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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PETROLEUM (SUBMERGED LANDS) LEGISLATION AMENDMENT BILL 1999

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Industry, Science and Resources,
Senator the Hon Nick Minchin)

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PETROLEUM (SUBMERGED LANDS) LEGISLATION AMENDMENT BILL 1999

GENERAL OUTLINE

The proposed amendments to the *Petroleum (Submerged Lands) Act 1967* generally relate to improving government administration and the efficiency of exploration for, and production of, petroleum resources. Many of these amendments are designed to adapt the Act to the present-day characteristics of the petroleum industry, economic and technological. This objective is also a factor behind a number of technical provisions being repealed with a view to incorporating them in regulations.

The substantive new provisions in the Bill include the introduction of infrastructure licences to cater for at-sea operations that do not strictly fall within the ambit of current production or pipeline licences. An option is also introduced for the use of supplementary bids to decide between exploration permit bids that are ranked equal. Additionally, there is the introduction of a right by submitters of information under the Act to make a declaration which, unless challenged by the Designated Authority, will determine whether and when the information may be publicly released. Another notable feature is the creation of a new offence, namely deliberately interfering with offshore petroleum operations or installations.

Substantive provisions that will be repealed by the amendments include the Joint Authority's discretion to fix the number of blocks for renewals of exploration permits at 16, the fragmentation constraints on areas covered by permits being renewed and the 21 year term of pipeline licences.

There are also refinements to some provisions, such as a modification of the halving rule for permit renewals when consideration is given to renewing an expiring permit covering 6 blocks or less and an amendment to ensure that the withdrawal of an applicant before the awarding of an exploration permit creates fewer complications for the overall process.

Additionally, a number of minor machinery amendments are made to update the Act to current legal and administrative practices, specifically in areas such as the use of approved forms, converting pecuniary penalties in the Act to penalty units and deleting provisions relating to offences that are fully dealt with in the *Crimes Act 1914*.

A consequential amendment is made to the *Petroleum (Submerged Lands) Fees Act 1994* to ensure that the costs of administering infrastructure licences are covered by fees in the same way as the costs of administering other titles.

FINANCIAL IMPACT STATEMENT

There will be no impact on the Commonwealth Budget as the changes in no way impact on elements such as annual licence fees payable to the Commonwealth. These fees will apply to pipeline licences and infrastructure licences with indefinite terms of effect as much as they would if the terms were limited. The net effect of the amendments is likely to be reduced administrative costs for both government and industry.

REGULATION IMPACT STATEMENT

1 Summary of Proposals

The Minister for Industry, Science and Resources has agreed to a number of amendments to the *Petroleum (Submerged Lands) Act 1967* (the Act). These amendments do not constitute a significant change to the existing regime governing the operations of the petroleum industry in the Australian offshore areas, but are designed to achieve the objectives listed below. It should be noted that the petroleum industry has always made it very clear that it wants regulation for surety and has worked comfortably within the current regime for several decades. The industry has been heavily involved in the proposed changes to the legislation, which will not result in any changes to the fundamental principles enshrined in the Act.

The purpose of the proposed amendments is to achieve:

- a more streamlined system for the administration of petroleum exploration and development in Australia's offshore waters;
- clarification of certain requirements;
- greater certainty and security for companies which hold, or are seeking to apply for, petroleum titles in Australia's offshore waters;
- a more flexible regime to accommodate the changes in offshore technology since the Act commenced operation; and
- improved efficiency in exploration for, and the production of, petroleum resources while ensuring the highest operating, safety and environmental standards are maintained.

Most of the proposed amendments to the Act are of an administrative nature, such as moving certain provisions from the Act to Regulations, and clarifying certain provisions. However, there are 4 which, while not major changes, are of a more substantive nature. These are:

1. Repeal of ss31(4) and ss31(5) of the Act to remove the discretionary '16 block' provision.
2. Changes to the term of pipeline licences.
3. The inclusion of infrastructure licences, a new class of title to provide secure title over processing, storage or offloading facilities.
4. Provisions for the continued use of production facilities in lapsed licence areas, with the transfer of obligations to parties continuing to use the facilities.

Title Allocation System

By way of clarification, the nature of petroleum titles and their allocation is as follows. The Australian offshore area has been sub-divided into graticular 'blocks' for the purposes of defining boundaries. Each block is approximately square, and measures 5 minutes of latitude by 5 minutes of longitude, covering an area of approximately 67 square kilometres in southern areas and approximately 83 square kilometres in the northern areas. An exploration permit may vary from a few blocks to up to 400 blocks while a production licence typically ranges from 1 to 9 blocks. An exploration permit provides the title-holder with the exclusive right to carry out operations relating to exploration for petroleum within the boundaries of the permit area. These rights include the right to carry out seismic surveys, to drill exploration and appraisal wells and to carry out production

tests on any petroleum pools in the permit area. There is a statutory right to a production licence following the discovery of petroleum, but certain conditions may apply to that licence.

Exploration permits are awarded via an annual or twice yearly acreage release system. Companies bid for permits on the basis of a work program bidding system under which bidders are required to propose a minimum guaranteed work program for the term of the permit. Permittees are primarily selected on the basis of the applicant's proposed work program for the first 3 years of the permit as well as on an assessment of their financial and technical capacity to undertake the proposed work program. Criteria for selection are applied by administrative guideline and are enforced through conditions attached to the permit.

When the holder of an exploration permit discovers petroleum in his permit area, the first step is the declaration of a location over the blocks covering the likely extent of the petroleum. The Act provides that within two years of the declaration of a location, the permittee must apply either for a production licence or a retention lease. A retention lease entitles the lessee to retain title to certain blocks in a permit area in which petroleum has been discovered, production of which is not currently commercially viable but is likely to become so within the 15 years following the application for the lease.

A permittee may at his discretion apply for a production licence over all or some of the blocks in a location. A production licence provides the titleholder the exclusive right to carry out operations for the recovery of petroleum in the licence area, including drilling of development wells, installation of production platforms and processing facilities provided that they are fully located within the licence area.

Exploration permits, retention leases and production licences are awarded by the Joint Authority which consists of the Commonwealth Minister for Industry, Science and Resources and the State or Northern Territory Minister with responsibility for petroleum matters in the State/NT adjacent to which the blocks in question are located.

2 Problem Identification and Regulatory Objectives

Over the years it has become evident that a number of provisions in the Act are no longer appropriate while others place unwarranted burdens on companies and government by way of unnecessary reporting requirements and approvals. In addition, there have been technological changes in the petroleum industry and other developments such as the opening up and growth of liquefied natural gas (LNG) markets. Further, the outdated provisions do not promote the Government's objectives (as set out in the 1998 Resources Policy Statement) of a competitive, innovative and growing petroleum sector which contributes to rising national prosperity and which operates in a legislative framework offering high levels of certainty to all stakeholders about their rights and responsibilities and the processes of public decision making, including the rules by which they need to abide.

With these considerations in mind, the then Department of Primary Industries and Energy, in consultation with the relevant Departments in the States/Northern Territory and the petroleum industry, carried out a Review of Offshore Petroleum Legislation extending over several years from 1990. Options were developed and finally agreement was reached with these stakeholders on recommendations to improve government administration of offshore petroleum legislation and the efficiency of exploration for, and production of, petroleum resources, while ensuring the continued integrity of operating, safety and environment protection standards.

The Review, the Report of which was published in March 1997, focused on administrative decisions, approvals and company reporting requirements in the Act and subsidiary Acts. Actions were identified to remove duplication, as were requirements that were considered inappropriate or unnecessary given the changing nature of the industry.

The terms of reference for the review of the petroleum offshore legislation, agreed to in consultation with the States and the Northern Territory, were:

"(1) Undertake a review of the Petroleum (Submerged Lands) legislation, including related regulations, the Schedule of Directions and Administrative Guidelines, to improve government administration of the legislation and the efficiency of exploration for, and production of, petroleum resources while ensuring that the highest operating, safety and environmental protection standards are maintained;

(a) in particular, the number of government decisions, approvals and company reporting requirements required by both the States/NT and the Commonwealth, are to be examined with a view to a reduction;

(b) the review will be undertaken in close consultation with the States/NT and industry."

