

**AUSTRALIAN OIL REFINING PTY. LIMITED
AGREEMENT RATIFICATION (AMENDMENT) ACT.**

Act No. 35, 1961.

Elizabeth II, No. 35, 1961 An Act to ratify an Agreement which is supplemental to a certain Agreement made between Australian Oil Refining Limited (now called Australian Oil Refining Pty. Limited) and the Minister for Lands with respect to the sale to such Company of certain lands at Kurnell and the granting to such Company of the right to obtain leases of and licenses over certain adjacent lands; to amend the Australian Oil Refining Limited Agreement Ratification Act, 1954, in certain respects; and for purposes connected therewith. [Assented to, 17th November, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title, construction and citation. 1. (1) This Act may be cited as the "Australian Oil Refining Pty. Limited Agreement Ratification (Amendment) Act, 1961".

(2) This Act shall be read and construed with the Australian Oil Refining Limited Agreement Ratification Act, 1954, which in this Act is referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Australian Oil Refining Pty. Limited Agreement Ratification Act, 1954-1961.

Ratification of amending Agreement. 2. The Agreement, a copy of which is set out in the Second Schedule to the Principal Act, as inserted by paragraph (e) of section four of this Act, is hereby approved, ratified and confirmed and may be carried into effect notwithstanding the provisions of any other Act.

3.

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

257

3. (1) The Company shall not, unless the written consent of the Minister be first obtained, sell or dispose of or lease for a term exceeding three years from the execution of the lease the lands described in the First Schedule to the Agreement or any part thereof: Provided that this section shall cease to operate—

No. 35, 1961
Restrictions
on sale or
lease of
land in First
Schedule to
Agreement.

- (a) upon the Minister stating in writing that the Company has performed the provisions of subclause (a) of clause 1A of the Agreement; or
- (b) upon the Company paying to the Minister the liquidated damages covenanted by it in subclause (b) of clause 1A of the Agreement to be paid to him; or
- (c) upon the Auditor-General certifying that the total sum arrived at by adding together the cost of the further permanent and fixed improvements erected and constructed and caused to be erected and constructed within three years from the first day of January, one thousand nine hundred and fifty-nine (or such further time, if any, allowed by the Auditor-General in writing) by the Company upon the said lands and other lands referred to in subclause (a) of clause 1A of the Agreement for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally since the first day of January, one thousand nine hundred and fifty-nine, is the equivalent of at least eight million pounds Australian currency.

In this section the terms "permanent and fixed improvements" and "all other expenditure incurred by the Company in relation to the project generally" and "industrial operations" and "project" have the meanings respectively ascribed to them in subclause (h) of clause 1A of the Agreement.

(2) This section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and fifty-nine.

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

No. 35, 1961

Amendment
of Act No.
34, 1954.

Sec. 2.
(Defini-
tions.)

Sec. 3.
(Ratification
of
Agreement.)

Sec. 9.
(Certain
persons may
sue and be
sued by the
Company.)
Schedule.

New Second
Schedule.

4. The Principal Act is amended—

- (a) by omitting from the definition of "The Agreement" in section two the words "Schedule to this Act" and by inserting in lieu thereof the words "First Schedule to this Act, as amended by the Agreement, a copy of which is set out in the Second Schedule to this Act";
- (b) by inserting in subsection one of section three after the word "Agreement" the words "a copy of which is set out in the First Schedule to this Act";
- (c) by inserting at the end of section nine the words "a copy of which is set out in the First Schedule to this Act";
- (d) by omitting from the Schedule the heading thereto and by inserting in lieu thereof the following heading:—

FIRST SCHEDULE.

THE AGREEMENT.

- (e) by inserting at the end of the Schedule the following new Schedule:—

SECOND SCHEDULE.

AMENDING AGREEMENT.

THIS AGREEMENT made the 17th day of June One thousand nine hundred and sixty BETWEEN—AUS-
TRALIAN OIL REFINING PTY. LIMITED a Company
duly incorporated under the Companies Acts of the State
of New South Wales (hereinafter called "the Com-
pany") of the first part THE HONOURABLE JOHN
BROPHY RENSHAW the Minister for Lands of the
State of New South Wales for and on behalf of Her Most
Gracious Majesty Queen Elizabeth II (hereinafter called
"the Minister" which expression shall where the context
admits include his successors in office) of the second part
THE HONOURABLE PHILLIP NORMAN RYAN
the Minister for Public Works of the said State for and
on behalf of Her Most Gracious Majesty Queen Elizabeth
II (hereinafter called "the Minister for Public Works"
which expression shall where the context admits include
his successors in office) of the third part and THE
MARITIME SERVICES BOARD OF NEW SOUTH
WALES a body corporate constituted by the Maritime
Services Act, 1935-1953 (hereinafter called "the Board")
of

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

259

of the fourth part WHEREAS this Agreement is made supplemental to an Agreement (hereinafter called "the Principal Agreement") dated the 16th day of June 1954 made between the Company (formerly and in the Principal Agreement called Australian Oil Refining Limited) of the one part and the Honourable Francis Harold Hawkins the then Minister for Lands of the said State for and on behalf of Her Majesty of the other part which last-mentioned Agreement was duly approved ratified and confirmed by the Parliament of the State of New South Wales by the Australian Oil Refining Limited Agreement Ratification Act, 1954 AND WHEREAS the Company has now established and is conducting an extensive oil refinery at Kurnell in the said State AND WHEREAS the Company proposes to further develop its said oil refinery and to use super tankers in connection therewith and in order that such super tankers may be so used it becomes necessary to deepen sections of Botany Bay and to make provision for the granting to the Company of certain further licenses including licenses to lay down construct use and maintain certain further pipe lines over parts of the bed of Botany Bay AND WHEREAS since the date of the Principal Agreement the Company has at its own expense with the consent of the Minister deepened part of the turning basin referred to in clause 23 of the Principal Agreement AND WHEREAS the parties hereto have agreed to execute this Agreement for the purpose of varying the Principal Agreement in the manner hereinafter appearing NOW IT IS HEREBY AGREED as follows:—

1. The Principal Agreement shall be read and construed—

(a) as if there were added after Clause One of the Principal Agreement the following additional clause:—

"1A. (a) The Company hereby covenants with the Minister that the Company without cost to the Minister or Her Majesty Her Heirs or Successors shall upon the 1st day of January 1959 have commenced or caused to be commenced the erection and construction of further permanent and fixed improvements upon the lands described in the First Second Fourth Tenth and Twelfth Schedules hereto and the other lands now owned or hereafter acquired by the Company adjoining or adjacent to the lands described in the First Schedule hereto for the purpose of carrying on industrial operations thereon and shall thereafter proceed with or cause to be proceeded with such erection and construction so that at the expiration
of

No. 35, 1961

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.****No. 35, 1961**
—

of three years from the said 1st day of January 1959 or of such further period if any as may be allowed by the Auditor-General in writing under the provisions hereinafter contained the Company shall have without cost to the Minister or Her Majesty Her Heirs and Successors erected and constructed or caused to be erected and constructed since the said 1st day of January 1959 upon the said lands and other lands as aforesaid further permanent and fixed improvements to a cost which together with all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 amounts to the equivalent of at least Eight million pounds (£8,000,000) Australian currency for the purpose of carrying on industrial operations thereon and the Company covenants with the Minister to construct and to have constructed such further permanent and fixed improvements to the said cost within the said period of Three years from the said 1st day of January 1959 (or further period if any allowed in writing by the Auditor-General as aforesaid) accordingly.

(b) In the event of the Company failing to erect and construct or cause to be erected and constructed upon the said lands and other lands as aforesaid such further permanent and fixed improvements to a cost which together with all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 amounts to the equivalent of at least Eight million pounds (£8,000,000) Australian currency as required by the preceding sub-clause within the time as thereby provided the Company hereby covenants to pay to the Minister as liquidated damages and not as penalty a sum calculated at the rate of Ten pounds (£10) per centum of the amount by which the sum of Eight million pounds (£8,000,000) in Australian currency exceeds the total sum (in Australian currency) arrived at by adding together the cost of such further permanent and fixed improvements erected and constructed and caused to be erected and constructed by the Company upon the said lands and other lands as aforesaid within the time as aforesaid and all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959.

(c)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

261

(c) A certificate by the Auditor-General No. 35, 1961 of the State of New South Wales as to the total sum arrived at by adding together the cost of the further permanent and fixed improvements erected and constructed and caused to be erected and constructed within the period of Three years from the said 1st day of January 1959 (or such further period if any allowed by the Auditor-General in writing under the provisions hereinafter contained) by the Company upon the said lands and other lands as aforesaid for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 shall be final and conclusive and binding upon the parties hereto.

(d) The Company shall from time to time produce all relevant books vouchers documents papers and evidence to, and allow the permanent and fixed improvements on the said lands and other lands as aforesaid and all other relevant property assets and things to be inspected by

- (i) the Minister and persons authorised by him for the purpose of ascertaining the performance or non-performance by the Company of sub-clause (a) of this Clause; and
- (ii) the Auditor-General (and persons authorised by him) for the purposes of sub-clauses (a) (c) and (f) of this Clause.

(e) The Company shall not after the said 1st day of January 1959 unless the written consent of the Minister be first obtained, sell or dispose of or lease for a term exceeding three years from the execution of the lease the lands described in the First Schedule hereto or any part thereof PROVIDED that this sub-clause shall cease to operate upon the Minister stating in writing that the Company has performed the provisions of sub-clause (a) of this Clause or upon the Company paying to the Minister the liquidated damages covenanted by it in sub-clause (b) of this Clause to be paid to him or upon the Auditor-General certifying that the total sum arrived at by adding together the cost of the further permanent and fixed improvements erected and constructed and caused to be erected and constructed within Three years from the said 1st day of January 1959 (or such

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.****No. 35, 1961**

such further time if any allowed by the Auditor-General in writing) by the Company upon the said lands and other lands as aforesaid for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 is the equivalent of at least Eight million pounds (£8,000,000) Australian currency.

(f) If through any cause beyond the control of the Company and not arising from or due to or contributed to by any neglect default or misconduct of the Company or its agents or servants delay occurs in the erection or construction by the Company of such further permanent and fixed improvements as provided by sub-clause (a) of this Clause the Company may from time to time within six months of the happening or occurring of the event or matter causing the delay apply in writing to the Auditor-General for an extension of time on account of such event or matter setting forth the cause of such application and the Auditor-General shall if he thinks the cause sufficient and within the foregoing provisions of this sub-clause (f) but not otherwise allow by writing under his hand such extension of time as he may think adequate.

(g) Unless the Company shall make such application within the time and in the manner aforesaid and unless and until the Auditor-General shall allow such extension or extensions of time as aforesaid the Company shall not by reason of any delay arising as in the preceding subclause mentioned or for any other reason whatsoever be relieved in any way or to any extent of its liability to erect and construct such further permanent and fixed improvements as provided by sub-clause (a) of this Clause within the time as therein provided or of any other liability or obligation of the Company under this agreement.

(h) In this Clause the term 'permanent and fixed improvements' includes buildings structures fencing storage tanks railways permanent pipe lines levelling of land reclamation of land wharves roads drains and canals and works and erections and other appurtenances to any of the foregoing and also includes fixed plant and machinery of any description and the term 'all other expenditure incurred by the Company in relation

relation to the project generally' includes expenditure incurred by the Company prior to the expiration of the said period of Three years (or further period, if any, allowed in writing by the Auditor-General as aforesaid) but after the said 1st day of January 1959 upon or in relation to— **No. 35, 1961**

- (i) the dredging of Botany Bay for the construction of and to secure safe access to wharves and other works;
- (ii) preliminary operations and training expenses;
- (iii) interest on debenture loans raised by the Company for the purpose of the project;
- (iv) royalties paid by the Company for the purposes of or in connection with the project;
- (v) design and purchasing expenses incurred for the purposes of or in connection with the project;
- (vi) the acquisition of lands or interests in lands acquired by the Company after the said 1st day of January 1959 for the purposes of or in connection with the project including agent's charges, conveyancing costs, stamp duty and other expenses properly paid in connection with such acquisition;
- (vii) the construction of the pipe lines referred to in paragraph (i) of Sub-clause (a) of Clause 25A hereof;
- (viii) the construction of pipe lines and other works under on or over any public road on Kurnell peninsula;

and the term 'industrial operations' includes such purposes associated therewith or incidental thereto as are conducive to carrying out such industrial operations and the term 'project' means the oil refinery and the building works and installations appurtenant thereto erected or to be erected on under or over all the lands referred to in paragraph (a) of Clause 1A of this Agreement."

- (b) as if there were added at the end of Clause 6 of the Principal Agreement the following words viz:—

"And all moneys payable to the Minister for Public Works under this Agreement shall be paid to the Minister for Public Works in cash in Sydney free of exchange."

(c)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.****No. 35, 1961**

- (c) as if there were inserted in paragraphs (i) and (ii) of Sub-clause (f) of Clause 21 of the Principal Agreement after the words "this Clause" the following words viz:—

"or Clauses 23A, 25 and 25A."

- (d) as if there were added after subclause (d) of Clause 23 of the Principal Agreement the following additional subclause:—

"(da) The Minister for Public Works or the Government of the State of New South Wales will as from the 1st day of May 1960 and during the currency of the lease referred to in Clause 21 hereof at the cost of Her Majesty perform such dredging and other work as may be necessary to maintain that part of the said turning basin which is constructed upon in or over that part of the bed of Botany Bay described in the Thirteenth Schedule hereto (such part of the said turning basin being hereinafter referred to as 'the deepened part of the turning basin') but excepting any part of the deepened part of the turning basin which is within 60 feet from the face of any jetty or wharf at any time constructed or erected in pursuance of Clause 21 of this Agreement or being at any time upon the land described in the Second Schedule hereto PROVIDED HOWEVER that the Minister for Public Works or the Government of the said State shall be liable under this sub-clause (da) to maintain the deepened part of the turning basin to the dimensions only and to the depth only of the deepened part of the turning basin as it existed at the said 1st day of May 1960 or to such dimensions and to such depth as from time to time in the opinion of the Minister for Public Works are reasonable having regard to the normal requirements of shipping at the Company's berths whichever are the lesser and in no event shall the Minister for Public Works or the Government of the said State be liable to maintain the deepened part of the turning basin or any part thereof to a depth greater than 38 feet clear water at Indian Spring Low Water".

- (e) as if there were inserted in sub-clause (f) of clause 23 of the Principal Agreement after the word letter and parentheses "subclause (d)" the following words letters and parentheses viz:—

"or subclause (da)".

(f)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

265

- (f) as if there were added after Clause 23 of the **No. 35, 1961**
Principal Agreement the following additional
Clauses:—

“23A. (a) The Company hereby covenants with the Minister for Public Works and with Her Majesty Her Heirs and Successors that the Company will before the 1st day of May 1960 carry out the following work that is to say:—

- (i) such original dredging and other work as may be necessary for the construction of a submarine terminal for super tankers upon in or over that part of the bed of Botany Bay described in the First and Second Parts of the Tenth Schedule hereto including such original dredging and other work as may be necessary for the construction of a mooring berth or basin (as part of the said submarine terminal for super tankers) upon in or over that part of the bed of Botany Bay described in the Eleventh Schedule hereto (being part of the land described in the First Part of the Tenth Schedule hereto) and such original dredging and other work as the Minister for Public Works may deem necessary outside the boundaries of the lands described in the said Tenth and Eleventh Schedules in order to provide a reasonable side slope to such submarine terminal and to such mooring berth or basin not being steeper than one vertical in three horizontal and the original dredging of the land described in the First Part of the Tenth Schedule hereto other than the land described in the Eleventh Schedule hereto shall be to a swept depth sufficient to allow a minimum of 39 feet of clear water at Indian Spring Low Water and the original dredging of the land described in the Second Part of the Tenth Schedule hereto shall be to a swept depth sufficient to allow a minimum of 38 feet of clear water at Indian Spring Low Water and the original dredging of the land described in the Eleventh Schedule hereto shall be to a swept depth sufficient to allow a minimum of 43 feet of clear water at Indian Spring Low Water.

(ii)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

No. 35, 1961

- (ii) such original dredging and other work as may be necessary for the construction of an approach channel upon in or over that part of the bed of Botany Bay described in the Twelfth Schedule hereto and such original dredging and other work as the Minister for Public Works may deem necessary outside the boundaries of the land described in the said Twelfth Schedule in order to provide a reasonable side slope to such approach channel not being steeper than one vertical in three horizontal and the original dredging of the land described in the Twelfth Schedule hereto shall be to a swept depth sufficient to allow a minimum of 38 feet of clear water at Indian Spring Low Water.

(b) On completion of the original dredging and other work referred to in sub-clause (a) of this Clause and when the said submarine terminal has been first used by the Company for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company's operations the Minister for Public Works or the Government of the State of New South Wales will within one week from the receipt by the Minister for Public Works of notice in writing from the Company of its having commenced so using the said submarine terminal commence and will during the currency of the lease referred to in Clause 21 hereof at the cost of Her Majesty continue such dredging and other work as may be necessary to maintain:—

- (i) the submarine terminal constructed as mentioned in paragraph (i) of subclause (a) of this Clause but excepting the mooring berth or basin constructed as mentioned in the said paragraph (i) of subclause (a) of this Clause and excepting also any part of the said submarine terminal which is within 60 feet from the face of any jetty or wharf at any time constructed or erected in pursuance of Clause 21 of this Agreement or being at any time upon the land described in the Second Schedule hereto;
- (ii) any approach channel constructed as mentioned in paragraph (ii) of sub-clause (a) of this Clause;

PROVIDED

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

267

PROVIDED HOWEVER that the Minister for No. 35, 1961
Public Works or the Government of the said State shall be liable under this sub-clause (b) to maintain the said submarine terminal to the dimensions only of the submarine terminal as it exists at the time when such submarine terminal is first used by the Company for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company's operations or to such dimensions as from time to time in the opinion of the Minister for Public Works are reasonable having regard to the normal requirements of shipping at the Company's berths whichever are the lesser AND PROVIDED FURTHER that the Minister for Public Works or the Government of the said State shall not be liable under this sub-clause (b) to maintain any part of the said submarine terminal to a depth greater than the depth of such part as it exists at the time when such submarine terminal is first used by the Company for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company's operations nor to a depth greater than the depth which from time to time in the opinion of the Minister for Public Works is reasonable having regard to the normal requirements of shipping at the Company's berths whichever is the lesser and in no event shall the Minister for Public Works or the Government of the said State be liable to maintain the part of the said submarine terminal described in the Second Part of the Tenth Schedule hereto or any part thereof to a depth greater than 38 feet clear water at Indian Spring Low Water nor to maintain the balance of the said submarine terminal (excepting the mooring berth or basin) or any part thereof to a depth greater than 39 feet clear water at Indian Spring Low Water AND PROVIDED FURTHER that neither the Minister for Public Works nor the Government of the said State shall be liable to maintain any part of such approach channel beyond a depth which from time to time in the opinion of the Minister for Public Works is reasonable for the Company's requirements and in no event shall the Minister for Public Works or the Government of the said State be liable to maintain any part of such approach channel to a depth greater than 38 feet clear water at Indian Spring Low Water.

(c)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.****No. 35, 1961**

(c) The liability of the Minister for Public Works or the Government of the State of New South Wales to carry out dredging and other work under this Clause shall be governed by the availability of dredging equipment at any particular time having regard to the necessity to use such dredging equipment elsewhere in the said State.

(d) In the event of the inability of the Minister for Public Works or the Government of the State of New South Wales to perform at any time the dredging and other work mentioned in sub-clause (b) of this Clause the Company may with the approval of the Minister for Public Works and subject to such terms and conditions as may from time to time be mutually agreed upon perform or cause to be performed such dredging and other work as shall in the opinion of the Minister for Public Works be necessary and in such event the cost of such dredging and other work shall be recoverable by the Company from the Minister for Public Works.

(e) The Company shall give to the Minister for Public Works notice in writing of its having commenced using the said submarine terminal for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company's operations.

(f) The Company covenants with the Minister for Public Works and with Her Majesty Her Heirs and Successors that no part of the work hereinbefore in sub-clause (a) of this Clause referred to shall be carried out except in accordance with plans and specifications previously approved of in writing by the Minister for Public Works and the Company will carry out all the work hereinbefore in sub-clause (a) of this Clause referred to on the most economical basis and in accordance with such conditions as the Minister for Public Works may have imposed or may impose and to the satisfaction in all respects of the Minister for Public Works.

23B. (a) Subject to the provisions hereinafter contained the Minister for Public Works shall make payments to the Company during the financial years 1959-1960 and 1960-1961 by way of reimbursement of cost as hereinafter mentioned to the amount of the cost to the Company of carrying out the works referred to in sub-clause

(a).

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

269

(a) of Clause 23A of this Agreement PROVIDED **No. 35, 1961**
ALWAYS AND IT IS HEREBY AGREED AND
DECLARED that the Minister for Public Works
shall not be liable by virtue of this sub-clause (a)
to pay to the Company any greater amount than
Four hundred and fiftyone thousand pounds
(£451,000).

(b) The payments so to be made by the
Minister for Public Works shall subject to the
provisions of this Agreement be made by such
instalments as the Minister for Public Works from
time to time shall see fit to advance as the carrying
out of the works proceed and the Company will
upon applying to the Minister for Public Works
for any such instalment deliver to the Minister for
Public Works such evidence as he may require as
to the cost of the work for the time being carried
out towards the completion of the said works and
that such work is being carried out in accordance
in all respects with the provisions of this Agree-
ment. The payments so to be made by the
Minister for Public Works shall not at any time
exceed in the aggregate the cost to the Company of
such part of the works referred to in sub-clause
(a) of Clause 23A of this Agreement as shall then
have been carried out by the Company AND the
Minister for Public Works shall not be called upon
to pay to the Company during the financial year
ending on the 30th day of June 1960 more than
Two hundred thousand pounds (£200,000).

(c) A certificate by the Auditor-General
as to the cost to the Company of carrying out the
works referred to in sub-clause (a) of Clause 23A
of this Agreement and/or as to the amount paid
by the Minister for Public Works to the Company
under this Clause of this Agreement shall be final
and conclusive and binding upon the parties
hereto.

(d) The Company shall from time to
time produce all relevant books vouchers docu-
ments papers and evidence to and allow the work
carried out by it under sub-clause (a) of Clause
23A of this Agreement to be inspected or checked
by surveys soundings or otherwise by—

(i) the Minister for Public Works and persons
authorised by him for the purpose of ascer-
taining the performance or non-perform-
ance by the Company of its obligations
under Clause 23A; and

(ii)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**No. 35, 1961

- (ii) the Auditor-General (and persons authorised by him) for the purposes of enabling him to ascertain the cost to the Company of carrying out the works referred to in sub-clause (a) of Clause 23A of this Agreement.

(e) It is a condition precedent to the right of the Company to claim any payment whatsoever from the Minister for Public Works under this Clause that it has fulfilled all the obligations on its part to be fulfilled under this Agreement so far as such obligations are capable of being fulfilled at the time when a claim for payment is made.

(f) The making of any progress payment to the Company under this Clause shall not be taken as proof of admission of any particular work or works having been executed or done or of the cost thereof or of any work having been executed or done to the satisfaction of the Minister for Public Works but shall only be taken to be payment on account.

23c. (a) When the works referred to in sub-clause (a) of Clause 23A of this Agreement have been completed the Director shall as soon as reasonably practicable issue a certificate that the submarine terminal is available for use and certifying the date on which it first became available for use and such certificate shall be conclusive evidence of all matters therein set out and absolutely final and binding on the parties hereto AND so that the Director may be in a position without delay to issue such a certificate the Company shall within fourteen days after the works referred to in sub-clause (a) of Clause 23A of this Agreement have been completed furnish to the Director a statement that such works have been completed.

(b) The Company covenants with the Minister for Public Works that upon the submarine terminal becoming available for use the Company will pay by way of rental to the Minister for Public Works in each and every year of the period of fifteen years from the date on which the said submarine terminal first becomes available for use annual payments as follows:—

- (i) during each of the first three years after the commencement of the said period of fifteen

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

271

fifteen (15) years a sum equal to one-sixth of the total amount payable by the Minister for Public Works to the Company under Clause 23B of this Agreement; No. 35, 1961

- (ii) during each of the succeeding three (3) years a sum equal to one-ninth of the said total amount;
- (iii) during each of the next succeeding three years a sum equal to one-eighteenth of the said total amount; and
- (iv) during each of the next succeeding six years (being the last six years of the said period of fifteen years) a sum equal to one-thirtieth of the said total amount

and the first of such payments shall be made within three months of the date of the issue of the certificate referred to in sub-clause (a) of this Clause and each subsequent payment will be made annually in advance upon the anniversary of the date set out in such certificate as the date on which the submarine terminal first became available for use.

(c) In case the Company shall make default in payment for the space of fourteen days after the due date for payment thereof of any such annual rental or any part thereof then interest at the rate of Six pounds (£6) per centum per annum on such sum as shall not have been paid (to be calculated from the due date for payment of the same to the date of actual payment thereof) shall be payable to the Minister for Public Works by and be recoverable from the Company.

(d) In case the Company shall make default in payment for the space of fourteen days after the due date for payment thereof of any such annual rental payable by it to the Minister for Public Works under this Clause or any part thereof the balance of the rental for the said term of Fifteen (15) years shall at the option of the Minister for Public Works immediately become due and payable by the Company to the Minister for Public Works together with interest thereon at the rate aforesaid to the date of payment."

(g)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

No. 35, 1961

(g) as if there were added after Clause 25 of the Principal Agreement the following additional Clauses:—

“25A. (a) After completion to the satisfaction of the Minister for Public Works of the original dredging and other work referred to in Sub-clause (a) of Clause 23A hereof and subject always to default not having been made by the Company under Clause 23c hereof the Board will upon the application of the Company grant to the Company—

(i) a license or licenses to lay down construct use and maintain pipe lines for the conveyance of crude oil or refinery products over parts of the bed of Botany Bay

(A) from a point situated in the said mooring berth or basin to the breasting island of the jetty or wharf constructed or erected pursuant to Clause 21 hereof; and

(B) from a point situated in the said mooring berth or basin to a point on the northern shore of Botany Bay at or in the vicinity of Yarra Point

in such position or positions as the Board may determine and for the residue then unexpired of the period of ninety nine years referred to in Clause 25 hereof and subject to such terms and conditions (including conditions as to payment for or in respect of the license and as to the maintenance of the pipe lines and as to the safeguarding of the future development including the dredging of Botany Bay and as to preventing interference with navigation or fishing and as to the depth below the surface of the bed of Botany Bay at which the pipe lines are to be laid) as the Board may determine:

(ii) a license to use the said submarine terminal (including the mooring berth or basin forming part thereof and the mooring buoys mooring lines and anchors and other facilities connected therewith) for the mooring of super tankers and as a point from which to discharge cargoes of crude oil and/or load bunkers or other refinery products into and for conveyance through the

the pipe lines referred to in paragraph (i) of sub-clause (a) of this Clause 25A for the residue then unexpired of the period of ninety nine years referred to in Clause 25 hereof and subject to such terms and conditions (including conditions as to payment for or in respect of the license and as to maintenance of the said mooring berth or basin mooring buoys mooring lines and anchors and other facilities and as to the safeguarding of the future development of Botany Bay and as to preventing interference with navigation or fishing) as the Board may determine.

(b) No such pipe line as is referred to in paragraph (i) of subclause (a) of this Clause shall be laid down or constructed except in accordance with plans and specifications previously approved of in writing by the Board and the work of laying down and constructing every such pipe line shall be carried out to the satisfaction of the Board. The plans and specifications referred to in this sub-clause shall be furnished by the Company to the Board at the cost and expense of the Company. Provisions in or to the effect of the provisions of this subclause may be inserted in any license granted to the Company in pursuance of the provisions of sub-clause (a) of this Clause to lay down construct use and maintain pipe lines.

25B. If at any time any such pipe line as is referred to in paragraph (i) of sub-clause (a) of Clause 25A or any mooring buoys mooring lines and anchors or other structures fixtures installations or facilities forming part of or in any way connected with the said submarine terminal shall in the opinion of the Board interfere with development along any of the foreshores of Botany Bay or interfere with access to or egress from or navigation in Botany Bay the Board shall be entitled to give to the Company notice requiring the Company to remove within the time stated in the notice (not being less than two years) all or any of such pipe lines mooring buoys mooring lines and anchors structures fixtures installations and facilities (in this Clause collectively called 'the pipe lines') either entirely from the said Bay or to such other position or depth or height as may be specified in the notice (provided that any such removal to a position or depth or height not within the limits of the lands which the pipe lines

