1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Resources and Energy, Senator the Hon. Gareth Evans, Q.C.)

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PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1985

Purpose

The Petroleum (Submerged Lands) Amendment Bill 1985 amends the Petroleum (Submerged Lands) Act 1967 so as to:

- provide for the granting of retention leases over currently non-commercial discoveries. Retention leases will allow explorers to retain tenure over discoveries until they become commercial and should provide an additional measure of encouragement for companies exploring in deep water or gas prone areas (clauses (5), (8), (9), (10), (11), and (38));

- revise the registration provisions of the Act to take account of the recommendations of the Royal Commission into the Activities of the Ship Painters and Dockers Union and other suggestions to clarify and streamline the process of registration of transfers and dealings affecting petroleum titles (clauses (14) to (26));

- improve the administrative processes for the making of Regulations and Directions and for the service of Directions. The new provisions will facilitate the service of documents, enable codes of practice and standards to be adopted as they exist from time to time, and enable the Directions and Regulations to control activities subject to the consent or approval of specified persons (clauses (27), (28), (34) and (36));

- extend the scope of access and special prospecting authorities and facilitate their grant to exploration companies (clauses (29) and (30));

- provide for early release of basic data and interpretive information supplied by titleholders to government, subject to consultations with titleholders on the release of interpretive information (clauses (31) and (32));

- enable review by the Administrative Appeals Tribunal of decisions made by the Commonwealth Minister, or his delegate, in relation to areas adjacent to the Commonwealth Territories or in relation to release of information under section 118 of the Act (clause (35));

- waive a proportion of the Commonwealth's share of royalties to be derived from the North West Shelf project, in favour of the Western Australian Government, to assist that State in meeting its obligations under the agreement reached with the North West Shelf Joint Venture participants (clause 33); and

- provide for any petroleum produced from the Territory of Ashmore and Cartier Islands adjacent area to be exempt from royalties. This will allow petroleum discoveries in the area to proceed to development without delay. These developments will be subject to the provisions of the proposed petroleum resource rent tax (clauses (4), (6), (7), (8), (9), (10), (12), (13) and (37)).

The waiver of a proportion of the royalties on the domestic phase of the North West Shelf project will amount to a loss of revenue of $117.1 million (in 1984-85 dollars) over the next twenty years; the loss to revenue in 1985/86 and 1986/87 as a consequence of the waiving of the royalties will amount to $0.7m and $0.8m (in 1984-85 dollars) respectively. Amendments giving effect to the Costigan Royal Commission's recommendations are expected to result in some increase in administrative costs associated with the registration of agreements under the legislation although this will be offset in part by the fees received.

NOTES ON THE CLAUSES OF THE BILL

Clause 1

Short title, etc

This clause provides for the short title of the legislation.

Clause 2

Commencement

Sections 1 and 2 will come into operation on the day on which this Act receives the Royal Assent. The remaining provisions of this Act will come into operation on such days as are fixed by Proclamation.

Clause 3

Interpretation

This clause covers the changes necessary to the definitions of a number of terms used in the Act as a consequence of the introduction of the retention lease provisions and amendment of the registration provisions.

Clause 4

Conditions of permit

The amendment ensures that a permit in the Territory of Ashmore and Cartier Islands adjacent area will not be subject to the Royalty Act.

Clause 5

Division 2A - Retention Leases for Petroleum

This is a new Division included in the legislation to make provision for retention leases.

Section 38A - Application by permittee for lease

A permittee may apply for a retention lease in respect of any or all of the blocks in a location within two years of the location being declared unless the permittee applies to the Designated Authority for an extension of two years before the initial period expires.

Applicants are required to provide details of proposed work and expenditure in the areas they have applied for, and the commercial viability, or possible future commercial viability, of the recovery of petroleum from that area. The proposed work may include seismic surveying, drilling wells, or evaluation studies to further assess the commercial viability of petroleum production from the area. A fee of $600 is payable on lodging an application.

In order to properly assess an application the Designated Authority has the power to require applicants to furnish further information in connection with a lease application.

Section 38B - Grant or refusal of lease in relation to application

If all information requested by the Designated Authority has been provided by the lessee and the Joint Authority is satisfied that the discovery is not presently commercially viable, but is likely to become viable within 15 years, the Joint Authority shall grant a lease over the blocks specified in the application. A permittee may apply for, and be granted, a retention lease over any or all of the blocks covered by a location. Any blocks in a location not taken up in a lease will revert to the permit and the location over those blocks will be revoked (see clause 11).

The applicant will be required to lodge a security for compliance with the lease conditions. The Joint Authority will provide the applicant with a summary of lease conditions and advice that the offer will lapse if the applicant does not request the grant of the lease and lodge the security with the Designated Authority within one month of the offer being made. However, the permittee may apply to the Designated Authority for an extension of one month. Once an applicant who has been offered a lease complies with these requirements, a retention lease will be granted and the permit over that block or blocks will cease to be in force.

The Joint Authority may refuse to grant a lease if the applicant has failed to furnish any further information required by the Designated Authority. The Joint Authority may also refuse to grant a lease if it is satisfied that petroleum production is currently commercially viable or that petroleum production is unlikely to be commercially viable within 15 years. In the former case the applicant may then apply for a production licence (see clauses 6 and 7), while in the latter case the location is revoked and the blocks remain in the permit (see clause 11).

