

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 16 October 1985

*(Minister representing the Minister for Resources
and Energy)*

A BILL

FOR

An Act relating to revenue from petroleum

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Petroleum Revenue Act 1985*.

5 Commencement

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

Interpretation

10 3. (1) In this Act, unless the contrary intention appears—
“agreement” includes—

(a) a lease; and

(b) an agreement as varied by an agreement or by agreements;

“market petroleum” means—

15 (a) petroleum in a form in which petroleum is commonly sold;
or

(b) a product that is derived from petroleum and is of a kind
that is commonly sold,

20 but does not include petroleum, or a product, that is derived from
petroleum to which paragraph (a) applies or from a product to
which paragraph (b) applies;

“petroleum” means—

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid, or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid, or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide,

and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir;

“prescribed petroleum” means—

- (a) stabilised crude petroleum oil;
- (b) liquid petroleum obtained from naturally occurring petroleum gas; or
- (c) liquefied petroleum gas obtained from unstabilised crude petroleum oil or from naturally occurring petroleum gas;

“production source” means—

- (a) a source of petroleum in a State (which, without limiting the generality of the foregoing, may be a production area within the meaning of section 5B of the *Excise Tariff Act 1921*); or
- (b) 2 or more sources referred to in paragraph (a) that constitute, or form part of, a project for the production of petroleum;

“production unit” means a production source together with the plant and facilities (wherever situated) used in, or in relation to, the production of market petroleum from that source (other than plant and facilities used in, or in relation to, the refining or transport of market petroleum);

“relevant resource rent agreement” means a resource rent agreement described in Schedule 1;

“relevant revenue-sharing agreement” means a revenue-sharing agreement described in Schedule 2.

(2) For the purposes of this Act—

- (a) liquid petroleum obtained from naturally occurring petroleum gas shall be taken to have been produced from a production source if the petroleum gas was produced from that source; and
- (b) liquefied petroleum gas obtained from unstabilised crude petroleum oil or from naturally occurring petroleum gas shall be taken to have been produced from a production source if that oil or naturally occurring petroleum gas, as the case may be, was produced from that source.

(3) For the purposes of this Act—

- (a) where an agreement that is a relevant resource rent agreement is so varied that it ceases to be a relevant resource rent agreement, that agreement ceases to be in force; and
- 5 (b) where an agreement that is a relevant revenue-sharing agreement is so varied that it ceases to be a relevant revenue-sharing agreement, that agreement ceases to be in force.

No discrimination or preference

10 4. The Commonwealth or the Minister shall not exercise the powers (including discretions) of the Commonwealth or of the Minister, as the case may be, under this Act or under a relevant revenue-sharing agreement in a way that would—

- (a) discriminate between States or parts of States within the meaning of paragraph 51 (ii) of the Constitution; or
- 15 (b) give preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.

Relevant revenue-sharing agreements

5. Where—

- 20 (a) a State and the person or persons who produce market petroleum from a production unit have entered into a relevant resource rent agreement providing for a royalty in respect of market petroleum produced from that unit on or after 1 July in a year after 1984 specified in the agreement;
- 25 (b) that agreement has been approved by an Act passed by the Parliament of the State; and
- (c) the State requests the Commonwealth to enter into a relevant revenue-sharing agreement in respect of royalty payable under that relevant resource rent agreement,
- 30 the Minister may arrange for the Commonwealth to enter into that relevant revenue-sharing agreement with the State.

Exemption from Excise duty

6. (1) Where—

- 35 (a) a State and the person or persons who produce market petroleum from a production unit have entered into a relevant resource rent agreement providing for a royalty in respect of market petroleum produced from that unit on or after 1 July in a year after 1984 specified in the agreement;
- 40 (b) that agreement has been approved by an Act passed by the Parliament of the State; and
- (c) the Commonwealth and the State have entered into a relevant revenue-sharing agreement in respect of royalty payable under that relevant resource rent agreement,

the Minister shall give the Minister administering the *Excise Tariff Act 1921* (in this section referred to as the "Excise Minister") a certificate in writing stating that it is appropriate that prescribed petroleum produced from that production source on or after that 1 July should be exempt from duties of Excise.

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(2) Where the Minister gives the Excise Minister a certificate under sub-section (1) in respect of a production source, the Excise Minister shall, by notice in writing published in the *Gazette*, declare that prescribed petroleum produced from that source, other than—

(a) prescribed petroleum produced before the 1 July specified in the certificate; or 10

(b) prescribed petroleum produced after the revocation of the declaration under this sub-section in respect of that source,

is exempt from duties of Excise, and, where the Excise Minister publishes that notice, that declaration has effect accordingly.

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(3) Where—

(a) a declaration under sub-section (2) in respect of a production source is in force; and

(b) either the relevant resource rent agreement or the relevant revenue-sharing agreement because of which that declaration has been made ceases to be in force, 20

the Minister shall give the Excise Minister a certificate stating that the declaration should be revoked.