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.****No. 35, 1961**

lines or any part thereof so required to be removed actually occupy at the time of the giving of the notice shall be subject to the consent of the Minister for Public Works and of the Minister and to any conditions imposed in respect of such consent) and in such case the Company shall at its own cost and expense complete the removal so required within the time stated in the notice accordingly and such removal shall be carried out to the satisfaction of the Board and in the event of the Company failing to comply with any such notice the Board may by itself or its servants or agents make good the failure of the Company at the Company's expense and cost and such expense and cost shall be repaid by the Company to the Board or as it may direct on demand and no liability shall be incurred by the Board or by any Minister of the Crown or by the Government of the State of New South Wales to compensate the Company for any loss or damage suffered by the Company by reason of anything done by the Board or any such Minister or the said Government or the servants or agents of any of them under or pursuant to this Clause PROVIDED THAT:—

- (a) upon any such removal of the pipe lines or any part thereof entirely from the said Bay any license granted in respect of the pipe lines or the part thereof so removed shall as from the date of such removal cease and determine but without prejudice nevertheless to any right or claim which may have accrued to the Board against the Company prior thereto:
- (b) upon any such removal of the pipe lines or any part thereof to a position or depth or height other than that actually occupied thereby at the time of the giving of the said notice the provisions of any license granted in respect of the pipe lines or the part thereof so removed shall in all respects apply mutatis mutandis to the pipe lines and every part thereof in such other position or depth or height and to the land or lands on under over or across which the same may from time to time be:
- (c) a covenant or condition to the effect of the preceding provisions of this Clause may be inserted in every such license as is referred to in this Clause."

(h)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

275

- (h) as if there were substituted for subclause (d) of Clause 26 of the Principal Agreement the following subclause:— **No. 35, 1961**

“(d) Covenants or conditions to the effect of the foregoing provisions of this Clause may be inserted in any lease or license granted to the Company by the Crown or the Minister or the Board for the purposes of or in connection with the said oil refinery and in any license granted to the Company pursuant to Clause 25A of this Agreement to lay down construct use and maintain pipe lines for the conveyance of crude oil or refinery products from a point situated in the said mooring berth or basin to a point on the northern shore of Botany Bay at or in the vicinity of Yarra Point.”

- (i) as if there were added at the end of subclause (b) of Clause 27 of the Principal Agreement the following words viz:—

“and in case such a covenant is so inserted in any such license granted pursuant to Clause 25A of this Agreement the same may be expressed to be made with the grantor of the license.”

- (j) as if there were added at the end of Clause 27 of the Principal Agreement the following sub-clauses:—

“(d) The Company hereby covenants with the Minister that the Company will not upon any land comprised in any license granted to it pursuant to Clause 25A of this Agreement to lay down construct use and maintain pipe lines for the conveyance of crude oil or refinery products from a point situated in the said mooring berth or basin to a point on the northern shore of Botany Bay at or in the vicinity of Yarra Point do permit or suffer to be done anything which will in any way endanger the preservation of the historic Captain Cook's Landing Reserve (being the land described in the Ninth Schedule hereto or the vegetation thereon.

(e) A covenant or condition to the effect of the provisions of sub-clause (d) of this Clause may be inserted in every such license as is referred to in that sub-clause and in case such a covenant is so inserted the same may be expressed to be made with the grantor of the License.”

(k)

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

No. 35, 1961

- (k) as if there were inserted at the end of Clause 37 of the Principal Agreement the following words, viz:—

“‘Director’ means Director of Public Works or other Permanent Head of the Department of Public Works of the State of New South Wales or the person acting as such for the time being.”

- (l) as if there were added after Clause 37 of the Principal Agreement the following clause:—

“38. Any opinion to be formed by the Minister for Public Works or the Director or the Auditor-General under this Agreement may be formed by him on such materials as he himself may think sufficient and in any such case the Minister for Public Works or the Director or the Auditor-General (as the case may be) shall be deemed to be exercising merely administrative functions.”

- (m) as if there were added after the Ninth Schedule to the Principal Agreement the following, viz:—

“THE TENTH SCHEDULE HEREINBEFORE REFERRED TO.

FIRST PART.

COMMENCING at a point bearing 317 degrees 44 minutes 35 seconds and distant 2,498.66 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence on the south-east by a line bearing 228 degrees 29 minutes 30 seconds 301.79 feet; on the south-west by lines successively bearing 288 degrees 9 minutes 10 seconds 898.73 feet, 319 degrees 56 minutes 20 seconds 862.34 feet and 335 degrees 36 minutes 20 seconds 472.15 feet; on the west by a line bearing 5 degrees 56 minutes 15 seconds 1,256.74 feet; on the north-west by a line bearing 53 degrees 7 minutes 50 seconds 750 feet; on the north-east by a line bearing 100 degrees 59 minutes 20 seconds 1,049.24 feet; and on the east by a line bearing 178 degrees 29 minutes 50 seconds 2,670.92 feet to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

SECOND

SECOND PART.