Section 38C - Rights conferred by lease

While the lease remains in force, the lessee is authorised to carry out petroleum exploration work and operations including the evaluation of the commercial viability of petroleum production within the lease area.

Section 38D - Term of lease

Subject to other provisions in this part, the lease will remain in force for five years.

Section 38E

Notice of intention to cancel lease

If, after consideration of a submission from the lessee re-evaluating the commercial viability of petroleum production from the lease, the Joint Authority is of the opinion that petroleum production has become commercially viable, the Joint Authority may inform the lessee or any other interested parties that it intends to cancel the lease. The lessee and the other interested parties will then have a period of not less than one month from the date of the notice of intention to cancel to submit any further information they wish to be considered by the Joint Authority.

Should the Joint Authority determine that the lease should be cancelled, cancellation will take effect 12 months after a notice of cancellation has been served. Until that time the lease is deemed to continue in force. If the lessee makes an application for a production licence in respect of one or more blocks in the lease within the twelve month period, the lease will cease when the Joint Authority grants, or refuses to grant, the licence or when the licence application lapses.

Section 38F

Application for renewal of lease

A lessee may apply to the Designated Authority for renewal of the lease by the Joint Authority. The renewal application should be submitted to the Designated Authority not less than 6 months or more than 12 months before the expiration of the lease. However, the Designated Authority does have the discretion to receive renewal applications less than 6 months before, but not in any case after, the day the lease ceases to be in force.

An application for a renewal of a lease must be accompanied by details of work and expenditure proposed in the lease area, an assessment of the present commercial viability of recovery of petroleum from the area and the possible future commercial viability of recovery of petroleum, and a fee of $600. The Designated Authority has the power to require the lessee to furnish additional information in relation to the application for renewal of a lease.

Section 38G

Grant or refusal of renewal of lease

If the Joint Authority is satisfied that the area is not currently commercially viable, but is likely to become viable within 15 years, and that the lessee has furnished all information requested by the Designated Authority, and has complied with the lease conditions, the Regulations and the provisions of the Act, the Joint Authority will inform the lessee that it is prepared to grant a renewal of the lease. If the lessee has not complied with these conditions the Joint Authority must be satisfied that special circumstances exist before granting a renewal.

Upon notification of a renewal, the lessee will be required to lodge a security for compliance with the conditions of the lease, the provisions of this Part and the Regulations. The notice of renewal will specify the conditions to which the lease, on grant of renewal, will be subject and state that the application will lapse if the lessee does not request, within one month, the granting of the renewal or fails to lodge with the Designated Authority a security of compliance. Once the lessee has complied with these conditions the Joint Authority will grant a renewal.

The legislation provides for the lease to remain in force after the expiry date if the Joint Authority is still considering the application or while the offer by the Joint Authority to renew the lease is current.

Before refusing to grant a renewal of the lease the Joint Authority must give the lessee at least one month's notice of intention to refuse the renewal, providing reasons for the intention to refuse and specifying a date by which the lessee or other interested parties may submit further information for consideration by the Joint Authority. Where the Joint

Authority refuses to grant the renewal of a lease because it is of the opinion that petroleum production is commercially viable, the Joint Authority is to notify the lessee that he has 12 months to apply for a production licence over one or more of the blocks in the lease.

The lease will remain in force for 12 months after a refusal of the renewal of the lease; or, where the lessee applies for a production licence, until the Joint Authority grants or refuses to grant the licence, or the licence application lapses.

Section 38H

Conditions of lease

A lease will be granted subject to conditions specified by the Joint Authority. The conditions may include work programs if required, such as seismic surveys, and wells or evaluation studies to determine the commercial viability of the area, and the amounts to be expended on this work.

The lease shall also contain conditions requiring the lessee to comply with the conditions of the Royalty Act, unless the lease is in the Territory of the Ashmore and Cartier Islands adjacent area. In addition, upon notification by the Joint Authority, the lessee may be required to re-evaluate the commercial viability of petroleum production in the lease area and notify the Joint Authority of the results. The Joint Authority will be able to request a re-evaluation of commercial viability on no more than two occasions in any term of a lease and the re-evaluation is to take the form of a written submission.

Section 38J

Discovery of petroleum to be notified

Where petroleum is discovered in a lease area, the lessee is required to notify the Designated Authority immediately and to provide details in writing within three days of the discovery. The Designated Authority has the power to direct the lessee to furnish particulars in connection with the discovery including:

- the chemical composition and physical properties of the petroleum;
- the nature of the subsoil in which the petroleum occurs;
- any other matters relating to the discovery.

Non-compliance with the direction could attract a penalty of $10,000.

Section 38K

Directions by Designated Authority on discovery of petroleum

The Designated Authority may direct the lessee to, within a specified period, evaluate the discovery in respect of the quantity and type of petroleum in the pool. Non-compliance with the direction could attract a penalty of $10,000.

Clause 6

Application for licence by holder of permit to which Royalty Act does not apply

The holder of a permit in the Territory of Ashmore and Cartier Islands adjacent area may apply for a production licence over all the blocks in a location. As royalty will not apply to the production licences there is no need to distinguish between a primary and secondary licence. If the permittee initially applies for a production licence over less than the total number of blocks in the location, the permittee may apply for a variation to that application, to include additional blocks, up to the number included in the location. An application for a variation must be made before the Joint Authority informs the permittee that it is prepared to grant the licence. An application to vary the initial application will not attract additional application fees.

The permittee may apply for a production licence within 2 years of the day on which the location was declared. On application by the permittee, the Designated Authority may extend the period of application for the licence by up to a further 2 years.

Where the permittee has applied for a retention lease over blocks in the location and that application has been rejected, the application period for a production licence is the normal application period or 12 months, whichever is the greater.

Clause 7

Application for licence by holder of permit to which Royalty Act applies

Section 40 of the Act is amended to enable a permittee, holding a permit in an area outside the Territory of Ashmore and Cartier Islands adjacent area, to apply for a production licence where the permittee's application for a retention lease has been rejected. In such cases the permittee has 12 months or the remainder of the period specified in sub-section 40 (4), whichever is the longer, to apply for a licence.

Clause 8

Section 40A

Application for licence by holder of lease to which Royalty Act does not apply

A new sub-section 40(A) is included in the Act to enable a lease holder in the Territory of Ashmore and Cartier Islands adjacent area to apply for a production licence over any or all of the blocks in a lease. There is no distinction between primary and secondary licences as the Royalty Act will not apply.

Application for licence by holder of lease to which Royalty Act applies

A new section 40B is inserted into the Act to specify the primary entitlement of a lessee when applying to the Designated Authority for grant by the Joint Authority of a production licence where the lease is in an area outside the Territory of Ashmore and Cartier Islands adjacent area. The lessee may apply for the grant of a licence in respect of a number of blocks that is less than the lessee's primary entitlement. Where a lessee has taken his primary entitlement he may apply for a secondary licence over any of the other blocks in the lease.

Clause 9

Application for licence

This is a consequential amendment to ensure section 41 of the Principal Act applies to all production licence applications from permittees or lessees, whether those applications relate to areas within the Territory of Ashmore and Cartier Islands adjacent area or any other adjacent area.

Clause 10

Notification as to grant of licence

This is a consequential amendment to ensure section 43 of the Principal Act applies to all applications for a production licence as in clause 9 above.

Clause 11

Determination of permit or lease as to blocks not taken up

These are consequential amendments which ensure that any blocks not taken up by a permittee or lessee in a production licence are determined.

Where blocks forming a location are not taken up by a permittee in a lease, the location over these blocks is revoked and the blocks remain in the permit. In addition, where the Joint Authority refuses to grant a lease over blocks in a location because the Joint Authority is not satisfied that the discovery is likely to become commercially viable within 15 years, the declaration of the location will be revoked and the blocks will remain in the exploration permit.

Clause 12

Conditions of licences

This amendment ensures that references in licence conditions to the application of the Royalty Act are only made in respect of those licences in areas outside the Territory of Ashmore and Cartier Islands adjacent area.

Clause 13

Works to be carried out

These are consequential amendments which will allow the quantity and value of any petroleum recovered by a licensee to be ascertained in accordance with the provisions of the Royalty Act, even where the petroleum licence is in the Territory of Ashmore and Cartier Islands adjacent area where production is not liable to royalty. The value of petroleum production so ascertained may be offset against the value of work to be carried out in the licence area.

Clause 14

Unit development

These are drafting amendments to section 59 of the Act consequent on amendments in clause 20 to section 81 of the Act. These amendments ensure that dealings contained in co-operative agreements for the recovery of petroleum from pools extending beyond a title boundary are subject to the provisions of section 81 as amended.

Clause 15

Interpretation

Section 75 is inserted into Division 5 of Part III of the Act to define a "title" for the purposes of the Division to be a permit, lease, licence, pipeline licence, or access authority.

Clause 16

Register of certain instruments to be kept

These are drafting amendments to section 76 of the Act to include appropriate reference to retention leases and the revised form of special prospecting authority (see clause 29).

Clause 17

Memorials to be entered of permits, &c, determined, &c

This is a drafting amendment to section 77 of the Act to include an appropriate reference to retention leases in paragraph (c). This amendment also inserts a provision into the Act to allow an entry to be made in the Register when a permit ceases to be in force over a block because a retention lease has been granted over the block.

Clause 18

Approval and registration of transfers

Section 78 of the Act is repealed and replaced by sub-clause (1) as follows. The amended scheme of arrangements for approval and registration of transfers of title broadly follows the scheme set out in the Principal Act but removes deficiencies which have been identified in the light of experience in administration of the Act since 1967.

Sub-section (1) ensures that a transfer of a title is of no force in law until it has been approved by the Joint Authority and registered according to the provisions of clause 18.

Sub-section (2) enables one of the parties to the transfer to make an application in writing for approval by the Joint Authority of the transfer of the whole of the title.

Sub-section (3) sets out the documents which must accompany an application for approval of a transfer. The Regulations will prescribe a form to be used as an instrument of transfer which will ensure that the whole title is transferred from all the existing registered titleholders (the transferors) to all of the intended titleholders (the transferees). Each transferor and each transferee will be required to execute the instrument of transfer which will set out also the consideration for the transfer. It is not intended that other matters will be capable of being included in the instrument of transfer, nor is it intended that part of a title is capable of being transferred. Any persons who are not existing registered holders of the title will be required to provide separate details of the technical and financial resources available to them to meet commitments in relation to the title.

To ensure the Register is able to be kept up-to-date, sub-section (4) provides for applications for approval of a transfer of a title to be lodged with the Designated Authority within three months of the date of completion of execution of

the instrument. Applications lodged after this period are not to be approved by the Joint Authority, except where the Joint Authority considers that special circumstances exist.

Sub-section (5) provides for the Register to be annotated when an application is received by the Designated Authority. Other notations may be made in the Register as the Designated Authority considers appropriate.

Sub-section (6) requires the Joint Authority to consider all applications, determine whether or not to approve the transfer, and in the case of a permit, lease, licence or pipeline licence decide whether a new security is required for compliance with the conditions of the title etc.

Sub-section (7) requires the applicant to be notified of the Joint Authority's decision and whether a new security is to be lodged.

Sub-section (8) deems a transfer to be approved when the security is lodged, if the applicant has been advised that the Joint Authority will approve the transfer subject to lodgement of a security.

Sub-section (9) provides that once the transfer has been approved by the Joint Authority, the Designated Authority shall note the approval on the instrument of transfer and on the copy held by the Designated Authority. On payment of the fee specified in the Registration Fees Act, the Designated Authority shall enter a memorandum of the transfer in the Register and the names of the persons henceforth holding the title.

Sub-section (10) provides that on completion of the action required by sub-section (9), the transfer is deemed to be registered and the transferees become the registered holders of the title.

Sub-section (11) requires a notation to be made in the Register of a refusal to approve the transfer of a title.

Sub-section (12) provides for a copy of the instrument of transfer endorsed with the memorandum of approval to be held by the Designated Authority and to be available for inspection, and for the endorsed original instrument of transfer to be returned to the applicant when the transfer of the title has been registered.

Sub-section (13) makes it clear that mere execution of an instrument of transfer creates no interest in the title.

Sub-clause (2) ensures that this amended scheme of arrangements applies to all applications for transfer of titles lodged after the commencement of this section, irrespective of when the instruments of transfer were executed.

Sub-clause (3) provides for applications for approval of transfers of permits, licences, pipeline licences or access authorities lodged before the commencement of this section, and for any reason not dealt with before the commencement of this section, to be dealt with under the old provisions, set out in section 78 of the Principal Act.

Sub-clause (4) ensures that transfers registered under the old provisions are not invalidated by these amendments to the Principal Act.

Clause 19

Entries in Register on devolution of title, &c

Sub-sections 79, (1) and (2) are amended to include appropriate reference to retention leases.

A new sub-section (3) is inserted to allow a company that is a registered holder of a title, and that has changed its name, to apply to have its new name substituted for its old name in the Register. A fee of $30 is payable in respect of each title so affected.

Clause 20

Approval of dealings creating, &c, interests, &c, in existing titles

Sections 80 and 81 of the Principal Act are repealed by sub-clause (1) and replaced with the following provisions. The amended scheme of arrangements for registration of specified dealings affecting titles (the new section 81) will remove deficiencies in the existing arrangements, particularly the uncertainty surrounding which dealings might be able to be registered and the effect in law of instruments evidencing dealings which have not been approved and registered.

Sub-section (1) identifies the types of dealings relating to existing titles which are required to be approved and registered under the amended section 81:

(a) arrangements establishing or assigning interests in an existing title including the initial interests of titleholders, any subsequent assignment of those interests (for example, unconditional "farm-in and farm-out agreements"), and charges over an interest

(b) arrangements giving rise to or assigning a right, whether conditional or not, to the assignment of an interest in an existing title, for example: trustee arrangements and conditional "farms-in and farm-out agreements"

(c) arrangements between registered titleholders and other parties with an interest in a title regarding the manner in which operations will be carried out under the title and the rights and obligations of each of the parties, for example: "joint operating agreements", "unit development agreements"

(d) arrangements creating or assigning an entitlement of a person to a share of the production of petroleum or revenue derived from production of petroleum from a current or future discovery. Such an arrangement may relate to a specific well or future production from a specified part of, or the whole of, a title area. These interests in a title are often known as "overriding royalty interests", "production payments", "net profits interests", or "carried interests"

(e) arrangements creating or assigning an option to enter into a dealing having one or more of the effects described in paragraphs (a) to (d)

(f) arrangements creating or assigning a right to enter into a dealing having one or more of the effects described in paragraphs (a) to (d)

(g) arrangements altering or terminating a dealing having one or more of the effects described above.

However, the amended section 81 does not apply to a transfer of a title covered by the amended section 78.

Sub-section (2) provides that a dealing having one or more of the effects described in sub-section (1) is of no force until the dealing has been approved by the Joint Authority and an entry has been made in the Register by the Designated Authority in accordance with sub-section (12).

Sub-section (3) provides for a party to a relevant dealing to lodge a separate application for approval of the dealing for each title to which the dealing relates.

Sub-section (4) sets out details of the supporting documents to be submitted with an application for approval of a dealing in respect of each title. The instrument evidencing the dealing, or a copy if the instrument has already been lodged with another application, must be provided together with any other particulars which may from time to time be prescribed in the Regulations for this purpose.

Sub-section (5) will enable the Register to be kept up-to-date by ensuring that applications for approval of a dealing are lodged within 3 months of the date of completion of execution of the instrument evidencing the dealing. Applications lodged after this period are not to be approved by the Joint Authority unless the Joint Authority considers that special circumstances exist.

Sub-section (6) provides for applications for approval of dealings, relating to future permits and which are not lodged in accordance with the provisions of the new section 81A, to be lodged within 3 months of the title coming into existence. Applications lodged after this period are not to be approved by the Joint Authority unless the Joint Authority considers that special circumstances exist.

Sub-sections (7) and (8) provide for each dealing forming a part of the issue of a series of debentures in relation to a particular title to be treated as one dealing for the purpose of section 81. An application for approval of such a dealing, or a dealing which creates a charge, is deemed to comply with the provisions of sub-section (4) if the appropriate number of copies is lodged of each document on the debenture series or charge required to be lodged with the National Companies and Securities Commission in accordance with section 201 of the Companies Act 1981 or the corresponding State or Territory law.

Sub-section (9) requires the Designated Authority to note in the Register the date on which an application is lodged. The Designated Authority is also empowered to make such other notations in the Register as are considered appropriate.

Sub-section (10) enables the Joint Authority to approve or refuse to approve a dealing in so far as that dealing relates to a particular title.

Sub-section (11) requires the Designated Authority to inform the applicant of the decision of the Joint Authority to approve the dealing.

Sub-section (12) requires the Designated Authority to endorse a memorandum of the approval on the original instrument and a copy, or on two copies if the original instrument was not submitted with the application, and on payment of the fee set out in the Registration Fees Act, to note the approval of the dealing in the Register.

Once an entry has been made in the Register, sub-section (13) provides for one copy of the instrument endorsed with the approval to be retained by the Designated Authority and be available for inspection, and for the original or where appropriate a copy, similarly endorsed, to be returned to the applicant.

Sub-section (14) requires the Designated Authority to note in the Register a refusal to approve a dealing.

Sub-section (15) ensures that for the purpose of this section, 'charge' and 'debenture' have the same meaning as they have in section 201 of the Companies Act 1981.

Approval of dealings in future interests, &c

The new section 81A sets out arrangements to apply to dealings relating to titles which might come into existence in the future and which at that stage would be subject to the provisions of the new section 81.

Sub-section (1) enables a party to such a dealing to lodge during the period specified in sub-section (4) a provisional application for approval of the dealing. This arrangement enables provisional applications to be lodged in the period immediately before a title comes into existence. A separate provisional application is required in relation to each title.

Sub-section (2) applies the provisions of new sub-sections 81 (4), (7) and (8) regarding the form of application and accompanying particulars, as though the provisional application was an application for approval of a dealing under sub-section 81 (3).

Sub-section (3) provides for a provisional application to become an application under section 81 on the day on which the title comes into existence and for the application to be treated accordingly.

Sub-section (4) sets out the period during which provisional applications may be lodged. In the case of permits, leases, licences or pipeline licences, provisional applications may be lodged from the day of service of a notice informing the applicant for one of these forms of title that the Joint Authority is prepared to grant a title, until the day the title comes into existence. In the case of access authorities, provisional applications may be lodged from the date of application of the access authority until the day the access authority comes into existence.

Clause (2) is a transition provision which applies the new sections 81 and 81A to dealings entered into after the commencement of this section, subject to the following provisions.

Clause (3) is a transition provision which enables a party to an unregistered dealing which was entered into before the commencement of this section and to which the new section 81 applies, to make an application within 12 months of the commencement of this section, to the Designated Authority for approval by the Joint Authority, of the dealing. Such dealings are not required to be lodged for approval and registration by this provision and if remaining unregistered would be subject to the provisions of the Principal Act. However, a number of these dealings may not have been considered to have been able to be registered under the Principal Act and it is expected

that parties to these and other dealings which are capable of being registered under the amended provisions will wish to take advantage of this provision to clarify the legal status of the dealing and to ensure completeness of the Register.

Clause (4) is a transition provision concerning dealings entered into before this section comes into force and that relate to future titles. Where such a title has come into existence before the commencement of this section, a party to a dealing may make application within 12 months of the commencement of this section, to the Designated Authority for approval by the Joint Authority of the dealing. In those cases where the dealing relates to a title which comes into existence after the commencement of this section, an application for approval of the dealing in relation to that title may be lodged within 3 months after the title comes into existence.

Clause (5) provides for the new section 81 (with the exception of sub-sections (5) & (6) which relate to the time period within which applications may be lodged) to apply to a dealing for which an application for approval is lodged under clauses (3) or (4) above.

Clause 21

True consideration to be shown

Section 82 has been amended to clearly indicate that it is an offence to lodge an instrument of transfer, an instrument evidencing a dealing or an instrument setting out matters prescribed by Regulation relating to section 81, which is false or misleading in relation to the information necessary to calculate the fee payable under the Registration Fees Act.

Clause 22

Designated Authority not concerned with certain matters

This is a drafting amendment to section 83 of the Act to clarify its application to a transfer or a dealing.