While the Act, including the amendments now proposed, will be subject to review in 1999 for compliance with National Competition Policy, it would be inappropriate to delay the implementation of the amendments now proposed. Apart from the fact that the newly completed Review has gone on for a considerable period, and that industry has been given assurances that the implementation of the recommendations will proceed, there are also a number of amendments which are crucial to the development of major projects and thus have the potential to adversely affect the economy if not implemented now.

3A '16 Block' Provision

Problems/Options

The objective of the exploration permit system is to facilitate an optimal level of investment in petroleum exploration in offshore areas under the Commonwealth's jurisdiction.

One of the mechanisms employed in the legislation to achieve this is a requirement that a permittee relinquish half the blocks covered by the permit at renewal, so that these relinquished areas may be released again for exploration by other companies. However, holders of exploration permits may currently, at the Joint Authority's discretion, retain up to 16 blocks where the halving process in the Act would otherwise result in fewer blocks being included in the renewed permit. This has resulted in large areas being retained by companies for extended periods with consequent reduction in areas available for competitive bidding by other applicants to acquire exploration permits.

There are 3 options:

- to leave the situation as is;
- to lower the number of blocks that may be retained; or
- to remove the discretion.

Costs and benefits

Administrative costs are neutral for all 3 options. There are no costs to holders of existing titles in leaving the situation as is, but changing the current situation could constitute a "cost" to some permittees in that they will no longer be able to retain exploration areas indefinitely.

There is no real benefit, apart from that to existing titleholders, in leaving the situation as is. The principal benefit of changing the situation is the removal of the potential for large areas to be sterilised from exploration for a considerable period, and a consequent stimulation of exploration activity in extensive areas of mature prospective basins. This will provide more opportunities for petroleum companies generally, and hence lead to the potential for a higher level of exploration (and thus greater investment) in offshore areas. In addition, removal of the discretion would result in a more certain outcome in that the situation is established by law and applies equally to all parties.

Feedback from Consultations

While industry, through the Australian Petroleum Production and Exploration Association (APPEA), accepted that they would no longer be able to retain exploration acreage indefinitely, they proposed that, for existing permits, 4 blocks should be the minimum size of a reduced permit on the basis that some fields underlie more than one or two blocks. This was accepted by all parties as a reasonable outcome, and, with some qualifications, is also proposed to be adopted for new permits.

Conclusion

Taking the above considerations into account, it was decided to adopt a combination of the latter two options, such that the discretion is removed but the minimum permit area size will be 4 blocks after halving. This would remove the bias in favour of existing explorers in mature acreage over new entrants, while at the same time providing for a sufficiently large minimum permit size to allow a meaningful exploration program. The discretionary minimum of 16 blocks for new permits is to be removed and the discretion for existing permits is to be removed after they have been renewed for the next permit term. Once a permit has reduced to 4 blocks it will be renewable twice over up to 4 blocks (instead of one renewal of 4 and the following renewal of 2 blocks). A one block permit will not be able to be renewed.

Companies with existing permits would not feel the impact of this change for at least 5 years and up to 10 years for recently renewed permits. In addition to the benefits noted above, exploration will also be stimulated by the impetus on existing permittees to explore more aggressively prior to having to surrender blocks.

3B Changes to the term of Pipeline Licences

Problems/Options

A pipeline licence is generally of 21 years' duration, unless the Joint Authority considers that the pipeline will not be required for that length of time, in which case the licence can specify a shorter period. In 1998, the term of a new production licence was made indefinite as part of a small number of urgent amendments made to the Act. For administrative reasons, a proposal to likewise extend the term of a pipeline licence was not able to be presented at the time.

All parties considered it would be appropriate to treat the term of a pipeline licence in the same way as that of a production licence. Accordingly, a change to an indefinite term for a pipeline licence is proposed.

The objective behind the proposed changes is to provide greater flexibility in the use of pipelines for more than one petroleum development.

The options are to:

- leave the provisions as they are; or
- establish an indefinite term for a pipeline licence.

Costs and benefits

As in the case of indefinite term production licences, the administrative costs for both government and industry will be reduced by the removal of fixed term pipeline licences. However, these costs are impossible to quantify.

A change to the current provisions will provide for greater flexibility than exists at present and has cost advantages and benefits over the first option.

Feedback from Consultations

APPEA indicated full support for the proposed changes to pipeline licence provisions.

Conclusion

It was decided that the Act should be amended such that the term of the pipeline licence and any renewed pipeline licence be indefinite but that the licence be able to be terminated five years after the pipeline ceases to be used. This period could be extended by the Joint Authority. The Act will also require the pipeline licence holder to maintain the pipeline, and these changes will make clear the rights and obligations of the pipeline licence holder in this respect.

3C Inclusion of a new class of title for production related facilities

Problems/Options

The Act does not provide for the licensing of offshore facilities for processing, nor does it provide for cases where storage or offloading facilities are not part of the actual production facility within a relevant production licence area. For example, there is currently a proposal that a production facility be located in Australia's offshore waters but outside its associated production licence area. In offshore areas, companies are also examining options for the installation of gas processing facilities producing LNG or methanol.

Companies are reluctant to invest in a platform or processing plant unless they have security of title over the area in which it is to be located.

The only available solution is to provide companies with such certainty by an appropriate amendment to the Act.

Costs and benefits

Any administrative costs associated with the new class of licence would be recovered via fees which are provided for via an amendment to the *Petroleum (Submerged Lands) Fees Act 1994*.

The benefits are greater flexibility for companies both in the location of processing and other facilities associated with the production of petroleum, and in utilising new technology such as offshore LNG or methanol processing facilities.

Feedback from consultations

Both industry and the States/NT support this proposed amendment.

Conclusion

This amendment is supported by all parties. Its implementation will result in greater certainty for industry and a more flexible regime.

3D Provisions for the continued use of production facilities in lapsed licence areas

Problems/Options

There are a number of production licences in Bass Strait which have been in existence since the late 1960s/early 1970s which are coming to the end of their producing lives. The facilities on a number of the platforms in a number of these production licence areas are being used to produce petroleum in adjacent licence areas, for example, via the use of horizontally drilled wells and the use of subsea completions connected back to the platform. Continuing improvements in technology mean that this trend is likely to increase in the coming years, with many of the smaller, previously uneconomic fields now becoming viable. In other cases larger platforms are used as a gathering and initial processing point for oil and gas produced from smaller adjacent facilities before being pipelined to an onshore processing plant.

Production of petroleum from the licence areas in which some of these platforms are located could cease within the next few years, in which case the production licence would normally lapse at the end of its term. Any associated facilities could not then continue to be used to produce petroleum from fields outside the original licence area.

The options are to:

- leave the situation as is; or
- enable the continued use of production facilities in lapsed production licence areas where they are of use in facilitating production and transport of petroleum.

Costs and benefits

There are no cost differentials for government associated with the identified options. However, the second option is likely to result in substantial savings to companies in their being able to make use of existing facilities.

There are no benefits in leaving the situation as is. The major benefit of the other option is that it will enable petroleum, which might otherwise not be commercially viable to produce, to be

recovered or to continue to be recovered from nearby licence areas. This will result in greater returns to the Commonwealth and the companies.

Feedback from consultations

Industry supports the proposal.

Conclusion

Enabling the continued use of production facilities in lapsed production licence areas will provide for greater flexibility and will give companies certainty in planning for the development of smaller and/or marginal fields and the continuing development of other fields. Further it will improve the economics of developing other fields, with a consequent higher return to Commonwealth revenue.

4 Consultation

The review was carried out in co-operation with the States/Northern Territory through the Australian and New Zealand Minerals and Energy Council (ANZMEC) Sub-committee on Petroleum, and also with the petroleum industry. Industry bodies consulted were the Australian Petroleum Production and Exploration Association (APPEA) and the Australian Mining and Petroleum Law Association (AMPLA).

