d)
Clause 6(1a):	amended by 42, 1986, s. 3; 74, 1994, s. 6(e)
Clause 6(2):	inserted by 42, 1986, s. 3
Clause 6(4):	amended by 74, 1994, s. 6(f), (g)
Clause 7:	repealed by 42, 1986, s. 3
Clause 8(1):	substituted by 74, 1994, s. 6(h)
Clause 8(2) and (3):	amended by 74, 1994, s. 6(i)-(l)
Clause 9:	substituted by 74, 1994, s. 6(m)
Clauses 10 and 11:	substituted by 74, 1994, s. 6(n)
Schedule 2:	repealed by 74, 1994, s. 6(n) deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted