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THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PETROLEUM (SUBMERGED LANDS) LEGISLATION AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the
Minister for Primary Industries and Energy,
The Hon John Kerin, MP)

PETROLEUM (SUBMERGED LANDS) LEGISLATION AMENDMENT BILL 1987

Outline

The Petroleum (Submerged Lands) Legislation Amendment Bill 1987 amends the Petroleum (Submerged Lands) Act 1967, the Petroleum (Submerged Lands) (Registration Fees) Act 1967 and the Petroleum (Submerged Lands) (Cash Bidding) Amendment Act 1985 so as to:

- . abolish the special arrangement with Western Australia whereby disagreements in the Joint Authority are resolved on a Premier/Prime Minister basis (Clause 4);
- . allow matters which were previously dealt with by the Joint Authority at the discretion of the Commonwealth Minister, to become automatically matters for Joint Authority decision (Clauses 5 and 13);
- . abolish 'over-the-counter' award of petroleum exploration and production titles (Clauses 6, 8 and 10);
- . allow a location to be declared over all of the blocks which cover a petroleum pool or pools found in a permit area, and remove the restriction on the maximum size of the location (presently a maximum of 9 blocks) (Clause 9);
- . protect confidential information contained in instruments evidencing dealings registered under section 81 of the Petroleum (Submerged Lands) Act 1967 (Clauses 11 and 12);
- . allow for the 1985 amendments to section 118 of the Petroleum (Submerged Lands) Act, which provide for improved public access to data and information, to apply to data and information supplied under the Act prior to the proclamation of the 1985 amendments (Clause 14);
- . provide for the Commonwealth Minister to direct the Designated Authority to obtain documents related to petroleum operations being carried on in the adjacent area (Clause 15);
- . recognise fees paid on dealings registered before July 1985 in the context of determining fees payable on transactions lodged for registration after July 1985 (Clause 18); and
- . remove the sunset clause on the cash bidding legislation to allow that legislation to remain in force after 21 November 1987 (Clause 19).

Financial Impact Statement

All of the above amendments, except for the last amendment, are not expected to have any financial impact nor will any of the amendments increase regulation of the petroleum exploration and development industry. In the case of the last amendment, the level of revenue that might be raised by the award of permits under the cash bidding system cannot be estimated as it will depend on the number of areas released during each financial year and the industry's appraisal of and response to the acreage released.

NOTES ON THE CLAUSES OF THE BILL

PART I - PRELIMINARY

Clause 1

Short title

This clause provides for the short title of the legislation.

Clause 2

Commencement

The Act will come into operation on the day on which it receives Royal Assent except for Clause 11 which will come into operation on a day to be fixed by Proclamation.

PART II - AMENDMENTS OF THE PETROLEUM (SUBMERGED LANDS) ACT 1967

Clause 3

Principal Act

References to the "Principal Act" are to the Petroleum (Submerged Lands) Act 1967.

Clause 4

Procedure of Joint Authorities

Subsection 8D(9) is repealed so that the special arrangement with Western Australia (as set out at Schedule 4 of the Act), whereby disagreements in the Joint Authority are resolved on a Premier/Prime Minister basis, is abolished.

Clause 5

Repeal of section 8E

This clause deals with the repeal of section 8E of the Act which provided for the Commonwealth Minister to elect to direct that the Joint Authority decide matters listed in Schedule 5 of the Act rather than the Designated Authority. These matters are to be automatically decided by the Joint Authority and this is reflected in subsequent clauses of this Bill.

This clause also sets out transition arrangements for those decisions that have been taken by the Designated Authority prior to the proclamation of these amendments and which are the subject of a notice to the Commonwealth Minister under subsection 8E(2) which has not expired. With the exception of

those matters which will continue to be decided by the Designated Authority (see clause 13, new subsection 103(1A)), the above notice is deemed to be a communication between the members of the Joint Authority thereby enabling these outstanding matters to be decided by the Joint Authority.

Clause 6

Advertisement of blocks

Subsections 20(3), 20(4), and 20(5) are repealed so that 'over-the-counter' releases of offshore petroleum exploration acreage are abolished.

Clause 7

Permit under Section 22B to continue in force in certain cases

Section 22C is amended as a consequence of the repeal of section 8E and the amendments to sections 36 and 37. Section 22C allows a cash bid permit to continue in force in respect of a certain block or blocks which are in a location or if a location is in the process of being declared under section 37 in respect of that block or blocks. The permit ceases to be in force in respect of this block or blocks when a location is not declared, when a location that is declared is revoked, when a lease or licence is granted over the block or blocks, or the period within which a lease or licence application can be lodged expires.

Clause 8

Application for permit in respect of surrendered blocks etc.

The repeal of subsections 23(2) and 23(3) will abolish "over-the-counter" releases of exploration permits.

Clause 9

Nomination of blocks as locations/Declaration of location

This clause repeals sections 36 and 37 and substitutes new sections 36 and 37.

The new section 36 enables a permittee to nominate for the purposes of declaring a location, the block or blocks which cover a petroleum pool or pools found in the permit area. The new subsection 36(5) ensures that a nomination can only be made if petroleum has been recovered from the pool or pools concerned, regardless of whether that recovery has been made in the permit area by the permittee or in an adjoining title (whether in an Adjacent Area or the Territorial Sea) by another

titleholder (being a permittee, lessee or licensee). For example, if a pool or pools straddle a permit boundary then the permittees on both sides of the boundary are able to declare a location even though petroleum may have been recovered from the pool or pools in only one of the permit areas.

The Joint Authority may require a permittee to exercise his rights and nominate the block or blocks. If the permittee fails to make the required nomination the Joint Authority may nominate the block or blocks.

The new provisions also remove the previous constraint on the size of locations. Under the existing legislation locations were usually 9 blocks (sometimes less) in size, but the amendments ensure that the location will now cover the whole of the petroleum pool or pools found.

The new section 37 provides for the Joint Authority to publish in the Gazette a notice declaring that the block or blocks nominated under section 36 are to be a location. The Joint Authority may at the request of a permittee vary or revoke a declaration. The Joint Authority may also of its own volition vary a declaration subject to the permittee being given an opportunity to advise the Joint Authority why such a variation should not be made.

Where a nomination of a location has been received by the Designated Authority but a declaration has not been made under the existing section 37 at the time this Bill comes into force, such a nomination will be processed as if the existing provisions prevail. Any declaration of a location made under the existing section 37 whether made before or after the commencement on the new section 37 remains valid.

The transition provision at subclause 9(5) ensures that, for permits in royalty areas (being permits VIC/P1, WA-1-P and WA-28-P after resource rent tax is introduced), the new sections 36 and 37 do not inadvertently result in an increase in royalty rates applicable to future licences.

The existing sections 36 and 37 of the Principal Act generally provide for a location to be 9 blocks in size which, in most cases, is larger than that required to cover a petroleum discovery. As a result, it is possible for a permittee or lessee in a royalty area to apply for a primary licence only, which would fully cover the discovery and which would incur a royalty rate of 10 per cent of net wellhead value.

With the implementation of clause 9, a location can only consist of the blocks that are necessary to fully cover the discovery. Consequently, by virtue of the formula contained in section 40 of the Principal Act, a titleholder in a royalty area would be forced to apply for a licence covering both the primary and secondary entitlements if the licence is to fully cover the discovery. In the absence of the transition provision in subclause 9(5) this would have resulted in the licensee being subject to a royalty rate of at least 11 per cent of net wellhead value.

The transition provision overcomes the potential increase in royalty by invoking the formula contained in section 40 of the Principal Act as if the new location arrangements contained in subclause 9(1) are not enacted. The provision achieves this by requiring the Joint Authority to notify the permittee of the maximum number of blocks which, in its opinion, would have been declared as the location had the existing sections 36 and 37 not been repealed. In forming its opinion as to the number of blocks that would have been contained in the location, the Joint Authority would take note of any views submitted by the permittee.

As an example of the application of the transition provision, suppose a location of 5 blocks is declared but, in the opinion of the Joint Authority, the repealed sections 36 and 37 would have resulted in a 9 block location. Applying the number 9 to the formula in section 40 results in a primary entitlement of 5 blocks, the same as the size of the location actually declared, and therefore all 5 blocks in the location will be able to be included in a primary licence. On the other hand, had the location declared been 6 blocks, 5 blocks would still qualify for a primary licence, but 1 block would be the subject of a secondary licence.

Subclause 9(6) provides for similar arrangements for determining a lessee's primary licence entitlement under section 40B.

Clause 10

Application for licence in respect of surrendered blocks etc.

The repeal, in paragraph (a), of subsections 47(4) and 47(5) will abolish the "over-the-counter" release of production licenses.

The amendments, in paragraphs (b) and (c), to paragraphs 47(6)(d) and 47(6)(e) arise as a consequence of the repeal of subsections 47(4) and 47(5).

Clause 11

Approval of dealings relating to existing titles

Subsection 81(4) has been amended so that an application for the registration of a dealing is no longer required to be accompanied by an instrument as prescribed by regulation (paragraph 81(4)(b)), but is still required to be accompanied by the instrument evidencing the dealing (paragraph 81(4)(a)). The applicant, however, has the option of lodging the prescribed instrument.

Subsection 81(13) is replaced by a new subsection which provides for the public inspection of an instrument evidencing a dealing in the case of the dealing having been approved and registered, and where the prescribed instrument was not lodged

with the application for approval of the dealing. However, where this instrument has been lodged with the application for approval of the dealing, that prescribed instrument and not the instrument evidencing the dealing will become available for public inspection. It is expected that companies will only take up the option of lodging the prescribed instrument in cases where the instrument evidencing the dealing contains commercially sensitive information.

This clause also provides transition arrangements which will allow applicants with dealings not approved at the time a regulation is made for the purposes of paragraph 81(4)(b) to lodge such an instrument. In this respect, the Designated Authority will notify these applicants that they may lodge such an instrument within 30 days of the Designated Authority's notice. The application for approval of the dealing shall not be processed during this period. The inclusion of the new subsection (13A) will ensure that if the Designated Authority fails to comply with these transition arrangements, the approval and registration of a dealing is not rendered ineffective.

Clause 12

Inspection of register and documents

Section 86 is amended as a consequence of the amendments to subsection 81(13).

Clause 13

Exemption

The replacement of subsection 103(1) arises as a consequence of the repeal of section 8E. The new subsections provide for the Designated Authority to retain the functions previously set out in subsection 103(1) which relate to special prospecting authorities and access authorities (see the new subsection 103(1A)). The remaining functions set out in the previous subsection 103(1) will become the responsibility of the Joint Authority.

The clause also provides transition arrangements which will allow outstanding applications from permit, lease and licence holders for variations, suspensions or exemptions from conditions of the title to be dealt with by the Joint Authority. Transition arrangements are also made for variations, suspensions or exemptions approved prior to these amendments to remain in force.

Clause 14Release of information

These amendments to section 118 provide for the application of subsections (2), (3) and (5A) to information, data and materials supplied to the Designated Authority or Commonwealth Minister both before and after 22 July 1985, being the proclamation date of the Petroleum (Submerged Lands) Amendment Act 1985. As a consequence of the application of this amendment to subsections (2) and (3), information, data and materials supplied by permittees prior to 22 July 1985 will become available for public release after two years as provided for in subsection (4).

Confidential information supplied prior to 22 July 1985 will become subject to the provisions of subsection (5A) and to related provisions which will continue to protect such information from public release after 5 years should it remain confidential.

Clause 15Records etc to be kept

Section 122 is amended so that the Commonwealth Minister may direct the Designated Authority as to what accounts, records and other documents should be kept and furnished by persons carrying on operations in the adjacent area. A direction given by the Commonwealth Minister may be expressed in general terms or may relate to specific documents to be kept or furnished by certain persons.

Clause 16Amendments

Further consequential amendments to the Petroleum (Submerged Lands) Act 1967 are set out in the Schedule.

Clause 17Transition provision

This transition provision arises as a consequence of the abolition of section 8E and ensures that previous actions taken by the Designated Authority are in no way invalidated. Similar arrangements for section 103 matters are provided for in clause 13.

PART III - AMENDMENT OF THE PETROLEUM (SUBMERGED LANDS)
(REGISTRATION FEES) ACT 1967

Clause 18

Imposition of registration fees

The clause amends subsection 4(3) and subparagraph 4(5)(b)(iv) so that fees paid in respect of the approval of the registration of instruments under the provisions of section 81 of the Petroleum (Submerged Lands) Act 1967 prior to the amendment of that section in 1985 are recognised for the purposes of the subsection and subparagraph amended by this clause.

PART IV - AMENDMENT OF THE PETROLEUM (SUBMERGED LANDS)
(CASH BIDDING) AMENDMENT ACT 1985

Clause 19

Repeal of section 3

This clause repeals section 3 of the Petroleum (Submerged Lands) (Cash Bidding) Amendment Act 1985 so that this Act will continue in force after 21 November 1987. Section 3 provided for the Act to cease to be in force two years after the Act's commencement (22 November 1985).

SCHEDULE

AMENDMENTS OF PETROLEUM (SUBMERGED LANDS) ACT 1967

Section 20

These amendments to subsections (1) and (2) arise as a consequence of the repealing of section 8E.

Subsection 23(1)

This amendment arises as a consequence of the repealing of section 8E

Subsection 25(3)

This amendment arises as a consequence of the repealing of subsections 23(2) and (3).

Subsection 31(5)

This amendment arises as a consequence of the repealing of section 8E.

Section 38

This amendment is a consequence of the amendments to sections 36 and 37.

Paragraph 39A(5)(b)

This amendment arises as a consequence of the repealing of section 8E.

Paragraph 40(1)(a)

This amendment arises as a consequence of removing the restriction on the size of locations by amending sections 36 and 37.

Paragraph 40(4)(b)

This amendment arises as a consequence of the repealing of section 8E.

Paragraph 40B(2)(a)

This amendment arises as a consequence of removing the restriction on the size of locations by amending sections 36 and 37.

Section 46

The amendments to subsections (3), (5) and (6) arise as a consequence of the amendments to section 37.

Section 47

The amendments to subsections (1), (2) and (3) arise as a consequence of the repealing of section 8E.

Section 48

The amendment to subparagraph (1)(b)(ii) arises as a consequence of the repealing of section 8E. The amendments to subparagraph (1)(b)(i) and to subsection (3) arise from the repealing of subsections 47(4) and (5).

Section 49

The amendments to subsections (3) and (7) arise from the repealing of subsections 47(4) and (5).

Subsection 57(4)

This amendment arises as a consequence of the repealing of section 8E.

Section 71

These amendments to subsections (1), (4) and (5) arise as a consequence of the repealing of section 8E.

Subsection 74(1)

This amendment arises as a consequence of the repealing of section 8E.

Subsection 125(1)

This amendment arises as a consequence of the repealing of section 8E.

Schedules 4 and 5

Schedule 4 is repealed as a consequence of the repeal of subsection 8D(9). Schedule 5 is repealed as a consequence of the repeal of section 8E.