5 Implementation and Review

Implementation of the proposals will be via amendments to the *Petroleum (Submerged Lands) Act 1967* and administration of the changes will be undertaken by existing staff.

Industry has been consulted in the legislative drafting of the proposals. The State/NT Departments which jointly administer the Act on behalf of the Commonwealth have also been consulted. Amendments mirroring the changes to the Commonwealth Act will be included by the States/NT in their corresponding legislation in due course.

The amendments will be included in the 1999 review of the *Petroleum (Submerged Lands) Act* under the Commonwealth's legislation review program.

NOTES ON INDIVIDUAL CLAUSES

Part 1 - PRELIMINARY

Clause 1- Short title

Provides for the Act to be cited as the Petroleum (Submerged Lands) Legislation Amendment Act 1999.

Clause 2 - Commencement

Subclause 2(1) provides for commencement of the Bill on Royal Assent.

Subclause 2(2) provides that certain items are to commence on a day to be fixed by Proclamation.

Subclause 2(3) provides that if the items set out in subclause 2(2) are not proclaimed, they will commence 6 months after the Act receives Royal Assent. These items repeal certain provisions of the existing Act with a view to incorporating them in Regulations. It is necessary to have these new Regulations in place when the repeal comes into effect.

Clause 3 – Schedule(s)

This clause makes it clear that two Acts are to be amended by the Bill and the amendments in respect of each Act are presented in a separate Schedule to the Bill.

Part 2 – AMENDMENT OF THE PETROLEUM (SUBMERGED LANDS) ACT 1967

SCHEDULE 1

Items 1, 2, 3, 4, 5 and 6 - Subsection 5(1)

These clauses define a "facility", "good processing and transport practices", "infrastructure facilities", "infrastructure licence", "infrastructure licence area" and "infrastructure licensee". These terms do not appear in the existing Act.

Item 7 - Subsection 5(1) (definition of *registered holder*)

This item inserts a definition of the registered holder of an infrastructure licence.

Item 8 - Subsection 5(1) (at the end of paragraphs (a), (b), (c), (ca) and (d) of the definition of *the relinquished area*)

This item makes minor editorial amendments to clarify the definition of the relinquished area.

Item 9 - Subsection 5(1) (after paragraph (ca) of the definition of *the relinquished area*)

This item inserts a definition of the relinquished area in relation to an infrastructure licence. This area needs to be defined because of existing requirements that holders of titles who relinquish areas take steps to remove their property from those areas.

Item 10 - Subsection 5(2)

This item extends to infrastructure licences the definition given in this subsection to the term of other titles under the Act, ie that it is the period during which the title remains in force.

Item 11 - Subsection 5(2)

This item deletes the definition in this subsection of the date of expiration of a pipeline licence. The definition is rendered superfluous by the new provision under item 67 making the term of a pipeline licence indefinite.

Item 12 - Subsection 5(3)

This item extends to infrastructure licences the definition given in this subsection to a year of the term of other titles under the Act, ie that it is a period of one year commencing on the day on which the title comes into force or on any anniversary of that day.

Item 13 - Subsection 5(6)

This item repeals the definition of the renewal of a pipeline licence. The definition is rendered superfluous by the new provision under item 67 making the term of a pipeline licence indefinite.

Item 14 - Subsection 5(8)

This item extends to infrastructure licences the provision in this subsection whereby any reference to a title under the Act is a reference to that title as varied for the time being under the Act.

Item 15 - Section 5AAA

The existing section 5AAA in the Act provides that the boundaries of existing pipeline licences are not affected by changes to the territorial sea baselines. This item substitutes a new section 5AAA such that the same protection is also conferred on existing exploration permits, retention leases, production licences and infrastructure licences. The amendments will be analogous to those made in 1996 to the *Offshore Minerals Act 1994*.

Items 16 and 17 - Subsection 18(1) and Section 18

These items extend the Joint Authority's current power to make declarations reserving specific blocks to include the power to reserve them from the grant of an infrastructure licence.

Item 18 - Subsection 19(1) (penalty)

This item reimposes the current imprisonment penalty for exploration for petroleum in contravention of the Act but deletes the pecuniary penalty in view of the fact that pecuniary penalty is now automatically linked to the term of imprisonment in accordance with the formula set out in section 4B of the *Crimes Act 1914*.

Item 19 - Paragraph 21(1)(a)

This item repeals the requirement that applications for exploration permits need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 20 - After section 21

This item adds a new section 21A to enable the Joint Authority to rank bids for exploration permits, exclude undeserving bids from the ranking and, if two or more parties that have tendered the best and equal work program bids, invite them to submit supplementary bids as a further basis for the selection of a successful applicant. The purpose of the new section is to enable the field of applicants to be revisited if a permit offer is not taken up or if two or more applicants are initially deemed best and equal. Under the existing provisions, in these situations the Joint Authority would need to issue a new public invitation for permit applications and recommence the entire process.

Item 21 - After section 22

This item inserts sections new 22AA, 22AB and 22AC which deal with the implications of permit applicants withdrawing before the grant of the permit and of applications lapsing (ie an offer not being taken up within the specified period). If the application withdrawn is one in respect of which the Joint Authority has already made an offer of permit, these sections enable the Joint Authority to fully revisit the selection procedure, ie in most respects the situation returns to what obtained when all the other applications were first received. In the case of a joint application, if one or more of the parties wish to withdraw, the application remains in effect for the remaining party/parties, but only if all parties to the application agree to the withdrawal. In that case, the remaining party or parties do not benefit from any offer of a permit that may already have been made, but the application is reassessed in competition with any other applications. However, if one or more parties withdraw from a joint application without the approval of all the other applicants, the application, if it leads to an offer of a permit, will lapse because not all the original parties will be able to accept the offer.

Item 22 - Paragraph 23(4)(a)

This item refers to applications for exploration permits in respect of blocks surrendered, cancelled or determined from a lease, licence or another permit. The clause repeals the requirement that applications for permits for such blocks need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 23 - Paragraph 24(3)

This item repeals discretionary refunds of application fees to successful bidders who reject offers of grant.

Items 24, 25, 26 and 27 - Subparagraph 25(5)(b)(ii), Paragraph 26(1)(b), Paragraph 26(2)(b), and Paragraph 27(b)

These items omit mentions of the instalment payment facility for cash bids for a permit in respect of surrendered blocks because this facility, provided for in section 109, is repealed under item 130.

Item 28 - At the end of section 29

This item refers to location blocks (ie blocks in which a petroleum pool or part thereof has been discovered and declared). The item provides for an exploration permit to continue in force in relation to any location blocks at the end of the final renewal term of the permit until the application for a retention lease or production licence is resolved. The resolution may take the form of the lease or licence being granted, the applicant withdrawing, the application lapsing or the application being refused. However, if a lease application is refused, under subsection 39A(6) of the Act the applicant has 12 months to apply for a licence. In that case, this item also extends the permit for that period.

Item 29 - Paragraph 30(2)(a)

This item repeals the requirement that applications for the renewal of an exploration permit need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Items 30 and 31- Subsection 31(1) and Subsections 31(3) to (6)

These items relate to the halving rule for exploration permit renewals, fragmentation constraints on the areas covered by permits being renewed and the 16 block discretionary minimum size of permit areas. At each renewal, the number of blocks covered by the renewed permit shall in principle be half the number of blocks over which the previous permit applied. If the previous permit applied over an uneven number of blocks, a formula provides for the permittee to qualify for a number of blocks equal to half the nearest number divisible by 4. These items amend this rule by revoking the possibility of the permittee applying for renewal over a one block permit and compensating for the possible shortening of the renewal series by making the minimum size of an area 4 blocks, with one extra renewal of that number of blocks. However, 2 or 3 block permit areas can come to exist in other ways (eg voluntary surrender of some of the blocks in an area), and the same principle of one renewal of that number of blocks is applied to them.

These items also repeal the fragmentation constraints which stipulate that each area is to consist of blocks having a side in common with at least one other block and that, if the total number of blocks

is 16 or more, then each area needs to consist of at least 16 blocks so connected. The Joint Authority's discretionary power to fix the number of blocks for renewal at 16 is also repealed.