Clause 23

Power of Designated Authority to acquire information as to dealings

Section 84 of the Principal Act is amended to clarify its application to applications for approval of transfers or dealings and to provisional applications for approval of dealings.

The new sub-section (1A) provides the Designated Authority with power to require a party to an approved dealing to supply information as to any alterations in the interests or rights in the title as a result of operation of the provisions of the dealing since it was approved. This provision, together with the new section 87A will assist in enabling the Register to be kept up-to-date.

The new sub-section (1B) provides the Designated Authority with power to require an applicant to supply further information in respect of applications under sections 79 (1) and (3) and 87A (2).

The new sub-section (1C) enforces compliance with the provisions of this section. Existing provisions make it an offence to provide false or misleading information.

Clause 24

Production and inspection of documents

Section 85 of the Principal Act is amended to clarify its application to transfers and dealings.

The new sub-section (1A) extends the existing provisions to applications made under sections 79(1) and (3), and 87A (2).

Clause 25

Inspection of Register and documents

These are drafting amendments to section 86 of the Act to allow the inspection of all instruments subject to inspection under this Division. The clause also removes the option of a titleholder to refuse inspection of a memorial in the Register or a particular title document (the document granting the title and setting out the specific conditions to apply to the title). The new arrangements will assist in ensuring access to essential title documents and entries in the Register.

Clause 26

Designated Authority may make corrections to Register

The new section 87A provides the Designated Authority with the power to make entries in the Register from time to time so that the Register remains an accurate record of the interests and rights existing in relation to each title.

Sub-section (1) enables the Designated Authority to alter the Register immediately to correct a clerical error or an obvious defect in the Register.

Sub-section (2) enables more substantial corrections to be made to the Register by the Designated Authority on application by a person holding the interest or right, on at the Designated Authority's own initiative.

Sub-section (3) ensures that before making any substantial correction to the Register, the Designated Authority publishes in the Gazette a notice setting out the proposed correction and inviting interested persons to make submissions within 45 days. If after taking into account any submissions the Designated Authority decides to make a correction to the Register, that correction must be published in the Gazette.

Clause 27

Directions

The original sub-sections 101 (1) and (2) and (6), which dealt with the service of directions, have been omitted and the following sub-sections inserted.

Sub-section 101 (1) will provide the Designated Authority with the power to give a registered titleholder a direction on any matter on which regulations may be made (regulations are made under section 157).

Sub-section 101 (2) will allow the Designated Authority, in giving a direction to a titleholder, the opportunity to specify that the direction also applies to servants and agents of, or persons acting on behalf of, or persons performing work or services either directly or indirectly for, the registered titleholder. In addition, directions may apply to persons not having any contractual relationship with the titleholder.

Sub-section 101 (2A) will require the titleholder to ensure that, where a direction is to apply to specified classes of persons, those persons are given the direction or the direction is exhibited in the adjacent area in a place frequented by those persons.

These new sub-sections will simplify the procedure whereby the Designated Authority issues a direction by placing on the registered titleholder the responsibility for ensuring that all relevant persons are aware of the directions.

A new sub-section 101 (6) has been inserted so that the new sub-sections 157 (2A) and (2B) will apply to directions in the same manner as they will apply to the regulations (see clause 36).

A new sub-section 101 (8) has been inserted so that, for a person who is not the titleholder on whom a direction was served to be convicted of an offence under this section, the prosecution must prove that the person knew, or could reasonably be expected to have known, of the existence of the direction.

Transition provisions have been included to ensure that directions in existence before the commencement of these amendments continue in force. The transition provisions also ensure that directions need not be re-issued.

Clause 28

Compliance with directions

Section 102 of the Principal Act is amended as a consequence of the amendments to section 101 (see clause 27).

In particular, a new sub-section 102 (2A) is inserted to protect persons who did not know, or could not reasonably be expected to have known, of the existence of the direction, from liability for costs incurred by the Designated Authority under sub-section 102 (1).

Clause 29

Special prospecting authorities

Section 111 of the Principal Act provides for the granting of special prospecting authorities to enable geophysical surveys to be carried out in an area over which an application has been invited for the award of a permit or a licence. However, the special prospecting authority can only apply to blocks which were previously in a location or licence.

Section 111 is amended so that special prospecting authorities may be granted over any vacant area irrespective of whether applications for award of a permit or licence have been called. It is also amended to allow the Designated Authority to grant more than one special prospecting authority over any area. The Designated Authority is to inform each holder of a special prospecting authority of any proposed activities by other holders of special prospecting authorities in the same area. Special prospecting authorities are not capable of being transferred under section 78 of the amended Act.

Clause 30

Access authorities

Section 112 of the Principal Act provides for the granting of access authorities to enable permittees or licensees to carry out activities related to petroleum exploration in areas outside their permit or licence. However, the access authority only applies to titleholders and exploration areas under the jurisdiction of the Commonwealth offshore legislation.

The category of persons to which the section applies is broadened by these amendments so that a person who holds a State or Northern Territory petroleum title is eligible to apply for an access authority to enter the Commonwealth area adjacent to their title.