(4) Where the Minister gives the Excise Minister a certificate under sub-section (3) in respect of a declaration, the Excise Minister shall, by notice in writing published in the *Gazette*, revoke that declaration. 25

Excise Act

7. (1) For the purposes of the *Excise Act 1901*, prescribed petroleum that, by virtue of section 6, is exempt from duties of excise shall not be taken to be "excisable goods" within the meaning of that Act and any entry of that prescribed petroleum purporting to have been made under section 58 of that Act shall be taken not to have been made. 30

(2) Sub-section (1) does not affect any Departmental By-laws under the *Excise Act 1901* in force immediately before the commencement of this Act or prevent the making of Departmental By-laws under that Act— 35

(a) prescribing any petroleum production area for the purposes of the definition of "prescribed production area" in sub-section 6B (1) of the *Excise Tariff Act 1921*;

(b) prescribing any new petroleum production area for the purposes of the definition of "prescribed new production area" in sub-section 6C (1) of that last-mentioned Act; or 40

- (c) prescribing any intermediate petroleum production area for the purposes of the definition of “prescribed intermediate production area” in sub-section 6D (1) of that last-mentioned Act.

Repayments

- 5 **8. (1)** Where, because of this Act, any amounts paid by way of duties of Excise are repayable to a person, interest on those amounts is not payable to that person.
- (2) Sub-section (1) shall not be taken to imply that—
 - 10 (a) but for that sub-section, interest would have been payable on the amounts referred to in that sub-section; or
 - (b) interest is payable on any other amounts paid by way of duties of Excise and repayable to a person.

SCHEDULE 1

Sub-section 3 (1)
(definition of
“relevant resource
rent agreement”)

RELEVANT RESOURCE RENT AGREEMENT

- 1.** A resource rent agreement between a State and a person or persons (in this Schedule referred to as the “producer”) shall provide—
 - (a) that a royalty is payable by the producer to the State in respect of the market petroleum produced from a production unit specified in the agreement on and after 1 July in a year after 1984 specified in the agreement (in this clause referred to as the “relevant petroleum”);
 - (b) that the royalty in respect of the relevant petroleum disposed of in a financial year is—
 - (i) except where sub-paragraph (ii) applies—40% of the accumulated net receipts from the relevant petroleum disposed of in that year; or
 - (ii) where the accumulated net receipts from the relevant petroleum disposed of in that year is nil or less—nil;
 - (c) that revenue from the royalty shall be shared between the Commonwealth and the State in accordance with a relevant revenue-sharing agreement between the Commonwealth and the State;
 - (d) that no other royalty or charges imposed by the State shall be payable to the State in respect of petroleum produced, during the period to which the agreement applies, from the production source in that production unit;
 - (e) that—
 - (i) during the first financial year to which the agreement applies, the producer will pay the State an amount equal to the amount that the State and the producer estimate will be the amount of royalty payable under the agreement in respect of the financial year;
 - (ii) the amount referred to in sub-paragraph (i) shall be paid in 4 equal instalments on—
 - (A) 30 September in that first financial year or the day (in this sub-paragraph referred to as the “commencing day”) on which the agreement comes into operation, whichever occurs last;

SCHEDULE 1—continued

- (B) 31 December in that first financial year or the commencing day, whichever occurs last;
 - (C) 31 March in that first financial year or the commencing day, whichever occurs last; and
 - (D) 30 June in that first financial year;
 - (iii) during each other financial year to which the agreement applies, the producer will pay the State an amount equal to the amount of the royalty payable under the agreement in accordance with the provisions of the agreement required by paragraph (b) in the immediately preceding financial year; and
 - (iv) the amount payable under sub-paragraph (iii) in a financial year shall be paid in 4 equal instalments on 30 September, 31 December, 31 March and 30 June in that year;
- (f) that—
- (i) as soon as practicable after the end of each financial year during which the agreement is in force, the producer shall give the State Minister sufficient information to enable the State Minister to ascertain the amount of the royalty payable in respect of the relevant petroleum disposed of during that financial year;
 - (ii) as soon as practicable after ascertaining the amount of the royalty referred to in sub-paragraph (i), the State Minister shall give the producer notice in writing of that amount;
 - (iii) where the amount specified in the notice referred to in sub-paragraph (ii) in respect of a financial year exceeds the sum of the amounts paid to the State by the producer under the provision of the agreement required by sub-paragraph (e) (i) or (iii), as the case requires, in respect of that year—the producer shall pay to the State the difference between the amount and the sum; and
 - (iv) where the amount specified in the notice referred to in sub-paragraph (ii) in respect of a financial year is less than the sum of the amounts paid to the State by the producer under the provision of the agreement required by sub-paragraph (e) (i) or (iii), as the case requires, in respect of that year—the State shall pay the producer the difference between the amount and the sum or shall otherwise give the producer the benefit of that difference;
- (g) that, if relevant petroleum is destroyed or lost and the producer receives an amount by way of insurance or indemnity in respect of the destruction or loss, the producer shall be taken to have sold the petroleum for that amount;
- (h) that, where relevant petroleum is sold by the producer otherwise than in an arms length transaction, the proceeds of the sale shall be taken to be the value of the petroleum at the time of the sale; and
- (j) that market petroleum shall be taken to be sold otherwise than in an arms length transaction if—
- (i) there is any consideration payable for or in respect of the petroleum other than its price;
 - (ii) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
 - (iii) the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price;
- (k) that 2 persons shall be deemed to be associates of each other if, and only if—
- (i) both being natural persons—

SCHEDULE 1—continued

- (A) they are connected by a blood relationship or by marriage or by adoption; or
- (B) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (ii) both being bodies corporate—
 - (A) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
 - (B) both of them together control, directly or indirectly, a third body corporate; or
 - (C) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
- (iii) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
- (iv) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate);
- (v) they are members of the same partnership; or
- (vi) they are trustees or beneficiaries, or one of them is a trustee and the other is a beneficiary, of the same trust;
- (m) that, if a party to the agreement is in breach of the agreement, the other party may terminate the agreement by giving the party in breach 7 days notice, in writing, of the termination;
- (n) that, if—
 - (i) the production of market petroleum from the production unit is ended; and
 - (ii) there are costs directly incurred in ending that production that are not included in eligible expenditure in respect of relevant petroleum disposed of in a financial year, not being costs incurred later than 24 months after the ending of that production,
 the State will pay to the producer an amount equal to 40% of those costs; and
- (p) subject to clause 2, expressions in the agreement that are used in this Act (including this Schedule) have the same meaning as in this Act.

2. A resource rent agreement may substitute for an expression in this Act (including the Schedule) another expression that has the same meaning as the first-mentioned expression.

3. (1) In this Schedule—

“accumulated net receipts”, in relation to the market petroleum produced from a production unit which is disposed of in a financial year, means the amount ascertained in accordance with the formula—

$$A + B \left(1 + \frac{C}{100} \right),$$

where—

A is the net receipts derived from the market petroleum;

B is—

- (a) where the accumulated net receipts in relation to the market petroleum produced from that production unit which was disposed of in the immediately preceding financial year was not ascertained for the purposes of this Act—zero;
- (b) where the accumulated net receipts in relation to market petroleum produced from that production unit which was disposed of in the immediately preceding financial year was nil or greater—zero; or

SCHEDULE 1—continued

- (c) where the accumulated net receipts in relation to the market petroleum produced from that production unit which was disposed of in the immediately preceding financial year was less than nil—those accumulated net receipts; and

C is the threshold rate for the financial year;

“eligible exceptional expenditure”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means—

- (a) expenditure related to the discovery, or attempted discovery, of sources of petroleum not discovered before that financial year which form, or would form, part of that production unit; or
- (b) expenditure relating to the development of sources referred to in paragraph (a);

“eligible expenditure”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means eligible normal expenditure and eligible exceptional expenditure relating to that petroleum;

“eligible normal expenditure”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means expenditure incurred in the production of the petroleum (whether capital expenditure, expenditure on administration, operations, exploration, marketing, research, or rehabilitation of the environment or other expenditure) but does not include—

- (a) eligible exceptional expenditure;
- (b) expenditure relating to loans or the acquisition of capital;
- (c) expenditure by way of taxes;
- (d) expenditure by way of payments for entering a joint venture;
- (e) expenditure by way of payment of a royalty known as an override royalty; or
- (f) other expenditure not directly related to the production of the petroleum;

“gross receipts”, in relation to market petroleum produced from a production unit which is disposed of in a financial year, means the sum of—

- (a) the proceeds of the sale of that market petroleum which was sold; and
- (b) the value of the market petroleum which was not, and is not to be, sold;

“long-term bond rate”, in relation to a financial year, means the average of the weighted average yield of the longest term bond series in each Commonwealth Treasury bond tender declared in that year;

“net receipts”, in relation to market petroleum produced from a production unit which was petroleum disposed of in a financial year, means the difference between the gross receipts for that petroleum and the eligible expenditure relating to that petroleum;

“State Minister”, in relation to a resource rent agreement, means the Minister of State of the State who is administering the Act passed by the Parliament of the State that approved that agreement;

“threshold rate”, in relation to a financial year, means the sum of—

- (a) the long-term bond rate for that year; and
- (b) a rate not greater than 15%.

(2) For the purposes of this Schedule and a resource rent agreement, market petroleum shall be taken to be disposed of—

- (a) when it is sold; or
- (b) in a case where it is not sold—when it leaves the production source, a facility, or another place, in the production unit where it was produced otherwise than in the course of moving to another place in that unit.

SCHEDULE 2

Sub-section 3 (1)
(definition of
“relevant revenue-
sharing agreement”)

RELEVANT REVENUE-SHARING AGREEMENT

1. A revenue-sharing agreement between the Commonwealth and a State (in this Schedule referred to as the “sharing agreement”) shall provide—

- (a) that a proportion of the revenue (in this Schedule referred to as the “relevant revenue”) received by the State under a relevant resource rent agreement (in this Schedule referred to as the “rent agreement”) specified in the sharing agreement shall be paid to the Commonwealth;
- (b) that the proportion of the relevant revenue received by the State in a financial year that is to be paid to the Commonwealth shall be—
 - (i) in the case of a rent agreement that relates to a production unit that includes at least one production source from which petroleum for commercial use was produced before 25 June 1985—
 - (A) where at least 50% of the stabilised crude petroleum oil produced from the production source in that production unit which was sold in the financial year which commenced on 1 July 1984 was produced from an old accumulation within the meaning of the *Excise Tariff Act 1921*—75%; or
 - (B) in any other case—25%; or
 - (ii) in the case of a rent agreement to which sub-paragraph (i) does not apply—
 - (A) where the quantity of stabilised crude petroleum oil produced from the production source in the production unit which was sold in the first-mentioned financial year does not exceed 500ML—nil;
 - (B) where that quantity exceeds 500ML but does not exceed 700ML—25%;
 - (C) where that quantity exceeds 700ML but does not exceed 900ML—50%; or
 - (D) where that quantity exceeds 900ML—75%;
- (c) that, where the State receives in respect of a financial year an amount under a provision of the rent agreement required by paragraph 1 (e) of Schedule 1, the State shall, within 21 days after the receipt of that amount, pay the Commonwealth a proportion of that amount, being—
 - (i) in the case of the first financial year to which the sharing agreement applies—the proportion that the Commonwealth and the State estimate will be the proportion of relevant revenue payable by the State to the Commonwealth in that first financial year; or
 - (ii) in the case of any other financial year—the proportion of relevant revenue payable by the State to the Commonwealth under the sharing agreement in the immediately preceding financial year;
- (d) that, where the State receives in respect of a financial year an amount under the provision of the rent agreement required by paragraph 1 (f) of Schedule 1—the State shall, within 21 days after the receipt of the amount, pay to the Commonwealth such proportion of that amount as will result in the proportion of relevant revenue paid to the Commonwealth by the State in respect of that financial year being the proportion required by paragraph (b);

SCHEDULE 2—continued

- (e) that, where, the State pays, or gives the benefit of, an amount in respect of a financial year under the provision of the rent agreement required by subparagraph 1 (f) of the Schedule, the Commonwealth shall, within 21 days of the payment or giving, pay to the State such amount as will result in the proportion of relevant revenue received by the State in respect of that year paid by the State to the Commonwealth and retained by the Commonwealth being the proportion that the State is required to pay under paragraph (b);
 - (f) that the Commonwealth is not responsible for, and shall not bear, any of the administrative or other expenses incurred by the State in the assessment and collection of royalty under the rent agreement;
 - (g) that a Minister of State of the State or other person who receives a return, or gives an assessment, under the rent agreement, shall, as soon as practicable after receiving the return or giving the assessment, give the Minister a copy of the return or assessment;
 - (h) that, where the Act passed by the Parliament of the State that approved the rent agreement, the rent agreement or a lease relating to the production unit to which the rent agreement applies, confers a discretion on a Minister of State of the State or another person, being a discretion that could affect the amount of royalty, that Minister or other person shall not exercise that discretion except in a manner approved by the Minister;
 - (j) that, if the State makes a payment under the provision of the rent agreement required by paragraph 1 (n) in Schedule 1, the Commonwealth shall, within 21 days of being notified by the State of that payment, pay to the State a proportion of the amount of the payment, being a proportion equal to the proportion, or average of the proportions, required by paragraph (b) in respect of the sharing agreement;
 - (k) that, if a party to an agreement is in breach of the agreement, the other party may terminate the agreement by giving the party in breach 7 days notice in writing of the termination; and
 - (m) that the Commonwealth may terminate the agreement by giving the State 3 months notice in writing of the termination.
2. A revenue-sharing agreement shall not contain any provision which—
- (a) discriminates, or would in any circumstances discriminate, between States or parts of States within the meaning of paragraph 51 (ii) of the Constitution; or
 - (b) gives, or would in any circumstances give, preference to one State or any part thereof over another State or any part thereof within the meaning of section 99 of the Constitution.
3. A revenue-sharing agreement may substitute for an expression in this Act another expression that has the same meaning as the first-mentioned expression.