Item 32 - Saving

This item saves the Joint Authority's discretion to fix the number of blocks at 16 for one more renewal in the case of permits existing at the date of effect of the repeal.

Items 33, 34 and 35 – At the end of subsection 34(1), Subsections 34(2) and (3) and the penalty and Section 35

Section 34 provides that, on discovery of petroleum, the permittee must notify the Designated Authority (ie the relevant State Minister) of the discovery, and thereafter, if directed, provide further information such as the chemical composition and physical properties of the petroleum and details about the nature of the subsoil. Section 35 provides that the Designated Authority may direct the permittee to undertake further work to obtain this information. While it is considered appropriate to retain in the Act subsection 34(1) requiring the permittee to notify the Designated Authority of any discovery and the penalty for failing to do so, the remaining provisions in these sections are technical in nature and more appropriately covered by regulations under the Act. Subsections 34(2) and (3) and section 35 are therefore repealed by these items.

Item 36 - At the end of section 37

This item adds subsection (7) clarifying the Joint Authority's power to form an opinion based on information from any source about whether blocks nominated by a permittee actually cover or extend into a petroleum pool.

Item 37 - Paragraph 38A(2)(a)

This item repeals the requirement that applications for retention leases need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 38 - Subsection 38B(1)

This item amends section 38B dealing with the procedure for the grant or refusal of a retention lease. Currently, if there is an application for a retention lease in respect of certain specified blocks constituting a location, then the Joint Authority has to take an "all or nothing" decision on granting a lease over those blocks. The substituted paragraph 38B(1)(c) will enable the Joint Authority, where appropriate, to grant a lease over a subset of the blocks nominated in the application, leaving the remainder of the nominated blocks under the continued coverage of an exploration permit, if one is in force. The subset selected for a lease will consist of the blocks about the status of which the Joint Authority is satisfied, specifically to the effect that the blocks contain petroleum and that its recovery is not at the time of the application commercially viable but is likely to become viable within 15 years.

Item 39 - Paragraph 38B(2)(b)

This item inserts a qualification to subsection 38B(2) reinforcing the amendment in the above item by clarifying that it is only if the Joint Authority is unsatisfied about the status of every block

referred to in the application for a lease that the Joint Authority is obligated to refuse the grant of a lease to the applicant.

Item 40 - After subsection 38B(2)

This item provides that refusal of a lease in respect of any block(s) (but not all blocks) in a lease application requires the Joint Authority to serve a refusal notice in writing on the applicant in respect of that or those blocks .

Item 41 - Paragraph 38F(2)(a)

This item repeals the requirement that applications for the renewal of retention leases need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Items 42, 43 and 44 – At the end of subsection 38J(1), Subsections 38J(2) and (3) and the penalty and Section 38K

Section 38J provides that, on discovery of petroleum in a lease area, the lessee must notify the Designated Authority (ie the relevant State Minister) of the discovery, and thereafter, if directed, provide further information such as the chemical composition and physical properties of the petroleum and details about the nature of the subsoil. Section 38K provides that the Designated Authority may direct the lessee to undertake further work to obtain this information. While it is considered appropriate to retain in the Act subsection 38J(1) requiring the lessee to notify the Designated Authority of any discovery and the penalty for failing to do so, the remaining provisions in these sections are technical in nature and more appropriately covered by regulations under the Act. Subsections 38J(2) and (3) and section 38K are therefore repealed by these items.

Item 45 - Section 39 (penalty)

This item reimposes the current imprisonment penalty for recovery of petroleum in contravention of the Act but deletes the pecuniary penalty in view of the fact that pecuniary penalty is now automatically linked to the term of imprisonment in accordance with the formula set out in section 4B of the *Crimes Act 1914*.

Item 46 - Paragraph 41(1)(a)

This item repeals the requirement that applications for production licences need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 47 - Subsection 43(1)

Currently, if there is an application for a production licence in respect of certain specified blocks constituting a location, then the Joint Authority has to take an "all or nothing" decision on granting a lease over those blocks. Complementing the amendments under item 38 to subsection 38B(1), this item adds provisions whereby the grant of a production licence may be made over a subset of the blocks nominated in the application, leaving the remainder of the nominated blocks under the continued coverage of an exploration permit, if one is in force. The subset selected for the licence will consist of the blocks about the status of which the Joint Authority is satisfied, specifically to the effect that the blocks contain petroleum.

Item 48 - Subsection 43(2)

This item makes a minor editorial amendment consequential on the previous item.

Item 49 - At the end of section 43

This item requires a notice of refusal of a licence to be served on the applicant if the Joint Authority decides not to grant the applicant a licence in respect of the block or any of the blocks specified in the application. The refusal may arise where the applicant has failed to furnish the Designated Authority with further information as required by a written notice served under subsection 41(2) or because the Joint Authority is not satisfied that the block or any of the blocks contain petroleum.

Item 50 - Subsection 44(2)

This item clarifies that, when an instrument of offer of a licence is issued by the Joint Authority, it will not necessarily cover all the blocks included in the application. Rather, the licence offer will apply only in respect of the blocks specified in the instrument. These blocks will be blocks about the status of which the Joint Authority is satisfied, specifically to the effect that the blocks contain petroleum.

Item 51 - Subsection 45(1)

This item refers to a variation of a licence adding to the licence area blocks that the licence holder had previously chosen to forego. This item specifies that any blocks the Designated Authority may add to the licence must be blocks about the status of which the Joint Authority is satisfied, specifically to the effect that the blocks contain petroleum.

Item 52 - Paragraph 47(6)(a)

This item repeals the requirement that applications for production licences in respect of surrendered, cancelled or determined blocks need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 53 - Subsection 48(3)

This item refers to the deposit paid by applicants for surrendered, cancelled or determined blocks. The clause repeals the discretional refundability of this deposit to successful bidders who reject the offer of a production licence over such blocks.

Items 54, 55, 56 and 57 - Subparagraph 49(5)(c)(ii), Paragraph 49(6)(b), Paragraph 49(7)(b) and Paragraph 50(b)

These items omit mentions of the instalment payment facility for cash bids for a licence in respect of surrendered blocks because this facility, provided for in section 109, is repealed under item 130.

Item 58 - Paragraphs 51(2)(a) and 54(2)(a)

This item repeals the requirements that applications for production licences in respect of individual blocks and the renewal of production licences need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 59 - After Division 3 of Part III

This item inserts the new Division 3A – Infrastructure licences.

Under "59A Construction etc of infrastructure facilities", the item extends to infrastructure facilities the provision that applies to production facilities and pipelines, making it an offence to do anything for the construction or operation of those facilities except under and in accordance with the relevant licence, in this case an infrastructure licence. The penalty for an offence under this section is to be equal to that applying to unauthorised petroleum exploration, production and pipeline construction.

Under "59B Application for infrastructure licence", the item inserts a section specifying the process for submitting an application for an infrastructure licence which is analogous to the process set out in the Act for submitting a production licence application.

Under "59C Notification as to grant of an infrastructure licence", the item inserts a section specifying the process for notifying a successful infrastructure licence applicant which is analogous to the process set out in the Act for notifying a successful production licence applicant.

Under "59D Notices to be given by Joint Authority", the item inserts a section specifying the consultation process with third parties that needs to be gone through before an offer of an infrastructure licence is made. This procedure is largely analogous with the consultation procedure that is currently gone through before access authorities are granted under section 112 of the Act. The difference is that, since special prospecting authorities and access authorities tend to be relatively short term titles, holders of these titles will not need to be consulted if the title will expire before any construction or operation of facilities under the proposed infrastructure licence would occur. The section also provides that the consultation process may be waived by any of the third parties having an interest in the block consenting in writing to the grant of the infrastructure licence. The consultation procedure reflects the concept that plans for infrastructure licences should create minimum disturbance for other title-holders in the area.

Under "59E Grant of infrastructure licence", the item inserts a section specifying the process for accepting an offer of an infrastructure licence which is analogous to the process set out in the Act for accepting an offer of a production licence.