Clause 31

Release of information

The amendments to section 118 of the Principal Act will ensure that, in addition to the information already covered by the section, information contained in or accompanying an application for the grant or renewal of a title may be made available for release. The new sub-section 118 (1B) sets out the conditions applying to release of information associated with applications such that the information may only be released after the grant of the title. Information which is confidential will be subject to the provisions of the new sub-section 118 (5A) (see below) and information of a financial or technical nature relating to the applicant will not be released. Further, factual information, as defined by sub-section (2), supplied with an application will not be able to be released until the relevant periods in sub-section (4) have expired.

The amendments also remove correspondence between the Designated Authority and the Commonwealth Minister from the release provisions of section 118. This matter is now dealt with under a new section 118A (see clause 32).

Amendments are also made to the timing of release of factual data and information, that is data and information which are neither conclusions nor opinions. The new provisions will allow such factual data and information supplied during the tenure of a permit or lease that is still in force, to be released after 2 years, whereas the current provisions provide 5 years confidentiality. The 12 month confidentiality provisions on data and information relating to licence areas remain unchanged. However, when a permit, lease or licence is surrendered, cancelled, determined or expires, factual information becomes available for release immediately. Where factual data and information are supplied in respect of a block

over which there is no permit, lease or licence in force (for example data and information collected under a special prospecting authority), it becomes available for release after 2 years or an earlier period if the Designated Authority determines it appropriate.

The new sub-sections 118 (5A) to (5L) set out the arrangements for release of information that is a conclusion or an opinion.

Sub-section 118 (5A) enables the Designated Authority or the Commonwealth Minister to release information, which is a conclusion drawn or an opinion based on information that relates to the sea-bed, the subsoil or to petroleum in a block, 5 years after that information was furnished to the Designated Authority. This release of information is subject to the conditions of sub-section 118 (5L) (see below). The starting point for the period for release is defined in the existing sub-section 118(8) of the Act.

Sub-section 118 (5B) specifies that before information can be released in accordance with sub-section 118 (5A) the Designated Authority or the Commonwealth Minister, as the case may be, shall publish a notice in the Gazette stating that the information is to be released, and giving interested persons 45 days in which to lodge an objection to the release of information. If no objections are received within this time it will be considered that there are no objections to the release of information. If it is practicable to do so, a copy of the notice will be sent to the person who supplied the information.

Sub-section 118 (5C) specifies that the reasons for an objection must be set out in any submission to the Designated Authority or Commonwealth Minister. Sub-section 118 (5D) outlines the grounds for an objection. These grounds are that the information is a trade secret, or that the disclosure of the information would adversely affect the business, commercial or financial affairs of the person.

Sub-section 118 (5E) specifies that where a person makes an objection to the release of information the Designated Authority or the Commonwealth Minister will consider the objection within 45 days after the receipt of the notice of objection, and allow, partly allow, or disallow, the objection. The person making the objection will be notified of the decision.

Sub-sections 118 (5F) to (5L) establish a mechanism for the Commonwealth Minister to review a decision made by the Designated Authority. A person who is dissatisfied with the decision of the Designated Authority may request a review by the Commonwealth Minister in accordance with sub-section 118 (5G). The request must be made within 28 days after the service of the notice of the decision referred to in sub-section 118 (5E) and must contain the reasons for that request. The Commonwealth Minister must make a decision on a request for review within 45 days of the request. Sub-section 118 (5K) specifies that the Commonwealth Minister shall notify the person who requested the review of the decision taken and the reasons for making that decision.

Sub-section 118 (5L) prohibits the Commonwealth Minister or the Designated Authority from releasing information specified under sub-section 118 (5A) whilst there is an objection in force. A further Gazette notice and notification to the person who supplied the information in accordance with sub-section (5B) may be made at a later time to determine if the information may be released at that time.

Clause 32

Designated Authority to make correspondence, &c, available to Commonwealth Minister

Section 118A will replace that part of sub-section 118 (1A) dealing with copies of any documents received or issued by, the Designated Authority in connection with the Act. Such correspondence and documents are to be made available to the Commonwealth Minister.

Clause 33

Payments to Western Australia

Section 129 of the Principal Act specifies the way in which the Commonwealth calculates and makes payments to the States and the Northern Territory in respect of offshore petroleum royalties. In addition to the amounts determined by section 129 in relation to royalties on petroleum production from the North West Shelf project (defined by production licences WA1-L, WA2-L, WA3-L, WA4-L, WA5-L and WA6-L), the new section 130 indicates that the Commonwealth will also pay to Western Australia certain other amounts.

The amounts payable to Western Australia will be the amount of royalty from the project retained by the Commonwealth after payments have been made to Western Australia in accordance with section 129 or the relevant amounts specified in sub-section (8), whichever is the lesser. The amounts in sub-section (8) are expressed in 1984-85 dollars. To convert these amounts to dollars of the day at the appropriate time, the Implicit Price Deflator (IPD) on expenditure on Gross Domestic Product, as published by the Australian Bureau of Statistics, will be used.

Where the payment made to Western Australia in a financial year is equal to the royalties retained by the Commonwealth from the project, the Minister may, at a later date but before 31 December 2005, pay to Western Australia an amount equal to the difference between the amount paid and the relevant amount derived from sub-section (8). The amount of the difference will be increased at a rate of 7% per annum until the date of payment.