No. 35, 1961

COMMENCING at the easternmost south-eastern corner of the land described in the Tenth Schedule—First part, being a point bearing 317 degrees 44 minutes 35 seconds and distant 2,498.66 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence on the west by the eastern boundary of the land described in the Tenth Schedule—First Part bearing 358 degrees 29 minutes 50 seconds 2,670.92 feet; on the north-east by a line bearing 135 degrees 1,272.79 feet; on the east by a line bearing 174 degrees 17 minutes 20 seconds 954.74 feet; and on the south-east by a line bearing 228 degrees 26 minutes 40 seconds 1,236.13 feet to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

**THE ELEVENTH SCHEDULE HEREIN-
BEFORE REFERRED TO.**

COMMENCING at a point bearing 327 degrees 19 minutes 20 seconds and distant 4,204.9 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence on the south-east, south-west, north-west and north-east by lines bearing 196 degrees 8 minutes 40 seconds 395.6 feet, 286 degrees 15 minutes 40 seconds 1,000 feet, 16 degrees 8 minutes 40 seconds 395.6 feet and 106 degrees 15 minutes 40 seconds 1,000 feet respectively to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

**THE TWELFTH SCHEDULE HEREIN-
BEFORE REFERRED TO.**

COMMENCING at the south-eastern corner of the land described in the Tenth Schedule—Second Part, being a point bearing 344 degrees 12 minutes 10 seconds and distant 2,774.13 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence

278 **Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

No. 35, 1961

thence on the west by the eastern boundary of the land described in the Tenth Schedule—Second Part bearing 354 degrees 17 minutes 20 seconds 954.74 feet on the north-east by a line bearing 106 degrees 15 minutes about 1,130 feet to its intersection with the contour line on the bed of Botany Bay at the depth of 38 feet below Indian Spring Low Water; generally on the east by that contour line generally southerly to a point which bears 85 degrees from the point of commencement; and on the south by a line bearing 265 degrees about 1,040 feet to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

**THE THIRTEENTH SCHEDULE HEREIN-
BEFORE REFERRED TO.**

COMMENCING at a point bearing 306 degrees 49 minutes 50 seconds and distant 3,039.56 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell, such commencing point being on a south-western boundary of the land described in the Tenth Schedule—First Part at a bearing of 288 degrees 9 minutes 10 seconds and distance of 554.28 feet from the southernmost corner of that land; and bounded thence on the south-east by a line along the face of the fenders on the north-western side of the Australian Oil Refining Pty. Ltd. jetty bearing 199 degrees 35 minutes 20 seconds 900 feet; on the south-west and north-west by lines bearing 289 degrees 35 minutes 20 seconds 150 feet and 19 degrees 35 minutes 20 seconds 896.24 feet respectively to the aforesaid south-western boundary of the land described in the Tenth Schedule—First Part; and on the north-east by part of that boundary bearing 108 degrees 9 minutes 10 seconds 150.05 feet to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

**Australian Oil Refining Pty. Limited Agreement Ratification
(Amendment) Act.**

279

2. The Principal Agreement as varied by this Agree- No. 35, 1961
ment shall continue in force according to the tenor
thereof.

3. The Act ratifying this Agreement shall contain a
prohibition to the effect of subclause (e) of Clause 1A of
the Principal Agreement as amended by this Agreement.

4. This Agreement is subject to ratification by the
Parliament of the State of New South Wales and shall
come into effect when so ratified.

IN WITNESS whereof the parties hereto have executed
this Agreement the day and year first above written.

THE COMMON SEAL of
AUSTRALIAN OIL RE-
FINING PTY. LIMITED
was affixed hereto in pur-
suance of a resolution of
the Directors and in the
presence of:

(L.S.)
J. O. FIFER
Managing Director

D. B. HENRY, Secretary.

SIGNED SEALED AND
DELIVERED by THE
HONOURABLE JOHN
BROPHY RENSHAW the
Minister for Lands of the
State of New South Wales
for and on behalf of Her
Most Gracious Majesty
Queen Elizabeth II (but
not so as to incur any
personal liability under
this Agreement) in the
presence of:

J. B. RENSHAW

J. T. CONNELL, J.P.

SIGNED SEALED AND
DELIVERED by THE
HONOURABLE PHILLIP
NORMAN RYAN the
Minister for Public Works
of the State of New South
Wales for and on behalf of
Her Most Gracious Majesty
Queen Elizabeth II (but
not so as to incur any per-
sonal liability under this
Agreement) in the presence
of:

P. N. RYAN

W. G. GILROY.

THE

No. 35, 1961

THE COMMON SEAL of
THE MARITIME SER-
VICES BOARD OF NEW
SOUTH WALES was here-
to duly affixed in pursuance
of a resolution of the
Board and in the presence
of the Commissioners
whose signatures are set
opposite hereto and

S. COHEN
Secretary

(L.S.)

J. SIMPSON
W. D. DONALDSON
Commissioners