Under "59F Rights conferred by infrastructure licence" the item inserts a statement of rights conferred by an infrastructure licence. These rights are essentially embodied in the definition of an infrastructure licence. It is also made clear that the infrastructure licence does not authorise the holder to do, nor is it a pre-requisite for, anything for which an exploration permit, production licence or pipeline licence is required.

Under "59G Term of infrastructure licence" the item provides an indefinite term for an infrastructure licence subject to compliance with all other requirements in Part III of the Act.

Under "59H Termination of licence if no use of facilities for 5 years", the item gives the Joint Authority power to terminate an infrastructure licence which is analogous to the power to terminate a production licence. This power is exercisable in cases where, for a continuous period of at least 5 years, there has been no construction work on the facilities. After the facilities have been constructed, the power is also exercisable where there has been no use of the facilities for a similar period. In calculating the date at which the power to terminate an infrastructure licence may be invoked, periods when construction or use was precluded by force majeure are to be disregarded.

Under "59J Conditions of infrastructure licence", the item gives the Joint Authority power to grant infrastructure licences subject to such conditions as the Joint Authority thinks fit and are specified in the licence. This power is identical to the Joint Authority's power to attach conditions to other titles granted under the Act, ie exploration permits, retention leases, production licences and pipeline licences.

Under "59K Variation of infrastructure licence", the item establishes a process for the variation of an infrastructure licence which is analogous to the process for varying an access authority except where holders of special prospecting authorities and access authorities are involved whose title will expire before any construction or operation of facilities under the proposed infrastructure licence would occur.

Item 60 - Subsections 60(2) and (3)

These subsections relate to the regulation of water lines, secondary lines, pumping stations, tank stations and valve stations. Owing to the technical nature of these provisions, it is appropriate that they be moved to regulations under the Act and the subsections are therefore repealed.

Items 61 and 62 - Subsection 60(4) and Subsection 60(5)

These items delete from subsections 60(4) and 60(5) all mentions of secondary lines and water lines. Owing to the technical nature of these provisions, it is appropriate that they be moved to regulations under the Act. After the deletions, these subsections cover only the operation of pipelines and remain otherwise unchanged.

Item 63 - Section 60 (penalty)

This item reimposes the current imprisonment penalty for constructing or operating a pipeline in contravention of the Act but deletes the pecuniary penalty in view of the fact that pecuniary penalty is now automatically linked to the term of imprisonment in accordance with the formula set out in section 4B of the *Crimes Act 1914*.

Items 64 and 65 - Paragraph 61(a) and Subsections 62(1) and (2)

These items delete from paragraph 61(a) and subsections 62(1) and (2) all mentions of water lines, secondary lines, pumping stations, tank stations and valve stations. Owing to the technical nature of these provisions, it is appropriate that they be moved to regulations under the Act. After the deletions, section 61 covers only acts done in an emergency to maintain a pipeline and section 62 covers only the Designated Authority's powers to direct alterations to, or removal of, pipelines constructed or reconstructed in contravention of the Act.

Item 66 - Paragraph 64(1)(a)

This item repeals the requirement that applications for pipeline licences need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 67 - Subsection 67(1)

This item makes the term of a pipeline licence indefinite subject to other provisions in Part III of the Act, most notably the new provisions in section 67A.

Item 68 - Application

This item clarifies that the indefinite term will apply to existing as well as new pipeline licences. It will also apply to a pipeline licence that has nominally expired but, under subsection 69(8), is deemed to continue in force for the time being because no decision has yet been made by the Joint Authority on a renewal application or because the licensee has not yet accepted an offer of renewal.

Item 69 - After section 67

This item inserts the new section 67A "Termination of pipeline licence if no operation for 5 years". This section gives the Joint Authority power to terminate a pipeline licence which is analogous to the power to terminate a production licence or infrastructure licence. This power is exercisable in cases where, for a continuous period of at least 5 years, there has been no construction work on the pipeline. After the pipeline has been constructed, the power is also exercisable where there has been no use of the pipeline for a similar period. In calculating the date at which the power to terminate an infrastructure licence may be invoked, periods when construction or use was precluded by force majeure are to be disregarded

Item 70 - Sections 68 and 69

This item repeals sections 68 and 69 which lay down procedures respectively for pipeline licence renewal applications and the grant or refusal of pipeline licence renewals. Since pipeline licences will no longer be subject to renewal, these sections become superfluous.

Item 71 - Subsection 70(3)

This item repeals subsection 70(3), which gives the Joint Authority power to vary conditions in a pipeline licence when it is renewed. Since pipeline licences will no longer be subject to renewal, this subsection becomes superfluous.

Item 72 - Saving

This item saves any conditions attached to a pipeline licence that had been introduced as variations under subsection 70(3) immediately before the repeal of the subsection.

Item 73 - Paragraph 71(2)(a)

This item repeals the requirement that applications for the variation of a pipeline licence need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 74 - Subsection 72(1)

This item deletes from subsection 72(1) mentions of water lines, secondary lines, pumping stations, tank stations and valve stations. Owing to the technical nature of these provisions, it is appropriate that they be moved to regulations under the Act. After the deletions, section 72 covers only the process for variation of a pipeline licence by the Joint Authority and remains otherwise unchanged.

Item 75 - Subsection 72(2) (penalty)

This item reimposes the current imprisonment penalty for failure to comply with a direction given under section 72 to make changes in the design, construction, route or position of a pipeline, but deletes the pecuniary penalty in view of the fact that pecuniary penalty is now automatically linked to the term of imprisonment in accordance with the formula set out in section 4B of the *Crimes Act 1914*.

Item 76 - Subsection 74(1) (penalty)

This item reimposes the current imprisonment penalty for ceasing to operate a pipeline in contravention of the Act, but deletes the pecuniary penalty in view of the fact that pecuniary penalty is now automatically linked to the term of imprisonment in accordance with the formula set out in section 4B of the *Crimes Act 1914*.

Item 77 - Section 75

This item brings infrastructure licences within the definition of "title" under Part III Division 5. Permits, leases, production licences, pipeline licences and access authorities are already considered as titles under the Division. This inclusion means the provisions of the Division in relation to the registration of instruments will apply to infrastructure licences.

Item 78 - At the end of paragraphs 76(2)(a) and (b)

This item makes minor editorial amendments to clarify the subsection.

Item 79 - After paragraph 76(2)(b)

This item adds a provision to the effect that the Designated Authority is to enter in the Register a memorial in respect of each infrastructure licence setting out particulars of the infrastructure licence area.

Item 80 - At the end of paragraphs 76(2)(c), (d) and (e)

This item makes minor editorial amendments to clarify the subsection.

Item 81 - Paragraph 76(2)(g)

This item provides that the Designated Authority also has power to enter in the Register such further matters relating to the registered holder or to the terms and conditions of an infrastructure licence as the Designated Authority deems proper and expedient in the public interest.

Item 82 - Paragraph 76(3)(c)

This item deletes mention of an agreement for payment by instalments for cash bids for a licence in respect of surrendered blocks because this facility, provided for in section 109, is repealed under item 130.

Item 83 - Subparagraph 81A(4)(a)(i)

Section 81A refers to a dealings in relation to titles that may in the future come into existence and the prescribed period during which a person who is party to such a dealing may lodge a provisional application for Joint Authority approval of the dealing. This item provides that the prescribed period in respect of a dealing in an infrastructure licence will commence on the day the Joint Authority serves an instrument on the applicant for the infrastructure licence informing that the Joint Authority is prepared to grant the infrastructure licence. The prescribed period will end on the day the infrastructure licence comes into existence.

Item 84 - Subsection 82(1) (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to making to the Designated Authority false or misleading statements in instruments related to dealings.

Item 85 - Sections 84, 85 and 90 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to making false or misleading statements in information required by the Designated Authority in relation to dealings, failing to produce documents required by the Designated Authority, making false entries in the Register or producing documents falsely purporting to be extracts from the Register.