The Commonwealth Minister may also make monthly advances to Western Australia. Where the advances made to Western Australia exceed the amounts the Commonwealth is liable to pay for a financial year, the overpayments may be deducted from the succeeding year's payments. Where this situation arises in the final year of payments, the year 2004-5, Western Australia must refund to the Commonwealth any overpayments.

Clause 34

Service of documents on 2 or more permittees, &c

Section 138A is being introduced to provide a more efficient arrangement in relation to the service of documents on holders of permits, leases, licences, pipeline licences, access authorities and special prospecting authorities.

Sub-section 138A (1) will permit the nomination of one registered holder of a title, where there is more than one such holder of the title, as the person on whom documents may be served. Sub-section 138A (2) specifies that a document served on the person nominated in sub-section 138 (1) is deemed to have been served on all of the registered holders of the title, subject to sub-sections 138A (3) and (4).

Sub-section 138A (3) will ensure that where one of the titleholders notifies the Designated Authority that it is desired to revoke the nomination of the person specified in sub-section 138A (1), any further documents will be served on all titleholders. Similarly, sub-section 138A (4) will ensure that if the person nominated in sub-section 138A (1) ceases to be a titleholder then any further documents will be served on all titleholders. A new arrangement under sub-section 138A (1) may be entered into at any time.

Clause 35

Reconsideration and review of certain decisions

Section 152 is being introduced to establish a mechanism for a person affected by certain specified decisions made by the Commonwealth Minister, or a delegate of the Commonwealth Minister, with respect to areas adjacent to Commonwealth Territories or in relation to release of information, to have those decisions reviewed by the Administrative Appeals Tribunal.

Sub-section 152 (1) defines 'decision' to have the same meaning as in the Administrative Appeals Tribunal Act 1975. A 'relevant decision' means a decision of a delegate of the Commonwealth Minister, made in the performance of Designated Authority duties in relation to the areas adjacent to the Commonwealth Territories. A 'reviewable decision' is a decision of the Commonwealth Minister, made in the performance of Designated Authority functions with respect to areas adjacent to the Commonwealth Territories, or a decision of the Commonwealth Minister concerning the release of information in accordance with sub-sections 118 (1B), (2), (3), (5), (5E), or (5J) or a decision of the Commonwealth Minister with respect to the reconsideration of a relevant decision under sub-section 152 (5).

The above provisions only relate to decisions made by the Commonwealth Minister acting as the Designated Authority in respect of Commonwealth Territories, Joint Authority and Designated Authority decisions in respect of the areas adjacent to the States and the Northern Territory are not reviewable.

Sub-section 152 (2) permits a person who is dissatisfied with a relevant decision to request the Commonwealth Minister to reconsider the decision. The person may do so within 28 days after having learned of the decision, or such a longer period as the Minister allows. In a request for a review, the person

must include the reasons for the request. On receipt of a request to review a relevant decision, the Minister will acknowledge receipt in writing.

Sub-section 152 (5) specifies that the Commonwealth Minister may make a similar decision to the original relevant decision, or make a modified decision, or revoke the original decision, within 45 days of the request. Sub-section 152 (6) specifies that the result of the review and the reasons for the decision, shall be conveyed to the person who requested the review.

Sub-section 152 (7) allows applications to be made to the Administrative Appeals Tribunal for review of a reviewable decision as defined above.

Sub-section (8) specifies that where a relevant decision is made the notice relaying that decision must include a statement that the person affected by that decision has a right to apply to the Commonwealth Minister for a review of the decision and if he is still dissatisfied after the review he may make application to the Administrative Appeals Tribunal for a review of that decision.

Sub-section (9) specifies that where a Commonwealth Minister makes a decision reviewable by the Administrative Appeals Tribunal, the notice relaying the decision shall include a statement that a person to whom the decision relates may make application to the Administrative Appeals Tribunal for a review of that decision. However, sub-section (10) provides that failure to comply with sub-section (8) or (9) does not affect the validity of the decision made by the Commonwealth Minister.

Clause 36

Regulations

Section 157 of the Act currently enables regulations to be made to provide for securing, regulating, controlling or restricting a wide range of matters covered by the Act. The Act is amended to enable the Regulations to apply codes of practice or technical standards to offshore petroleum activities. These codes of practice generally relate to safety or engineering matters and in view of the international nature of the petroleum industry, provision is made to adopt relevant Australian codes of practice and standards or, where appropriate, overseas codes of practice and standards. It is intended that overseas standards etc will only be adopted where appropriate Australian standards etc do not exist. Provision is also made for the codes of practice and the standards to apply as they exist from time to time.

Sub-section (2B) has been included so that regulations may be made enabling actions to be taken subject to the consent or approval of a person specified in the regulations. This will enable specified operational and technical actions to be taken subject to the consent or approval of government officials and to enable the advice of internationally recognised certifying and classifying bodies to be accepted as the basis for consideration of certain specified proposals such as the assessment of the seaworthiness of vessels and the integrity of offshore structures.

Clause 37

Schedule 5

This is a consequential amendment related to clause 6 and maintains consistency with paragraph 40(4)(b) which is already included in Schedule 5. Proposed decisions by the Designated Authority to extend the application period for a licence from 2 years to up to 4 years are required to be referred for consideration by the Commonwealth Minister under the provisions of section 8E of the Act.

Clause 38

Consequential amendments

These are amendments arising as a consequence of the introduction of retention leases.