

South Australia

Oil Refinery (Hundred of Noarlunga) Indenture Act 1958

An Act to approve and ratify an Indenture made between the State of South Australia and Standard Vacuum Refining Company (Australia) Proprietary Limited relating to the establishment and working of an oil refinery in the State, and to provide for carrying the provisions of that Indenture into effect, and for other purposes.

Contents

- 1 Short title
- 2 Interpretation
- 3 Ratification of Indenture
- 4 Supply of steam
- 5 Local government rates
- 6 Rights over foreshore
- 7 Trespassing on foreshore etc
- 8 Legal proceedings
- 10 Power in company to consent to use of certain facilities and services

Schedule—The Indenture

Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Oil Refinery (Hundred of Noarlunga) Indenture Act 1958*.

2—Interpretation

In this Act, unless the context otherwise requires—

the Indenture means the indenture set out in the Schedule to this Act;

the Company means the Company incorporated in Victoria under the name of Standard-Vacuum Refining Company (Australia) Proprietary Limited and includes its successors and assigns;

the refinery site means the area of approximately 604 acres of land in the district council district of Noarlunga, which before the passing of this Act the Company has agreed to purchase for the purpose of building an oil refinery thereon;

the refinery means the oil refinery established pursuant to the Indenture and includes any additions or changes made thereto from time to time;

the State means The State of South Australia.

3—Ratification of Indenture

The Indenture is hereby approved and ratified and shall notwithstanding any other Act or law, or any regulation proclamation or order, be carried out and take effect as though the provisions of clauses 3 to 16 thereof had been expressly enacted in this Act.

4—Supply of steam

The Electricity Trust of South Australia may supply steam to the Company and for that purpose may install, operate and maintain such plant and equipment as it deems expedient.

5—Local government rates

- (1) The rates payable to the council of the local government area in which the refinery site is situated in respect of the refinery site and the refinery shall be—
- (a) for the year ending 30 June 2001—the sum of \$218 580;
 - (b) for the year ending 30 June 2002—the sum of \$135 000;
 - (c) for the year ending 30 June 2003—the sum of \$108 000;
 - (d) for the year ending 30 June 2004—the sum of \$90 000;
 - (e) 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 financial year, expressed in dollars:

X = the sum payable in respect of the financial year immediately preceding the relevant financial 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 financial year on ratable property within the prescribed area:

B = the number of ratable 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 financial year immediately preceding the relevant financial year on ratable property within the prescribed area:

D = the number of ratable 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 refinery site and the refinery.
- (3) No rates shall be payable to a municipal or district council in respect of any pipelines referred to in clause 6 of the Indenture.
- (4) The foregoing provisions of this section shall have effect notwithstanding any other enactment, or any rate at any time declared or levied by any district or municipal council.
- (5) 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.
- (6) On and from the first day of July, 1976, a reference in this section to the refinery site shall be read as reference to the area comprising the refinery site other than the land situated in the Hundred of Noarlunga being the land comprised in Certificate of Title Register Book Volume 3948 Folio 4.

6—Rights over foreshore

- (1) So long as the refinery continues to be operated, the Company shall have the sole right to use and occupy the foreshore adjacent to the refinery site and to erect and maintain thereon any structures required for the purpose of such operation or any operations ancillary thereto.
- (2) Nothing in subsection (1) of this section shall be held as limiting or restricting the power of the Company to consent to the use and occupation by the Company as defined in the *Mobil Lubricating Oil Refinery (Indenture) Act 1976*, of the foreshore adjacent to the refinery site and any structures erected or maintained thereon by the first mentioned Company.

7—Trespassing on foreshore etc

- (1) No person except a person authorised to do so under an Act or under subsection (2) of this section shall enter, or remain on, or use—
 - (a) the foreshore adjacent to the refinery site; or
 - (b) any berth, wharf, jetty or loading place on or adjacent to such foreshore; or

- (c) any waters within fifty yards of any such berth, wharf, jetty, loading place, or foreshore.

Penalty: One hundred dollars.

- (2) The Company may authorise, with or without limitations or conditions, any person to enter or remain on or use any such berth, wharf, jetty, loading place, foreshore or waters and may at any time revoke or vary the authorisation.
- (3) Proceedings for offences against this section shall be heard and determined summarily.