Item 86 - Paragraphs 94(a) and (b)

Section 94 provides for publication in the *Gazette* of information about applications, grants, renewals, variations, surrenders, cancellations, determinations and expiry of titles, as appropriate and specified in the section. This item inserts a provision that, in addition to the grant or variation of other titles, the grant or variation of an infrastructure licence is to be notified in the *Gazette*. It also deletes the requirement that the renewal of a pipeline licence needs to be notified. This is rendered superfluous by the amendment in item 67 making the term of a pipeline licence indefinite.

Item 87 - At the end of paragraph 94(c)

This item makes a minor editorial amendment to clarify the section.

Item 88 - After paragraph 94(c)

This item inserts a provision into section 94 for the surrender or cancellation of an infrastructure licence to be notified in the *Gazette*.

Item 89 - At the end of paragraph 94(d)

This item makes a minor editorial amendment to clarify the section.

Item 90 - Paragraph 94(e)

This item deletes the requirement that an application for the renewal of a pipeline licence needs to be notified in the *Gazette*. This is rendered superfluous by the amendment in item 67 making the term of a pipeline licence indefinite.

Item 91 - Paragraph 94(g)

This item inserts a requirement that particulars of the termination of a production licence, infrastructure licence or pipeline licence are to be published in the *Gazette*. It also deletes mention of the expiry of a pipeline licence, which is rendered superfluous by the amendment in item 67 making the term of a pipeline licence indefinite.

Item 92 - After subsection 95(2)

This item inserts a subsection specifying that the date of effect of the surrender or cancellation of an infrastructure licence is the day on which notice is published in the *Gazette*.

Item 93 - Subsection 95(4)

This item extends to infrastructure licences the provision that already applies to production licences and pipeline licences that the date of effect of a variation of the licence is the day on which notice of the variation is published in the *Gazette*.

Items 94 and 95 - Subsections 96(1) and (2)

These items provide that the same requirements will apply to infrastructure licensees as apply to holders of other titles in relation to the commencement of work or operations. Specifically, if work or operations are a condition of the infrastructure licence, the work or operations must be commenced within 6 months of the day the infrastructure licence comes into force except where the Designated Authority otherwise directs.

Item 96 - Section 96 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure to comply with a direction by the Designated Authority to commence works or operations as provided under section 96.

Item 97 - After subsection 97(2)

This item inserts subsection (2A) requiring operations under an infrastructure licence to be carried out in a safe manner and in accordance with good oil field, processing and transport practices, as defined in item 2 and elsewhere in the existing Act. The item also inserts subsection (2B) requiring the infrastructure licensee to prevent the waste or escape, and control the flow, of substances from a facility that has been constructed under the licence, except where this is specifically authorised, for instance for a "dewatering" plant. These requirements are consistent with the requirements imposed by section 97 on holders of other titles under the Act.

Item 98 - Section 97 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure to comply with good work practices as required by section 97.

Item 99 - Subsections 97A(1), (3) and (4)

This item extends to infrastructure licensees the requirement that already applies to other title-holders whereby they must, as directed by the Designated Authority, maintain specified types of insurance in relation to operations permitted by their titles.

Item 100 - Subsection 98(1) (definition of *operator*)

This item extends to infrastructure licensees the requirement that already applies to other title-holders whereby they must maintain all structures, equipment and other property in good condition and repair and remove unused structures, equipment and property. This is achieved by including infrastructure licensees within the definition of an "operator" that appears in the section.

Item 101 - Subsection 98(1) (after paragraph (a) of the definition of *the operations area*)

This item provides that the area in which the infrastructure licensee has the maintenance and other obligations imposed by section 98 is the infrastructure licence area as defined by item 5.

Item 102 - Section 98 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by title-holders to maintain structures, equipment and other property in good condition and repair or remove unused structures, equipment and property.

Item 103 - Section 100

This item repeals section 100, which provides, among other things, that a permittee, lessee or licensee shall not make a well any part of which is less than 300 metres from a boundary of the permit area, lease area or licence area, as the case may be, except with the consent in writing of the Designated Authority and in accordance with such conditions, if any, as are specified in the instrument of consent. Also repealed is the provision that, where a permittee, lessee or licensee does not comply with the above prohibition, the Designated Authority may, by instrument in writing served on the permittee, lessee or licensee, direct him to plug or close off the well, or comply with other specified directions within the period specified in the instrument.

These provisions are repealed because they are technical and more appropriately covered by directions issued by the Designated Authority under section 101 of the Act.

Item 104 - Subsection 101(1)

This item extends to infrastructure licensees the provision that already applies to other title-holders whereby the Designated Authority may serve on the title-holder written directions as to any matter with respect to which regulations may be made.

Item 105 - Subsections 101(2A), (2B) and (2C) (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by a title-holder to distribute or display to agents, staff or other relevant parties copies of directions received by that title-holder under section 101.

Item 106 - Paragraph 102(2A)(a)

This item refers to costs and expenses incurred by the Designated Authority in carrying out actions where the person to whom a direction has been given or to whom the direction is applicable fails to comply with the direction. Such costs and expenses are a debt payable to the Commonwealth by the person to whom the direction was given or to whom the direction is applicable. Currently, subsection 102(2A) provides a defence that may be used by a person who is not the title-holder but to whom the direction is applicable, specifically that the person did not know or could not reasonably be expected to know of the direction. This item extends this defence to persons affected by directions given to infrastructure licensees.

Item 107 - Paragraph 103(1)(a)

Paragraph 103(1)(a) refers to renewals of various titles including pipeline licences. This item deletes from the paragraph the mention of pipeline licences because this is rendered superfluous by the amendment in item 67 making the term of a pipeline licence indefinite.

Items 108, 109, 110, 111, 112 and 113 - Paragraph 103(1)(j), Paragraph 103(1)(j), Paragraph 103(1)(k), Subsection 103(1), Paragraph 103(1)(n) and Subsection 103(1)

Subsection 103(1) provides that the Joint Authority may vary, suspend or exempt a title-holder from compliance with any or all the conditions to which the title is subject. These items together extend this power to the Joint Authority in respect of infrastructure licences, specifically where such variation, suspension or exemption has been sought by the infrastructure licensee or where the Designated Authority or Joint Authority gives a direction or consent to the infrastructure licensee.

Item 114 - Paragraph 103(2)(b)

Paragraph 103(2)(b) provides that the Joint Authority's powers under subsection 103(1) to vary, suspend or exempt a title-holder from compliance with title conditions do not authorize the Joint Authority to take action to the extent that it would affect the term of the title. This item extends this provision to infrastructure licences.

Items 115 and 116 - Subsection 104(1) and After paragraph 104(1)(a)

These items insert a provision enabling the holder of an infrastructure licence to apply for consent to surrender the infrastructure licence. The surrender application is to apply to the infrastructure licence area as a whole.

Item 117 - Subsection 104(3)

This item extends to infrastructure licensees the provision that already applies to other title-holders whereby the Designated Authority may, in exceptional circumstances, consent to the surrender of the title even where there has not been compliance with the requirements set out in subsection

104(2). These requirements relate to the payment of fees, meeting the conditions of the title, removal of property, protecting the natural resources of the area and making good any damage to the seabed.

Item 118 - After paragraph 104(5)(a)

This item inserts a paragraph clarifying that, in the case of infrastructure licences, the abovementioned requirements of subsection 104(2) relate to the infrastructure licence area.

Items 119, 120, 121 and 122 - Section 105, Paragraph 105(1)(a), After paragraph 105(1)(e) and Subsection 105(2)

These items extend to infrastructure licences the cancellation provisions that already apply to other titles in cases where there is non-compliance with title conditions, directions, regulations, other requirements of the Act or payment obligations.

Item 123 - Section 106

This item repeals section 106 in its current form and substitutes an amended version which extends to infrastructure licences the provisions that already apply under the section to other titles. Specifically, conviction for an offence under the Act will not preclude cancellation of an infrastructure licence on the same grounds. Conversely, the cancellation of an infrastructure licence will not preclude a conviction for an offence on the same grounds. Likewise, a judgement or a part or full payment after 3 months will not preclude cancellation of the infrastructure licence on the grounds that payment of amounts payable was not made within 3 months. Conversely, the cancellation of an infrastructure licence on grounds of non-payment will have no effect on liability to pay the arrears and any penalty payments.