8—Legal proceedings

- (1) Notwithstanding any other Act or law the State may under the name of "The State of South Australia"—
 - (a) sue and be sued and be a party to legal proceedings in connection with any matter arising out of this Act or the Indenture;
 - (b) agree with the Company to submit any dispute or difference between the State and the Company arising out of or relating to the Indenture to arbitration under the laws relating to arbitration for the time being in force in the State.
- (2) In any legal proceedings or arbitration to which the State is a party under subsection (1) of this section the practice and procedure and the rights of the parties shall as nearly as possible be the same and judgment may be given or an award may be made and costs awarded on either side as in legal proceedings or an arbitration between subject and subject.
- (3) The Treasurer shall out of money provided by Parliament for the purpose, satisfy any award order or judgment for the payment of money made or given against the State in any such proceedings or arbitration.

10—Power in company to consent to use of certain facilities and services

Nothing in this Act or in the Indenture shall be held as limiting or restricting the power of the Company to consent to the use and enjoyment by the Company as defined in the *Mobil Lubricating Oil Refinery (Indenture) Act 1976*, of the facilities or services mentioned in paragraphs (c), (d), (e) and (f) of clause 5 of the Indenture.

Schedule—The Indenture

This Indenture made the 14th day of August 1958 BETWEEN The State of South Australia (hereinafter referred to as "the State") of the one part and STANDARD-VACUUM REFINING COMPANY (AUSTRALIA) PROPRIETARY LIMITED, a Company incorporated in the State of Victoria and having its registered office at the corner of Kororoit Creek Road and Millers Road, Altona in the State of Victoria (hereinafter with its successors and assigns referred to as "the Company") of the other part

WHEREAS the Company proposes with the approval of the State to establish an oil refinery near Port Noarlunga in the State of South Australia and for that purpose has entered into contracts with the South Australian Housing Trust for the purchase of 604 acres of land or thereabouts in the district council district of Noarlunga

AND WHEREAS the State has agreed subject to the ratification of this Indenture by the Parliament of South Australia to provide facilities and services as herein set forth to enable the said refinery to be constructed and operated

NOW THIS INDENTURE WITNESSETH that the parties hereto covenant and agree with each other as follows:—

1. Interpretation

- (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;

"**feedstock**" means any petroleum substance intended for use as feedstock in the manufacturing process in the 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 lube refinery**" has the same meaning as in the Indenture set out in the first schedule of the *Mobil Lubricating Oil Refinery (Indenture) Act 1976*;

"**Mobil**" means Mobil Oil Australia Limited, a company incorporated in the State of Victoria, and includes any person to whom a right, power, benefit or privilege under the Indenture is assigned or otherwise disposed of by that company pursuant to the Indenture;

"**the Company's marine installations**" means the anchorage, submarine pipelines, wharves, jetties, landing places, and other marine facilities provided by the Company in St. Vincent Gulf in the vicinity of the site of the refinery;

"**the refinery**" means the oil refinery established pursuant to this Indenture;

"**the refinery site**" means the area of approximately 604 acres of land in the district council district of Noarlunga which the Company has agreed to purchase for the site of the refinery;

"**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. Ratification of Indenture

- (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 provide for carrying it into effect.
- (2) If such a Bill is not passed before the first of January 1959 the clauses of this Indenture other than this clause shall not come into operation.

3. Conditions of Indenture

- (1) This Indenture is made subject to—
- (a) the granting of the necessary import licences under the Customs Regulations for the import of plant, equipment and materials to be imported from overseas for the construction of the refinery; and
 - (b) the provision by the Commonwealth Bank of Australia of the foreign exchange required for such plant, equipment and materials, and for making payments under contracts relating to the designing and construction of the refinery or any portion thereof.
- (2) If after reasonable attempts the Company is unable to obtain such import licences or foreign exchange the clauses of this Indenture, other than clauses 1, 2 and 3, shall cease to operate and neither of the parties hereto will have any claim against the other with respect to anything arising under this Indenture.

4. Construction of refinery

- (1) Subject to subclause (2) of this clause, the Company shall—
- (a) within the period of five years after the Bill for the approval and ratification of this Indenture comes into operation or within such extended period as the State may allow, construct on the refinery site an oil refinery having a designed capacity of between 30 000 and 40 000 barrels of crude oil per day; and
 - (b) in the design, erection, equipment and operation of the refinery comply with accepted modern oil refinery practice and standards.
- (2) The Company shall not be liable for delay in constructing the refinery if such delay arises from causes beyond the reasonable control of the Company.