Items 124, 125 and 126 - Subsection 107(1), Subsection 107(2) and Paragraph 107(3)(b)

These items refer to titles that are no longer in force or are in force only in part, and extend to infrastructure licences the Designated Authority's powers in respect of other such titles to issue directions for the removal of property brought into the title area. This is to provide for the conservation and protection of the natural resources and making good any damage to the sea-bed.

Item 127 - Section 107 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to non-compliance with a direction given by the Designated Authority for the removal of property brought into the title area.

Items 128 and 129 - Section 108 and Paragraph 108(b)

These items extend to infrastructure licences the provision that already applies in relation to other titles no longer in force or in force only in part, where a direction given to the title-holder under section 107 was not complied with. Specifically, the Designated Authority may then do any or all of the things that were required by the direction and may, by Gazette notice, direct the removal of any property from the area to which the title applied. The same notice is to be served on all persons believed to be owners of the property in question.

Item 130 - Sections 109 and 110

This item repeals sections 109 and 110 which provide an instalment payment facility for cash bids for a permit or a licence in respect of surrendered blocks. Repeal of this provision is deemed appropriate in view of lack of interest in making use of the facility.

Item 131 - Paragraph 111(2)(a)

This item repeals the requirement that applications for special prospecting authorities need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 132 - Subsection 111(9) (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by a former holder of a special prospecting authority to comply with a direction given by the Designated Authority under section 111.

Item 133 - Paragraph 112(2)(a)

This item repeals the requirement that applications for access authorities need to be submitted in accordance with an approved form. Under current administrative procedures, this is considered unnecessary.

Item 134 - Subsection 112(10) (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by a former holder of an access authority to comply with a direction given by the Designated Authority under section 112.

Item 135 - Subsection 112(11) (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by a holder of an access authority to provide regular reports to a person holding another title over the block or blocks to which the access authority applies.

Item 136 - Paragraph 113(3)(b)

This item refers to costs incurred by the Commonwealth in doing anything that was not done by a title-holder to whom a direction by the Designated Authority applied. This item extends to infrastructure licensees the provision that already applies to other title-holders whereby such costs are recoverable by the Commonwealth from the title-holder in a court of competent jurisdiction.

Item 137 - Subsection 115(1)

Subsection 115(1) gives the Designated Authority or an inspector power to require a person to provide information or documents held by that person relating to petroleum exploration, production or pipeline construction and operation. This item extends this power to require information

pertaining to facilities constructed under an infrastructure licence, specifically information on processing or storage of petroleum or preparation of petroleum for transport.

Items 138 and 139 - Subsection 115(2) and At the end of section 115

Subsection 115(2) provides that a person is not excused from providing information, answering a question or producing a document on the grounds that that action could incriminate him or her, but the information furnished or the answer to the question is not admissible in evidence against the person except in proceedings on a charge of giving false or misleading information in the answer. This item clarifies the provision, making it consistent with the wording of the amended clause 32 of Schedule 7 (item 169).

Item 140 - Section 117 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by a person to give information as required under section 115, including knowingly giving false or misleading information .

Item 141 - Section 118

This item repeals section 118 because all provisions contained in it are included in the new Part IIIA inserted by item 161.

Item 142 - Saving

This item saves the provisions of section 118 in their application to information given to the Designated Authority before the commencement of Part IIIA. The reason for this is that the new Part IIIA, unlike section 118, is based on the submitter of information classifying the information *at the time of submission* as to whether it should be protected from release for an extended period or indefinitely. The changes brought about by Part IIIA are therefore prospective and cannot apply to information already submitted.

This item additionally saves Petroleum (Submerged Lands) Regulation No. 9 providing for the calculation of fees with reference to various subsections of section 118. These fees are set to cover costs associated with lending a document, core, cutting or sample to a person, time taken to locate information, documents, cores, cuttings or samples, copying or reproduction of documents and consignment of documents, cores, cuttings or samples. The application of these fees is also carried through to the relevant subsections of Part IIIA. In either application, the regulations may be amended.

Item 143 - Subsection 119(3)

This item reimposes the current imprisonment penalty applicable to the owner and person in charge of a vessel entering or remaining in a safety zone in contravention of the Act, but deletes the pecuniary penalty in view of the fact that pecuniary penalty is now automatically linked to the term of imprisonment in accordance with the formula set out in section 4B of the *Crimes Act 1914*.

Item 144 - Subsection 120 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by a person to report to the Designated Authority the discovery of water in a permit, lease or licence area as required by section 120.

Item 145 - Section 121

This item repeals section 121 which provides for the Designated Authority to direct a title-holder to carry out a survey of a well, structure or specified equipment and to report on the survey. This provision is repealed because it is deemed more appropriate for the Designated Authority to order surveys by means of directions issued under section 101 of the Act.

Item 146 - Subsection 122(1)

This item extends to infrastructure licensees the power already held by the Designated Authority to direct persons operating under other titles to maintain records, samples and the like in connection with those operations and to furnish them to the Designated Authority.

Item 147 - Subsection 122(2) (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to non-compliance with a direction given under section 122.

Item 148 - Section 124

This item extends to infrastructure licences the interference minimisation requirement that already applies to persons operating under other titles, specifically as regards interference with navigation, fishing, conservation of the natural resources of the sea and seabed, or other lawful activities of other parties.

Item 149 - Section 124 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to an act of interference in contravention of section 124.

Item 150 - After section 124

This item inserts a new section 124A prohibiting, in offshore areas covered by the Act, intentional or reckless interference with or damage to any structure or vessel used for any purpose approved under the Act as well as operations or works connected with that structure or vessel. The 10 year imprisonment penalty will be equal to the most severe penalty in the Act, the other offence attracting this penalty being applicable to the owner and person in charge of a vessel entering or remaining in a safety zone in contravention of the Act.

Item 151 - Subsection 125(1)

This item gives to the Designated Authority in respect of an adjacent area the power currently held by the Joint Authority to appoint inspectors.

Item 152 - Saving

This item provides that the status of an inspector who has been appointed by the Joint Authority is unaffected by the amendment to subsection 125(1).

Item 153 - Subsection 125(3) (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by an inspector to surrender a certificate on the expiry or revocation of his or her appointment.

Item 154 - Paragraph 126(1)

This item adds to the powers of an inspector the power to have access to facilities covered by an infrastructure licence.

Item 155 - Section 126 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to obstructing or hindering an inspector in the exercise of his or her powers.

Item 156 - Section 131

This item repeals section 131 dealing with continuing offences because the issue is now covered by section 4K of the *Crimes Act 1914*.

Item 157 - Paragraphs 133(1)(a) and (b)

Various offences in the Act are referred to in paragraph 133(1)(a) as offences which can lead to orders for forfeiture of aircraft, vessels or equipment used in committing the offence or of petroleum recovered or conveyed as part of the offence. This item adds to paragraph 133(1)(a) mention of section 59A, which specifies penalty for offences relating to infrastructure facilities, meaning infrastructure plant, equipment and processed products can likewise be forfeited. In addition, the *Crimes Act 1914* contains sections providing penalties for aiding and abetting in the commission of an offence, being an accessory after the fact, attempting to commit an offence, inciting or urging the commission of an offence and conspiracy to commit an offence. These sections are also listed in paragraph 133(1)(b) as offences that can similarly lead to forfeiture. However, the mention here of section 5 of the Crimes Act, referring to aiding and abetting, has been inadvertent because no offence arises under section 5 itself. Aiding and abetting in the commission of an offence is made equivalent to the commission of the offence itself, not an offence arising under section 5 of the Crimes Act. Accordingly, this item deletes mention of section 5 of the Crimes Act from paragraph 133(1)(b). It also corrects the reference to the provision in section 86 of the Crimes Act, which has undergone a minor paragraph numbering change because of an amendment to that Act.