6. Powers of the Company as to pipelines anchorage, etc.

- (1) The Company may without payment of any rental royalty or other charge, at its own expense—
 - (a) lay and operate pipelines from the refinery site to Birkenhead and Osborne along or under any road or railway land in accordance with plans and specifications approved in writing by the Minister for Transport;
 - (b) construct and maintain on the foreshore or seabed in proximity to the refinery site or on land owned by the Company all necessary offshore berthing accommodation, wharves, jetties landing places and submarine pipelines in accordance with plans and specifications approved in writing by the Minister for Transport;
 - (c) draw water from the sea at any place adjacent to the refinery site and use such water for cooling and other purposes of the refinery.
- (2) The Minister for Transport must, before approving any plans and specifications relating to pipelines along or under a road, consult with the municipal or district council in whose area the road is situated.
- (3) The Minister for Transport must not unreasonably refuse to approve any plans and specifications submitted under subclause (1).

7. Cost of a road

If a public road running generally along the eastern boundary of the refinery site is opened either on the Company's land or on land adjacent to such eastern boundary the State will bear the cost of construction of such road and no contribution thereto will be required from the Company.

8. Pilotage and harbor and navigation charges

- (1) A vessel arriving at, or off, or proceeding to sea from, the Company's marine installations is exempted from Division 5 (Pilotage) of Part 5 of the *Harbors and Navigation Act 1993*.
- (2) Where a vessel uses the Company's marine installations, a harbor service charge is not payable but a navigation service charge is payable.
- (3) In subclause (2)—

"**harbor service charge**" means a charge payable under the law of the State for services provided by or on behalf of the State in relation to vessels at port facilities;

"**navigation service charge**" means a charge payable under the law of the State for the provision by or on behalf of the State of navigational aids for the safe navigation of vessels in State waters.

10. Charge on unloading of finished petroleum products

- (1) No charge is payable to the Minister for Transport in respect of finished petroleum products unloaded by Mobil at the Company's marine installations.

10A. Charge on loading of refinery products

- (1) No charge is payable to the Minister for Transport in respect of—
 - (a) petroleum products produced at the refinery and loaded at the Company's marine installations; or
 - (b) petroleum products produced at the 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; or
 - (c) crude oil or condensate loaded by Mobil at the Company's marine installations.

11. Inward wharfage on refinery products transported intra-state

- (1) Petroleum products produced at the refinery and transported by sea to Port Adelaide will not be chargeable with 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, cargo service 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 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 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.

12. General liability for other charges

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.

15. Assignment

- (1) With the written consent of the State the Company may assign or otherwise dispose of any right, power, benefit or privilege conferred on the Company 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) The Company 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 the Company 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 the Company by this Indenture to or for the performance of the Company'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 Standard-Vacuum Oil Company a company incorporated in the State of Delaware, U.S.A.
- (3) The Government shall not arbitrarily or unreasonably withhold consent to any assignment or disposition under this clause.

16. Mode of giving consent

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 the Company signed by the Premier or Acting Premier of the State.

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

His Excellency the Lieutenant Governor of South Australia caused the public seal of the State to be hereto affixed and signed this Indenture on the 14th day of August, 1958, in the presence of:—

A. LYELL McEWIN.

The Common Seal of Standard-Vacuum Refining Company (Australia) Proprietary Limited was hereto affixed in the presence of:—

R.B. PRICE, Director.
W.C. BIRCH, Secretary.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1958	18	<i>Oil Refinery (Hundred of Noarlunga) Indenture Act 1958</i>	23.10.1958	23.10.1958
1965	47	<i>Oil Refinery (Hundred of Noarlunga) Indenture Act Amendment Act 1965</i>	9.12.1965	9.12.1965
1967	46	<i>Oil Refinery (Hundred of Noarlunga) Indenture Act Amendment Act 1967</i>	19.10.1967	19.10.1967
1976	15	<i>Oil Refinery (Hundred of Noarlunga) Indenture Act Amendment Act 1976</i>	4.3.1976	4.3.1976
1976	78	<i>Mobil Lubricating Oil Refinery (Indenture) Act 1976</i>	9.12.1976	Sch 2—24.2.1977 (<i>Gazette</i> 24.2.1977 p491)
1986	41	<i>Oil Refinery (Hundred of Noarlunga) Indenture Act Amendment Act 1986</i>	4.9.1986	4.9.1986
1994	74	<i>Statutes Amendment (Oil Refineries) Act 1994</i>	1.12.1994	Pt 2 (ss 3 & 4)—1.12.1994
2001	70	<i>Statutes Amendment (Mobil Oil Refineries) Act 2001</i>	6.12.2001	Pt 2 (ss 3 & 4)—6.12.2001

Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 702.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
s 2		
the refinery	amended by 78/1976 s 8(1) (Sch 2)	24.2.1977
s 5		
s 5(1)	amended by 15/1976 s 2(a)—(c)	4.3.1976
	amended by 70/2001 s 3(a)—(c)	6.12.2001

6.12.2001—Oil Refinery (Hundred of Noarlunga) Indenture Act 1958

Legislative history

s 5(2)	amended by 70/2001 s 3(d)	6.12.2001
s 5(5) and (6)	inserted by 15/1976 s 2(d)	4.3.1976
s 6		
s 6(1)	s 6 redesignated as s 6(1) by 78/1976 s 8(1) (Sch 2)	24.2.1977
s 6(2)	inserted by 78/1976 s 8(1) (Sch 2)	24.2.1977
s 9		
s 9(1)	<i>s 9 redesignated as s 9(1) by 41/1986 s 2</i>	4.9.1986
	<i>deleted by 74/1994 s 3</i>	1.12.1994
s 9(2)	<i>inserted by 41/1986 s 2</i>	4.9.1986
	<i>deleted in pursuance of the Acts Republication Act 1967 as its function is now exhausted</i>	1.12.1994
s 10	inserted by 78/1976 s 8(1) (Sch 2)	24.2.1977
Sch		
Indenture		
cl 1		
cl 1(1)		
cargo service charge	inserted by 74/1994 s 4(a)	1.12.1994
feedstock	inserted 41/1986 s 2	4.9.1986
finished petroleum product	inserted by 41/1986 s 2	4.9.1986
Esso	<i>inserted by 41/1986 s 2</i>	4.9.1986
	<i>deleted by 74/1994 s 4(b)</i>	1.12.1994
the lube refinery	inserted by 74/1994 s 4(b)	1.12.1994
Mobil	inserted by 41/1986 s 2	4.9.1986
Port Adelaide	substituted by 74/1994 s 4(c)	1.12.1994
cl 5	<i>deleted by 70/2001 s 4(a)</i>	6.12.2001
cl 6		
cl 6(1)	amended by 74/1994 s 4(d), (e)	1.12.1994
cl 6(2)	substituted by 74/1994 s 4(f)	1.12.1994
cl 6(3)	inserted by 74/1994 s 4(f)	1.12.1994
cl 8	substituted by 74/1994 s 4(g)	1.12.1994
cl 9	<i>amended by 41/1986 s 2</i>	4.9.1986
	<i>substituted by 74/1994 s 4(g)</i>	1.12.1994
	<i>expired: cl 9(8)—omitted under Legislation Revision and Publication Act 2002</i>	(1.2.1996)
cl 9A	<i>inserted by 41/1986 s 2</i>	4.9.1986
	<i>deleted by 74/1994 s 4(g)</i>	1.12.1994
cl 10	amended by 41/1986 s 2	4.9.1986
	substituted by 74/1994 s 4(g)	1.12.1994
cl 10(1)	amended by 70/2001 s 4(b)	6.12.2001
cl 10(2)—(4)	<i>deleted by 70/2001 s 4(c)</i>	6.12.2001

Oil Refinery (Hundred of Noarlunga) Indenture Act 1958—6.12.2001
Legislative history

cl 10A	inserted by 41/1986 s 2	4.9.1986
	substituted by 74/1994 s 4(g)	1.12.1994
cl 10A(1)	amended by 70/2001 s 4(d)	6.12.2001
<i>cl 10A(2)—(4)</i>	<i>deleted by 70/2001 s 4(e)</i>	<i>6.12.2001</i>
cl 11		
cl 11(1)	amended by 74/1994 s 4(h)—(l)	1.12.1994
cl 11(2)	substituted by 74/1994 s 4(m)	1.12.1994
cl 11(3)	inserted by 74/1994 s 4(m)	1.12.1994
cl 12	substituted by 74/1994 s 4(n)	1.12.1994
<i>cll 13 and 14</i>	<i>deleted by 74/1994 s 4(n)</i>	<i>1.12.1994</i>

Historical versions

Reprint No 1—1.10.1991

Reprint No 2—1.12.1994