Item 158 - Paragraph 135(b)

Section 135 stipulates that proceedings in respect of offences against the Act can be brought at any time, as can proceedings in respect of offences linked to sections of the Crimes Act, as outlined under item 157. This item makes, in paragraph 135(b), the same changes to the list of sections of the Crimes Act as are made in paragraph 133(1)(b).

Item 159 - Subsection 138A(5)

This item extends to infrastructure licences the provisions that already apply to other titles in relation to the service of documents where there are 2 or more registered holders of the title.

Item 160 - Subsection 140E(2)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to specified acts of hindering persons who are authorised to board vessels.

Item 161 - After Part III

This item inserts the new Part IIIA which replaces in the Act all provisions of section 118, relating to the release of information, which is repealed by item 141. Part IIIA is intended to be a rewrite of section 118 in a simplified form but it also adds some provisions that do not exist in section 118. These are specifically indicated below.

Section 150 provides definitions of a number of terms that are fundamental to setting in place the provisions in Part IIIA. These terms do not exist in section 118. The provision for information to be classified by the submitter as derivative or confidential is a provision which does not exist in section 118. The section also omits the procedure of gazetting proposed releases of derivative information in favour of a system that respects the submitter's initial classification, qualified by the Designated Authority's right to disagree within 30 days. The section defines the date when cores, cuttings, well data, logs, sample descriptions and other documents relating to the drilling of a well are taken to have been given to the Designated Authority. It also defines the date when geophysical or geochemical data relating to a survey are taken to have been given to the Designated Authority. A way of clearly determining these dates is required for purposes of calculating "the relevant day" under section 150E

Section 150A specifies that Part IIIA applies only to information given to the Designated Authority after the commencement of the Part, but makes no distinction in relation to petroleum mining samples given to the Designated Authority in the past or future. The reason for this is that Part IIIA introduces the concept of the submitter classifying information *at the time of submission* as to whether it should be protected from release for an extended period or indefinitely. However, the length of time for which a petroleum mining sample and particulars about it can be withheld from public access is not contingent on the submitter's opinion or open to dispute. Thus Part IIIA applies to petroleum mining samples already submitted as much as to those to be submitted after the commencement of the Part.

Section 150B places a general prohibition on publishing or disclosing documentary information or publishing information about, or allowing the inspection of, a petroleum mining sample, except as specified. The specified provisions for release are as set out elsewhere in Part IIIA or for administration of the Act or regulations or release to a Commonwealth or State Minister. This

section in effect places a perpetual prohibition on the public release of confidential information, as there is no provision for its public release anywhere in Part IIIA.

Section 150C enables the Designated Authority to release information to a Commonwealth or State Minister. This includes Ministers whose portfolios do not include the administration of any petroleum legislation. The section also enables the Commonwealth Minister administering the Act to require the Designated Authority to release to the Commonwealth Minister any documentary information or a sample.

Section 150D deals with the disclosure of documentary information and making petroleum mining samples available for public inspection. It does not allow the release of excluded information, ie derivative information, confidential information or particulars about an applicant's qualifications, technical advice or financial resources. Under this section, documentary information in an application is releasable immediately after the grant, renewal or refusal of the petroleum mining instrument that was sought. Other documentary information and samples are releasable after the "relevant day" provided for under section 150E. Section 150D also provides for a fee to apply to access to information or samples where such a fee is prescribed in the Regulations.

Section 150E identifies the "relevant day" for the release of various classes of information and sample. With the exception of subsection 150E(7), these provisions replicate section 118.

Subsection 150E(7) creates a new class of information. It refers to information that is a 3 dimensional seismic survey, is collected for sale on a non-exclusive basis, may freely be reprocessed by the buyer and is accompanied by 2 dimensional information derived from the seismic survey that is presented in a seismic data grid scaled in time. In respect of such 3 dimensional information, the relevant day is a maximum of 8 years after the information was given to the Designated Authority regardless of whether a permit, lease or licence is or was in force in respect of the block. The precise day is to be determined by the Designated Authority.

The seismic data grid scaled in time, as defined in subsection 150(1), will consist of vertical cross-sections of seismic information from the 3 dimensional processed image of geological strata in a grid with 2 kilometre spacing in 2 directions. The significance of this 2 dimensional information is that members of the public will be able to obtain earlier access to it under the Act than to the full 3 dimensional survey results. The relevant day for the release of this 2 dimensional information will be as provided by one of the other subsections of section 150E, as applicable. The 2 dimensional information will give parties accessing it some indication of what lies beneath the seabed without divulging to them the more valuable detailed information they would gain by buying the full 3 dimensional survey results. To allow for the possibility that evolving technology may make the 2 kilometre by 2 kilometre spacing of the grid less appropriate in the future, subsection 150(1) provides for the spacing to be varied by regulation.

Section 150F refers to information or a sample that has been given to the Designated Authority by the holder of a permit, lease, production licence, special prospecting authority or access authority where that party has, of his or her own volition, published the information, made the sample available for inspection or given written consent for this to occur. In these cases, section 150F provides that the Designated Authority or Commonwealth Minister may release the information or sample at any time after the publication has occurred or the consent has been given, subject to the payment of a fee where prescribed in the Regulations.

Section 150G provides for the release after 5 years of receipt of derivative information, ie information which the submitter classifies as a conclusion or opinion wholly or partly drawn from

other documentary information and the Designated Authority does not disagree with the classification within 30 days of receipt.

Sections 150H and 150J are based on the review process in section 118 but differ from it in two notable respects. Firstly, there is review not only in respect of contested information that is claimed by the submitter to be confidential but also in respect of contested information that is claimed by the submitter to be derivative (ie the Designated Authority believes it to be documentary and therefore releasable earlier than derivative information). Secondly, unlike the procedure in section 118, the Commonwealth Minister does not become involved in determining the status of information except as the reviewer of the Designated Authority's decision. This review is available if the Designated Authority has considered and decided upon the objection and the submitter is dissatisfied with that decision.

Section 150K (a new provision which does not exist in section 118) refers to the fact that copyright of material submitted under the Act and releasable under Part IIIA resides with the original copyright owner who would normally be the author or company submitting the information. This section is intended to clarify that the Designated Authority, or the Commonwealth Minister, is able to provide to the public copies of releasable documents under Part IIIA without in any way changing the ownership of copyright. This section is intended to put beyond doubt the fact that the Designated Authority, or the Commonwealth Minister has a non-exclusive right to copy those data.

Item 162 - Subsection 152(1) (paragraph (b) of the definition of *reviewable decision*)

This item extends the application of review by the Administrative Appeals Tribunal to actions by the Commonwealth Minister under Part IIIA in the same way as actions by the Commonwealth Minister under section 118 are subject to Administrative Appeals Tribunal review.

Item 163 - Paragraph 157(2)(e)

Paragraph 157(2)(e) provides that the Governor-General may make regulations for securing, regulating, controlling, or restricting the construction, erection, maintenance, operation or use of installations or equipment. This item inserts the word "facilities" to make it clear that the power extends to facilities under infrastructure licences.

Item 164 - Paragraph 157(5)(a)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to an offence against the regulations made under the Act.

Items 165 and 166 - Subclause 4(1) of Schedule 7 (penalty) and Clause 5 of Schedule 7 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. These items express in penalty units the pecuniary penalty that currently applies to failure by an employer to take all reasonable steps to protect the health and safety at work of employees and of other persons at or near the workplace.

Item 167 - Subclauses 6(1) and (2), 7(1) and 8(1) of Schedule 7 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty

that currently applies to failure by manufacturers to ensure the safety of plant and substances produced by them, failure by suppliers to ensure the safety of plant and substances supplied by them and failure by persons erecting plant to ensure its safety to employees using it.

Item 168 - Subclause 9(1) of Schedule 7 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by an employer to take all reasonable steps to ensure duties and directions given to employees are consistent with enhancing occupational health and safety.

Item 169 - At the end of clause 32 of Schedule 7

Clause 32 gives an investigator power to require any employer, any person representing an employer, any owner or occupier of a workplace at which the investigation is being conducted or any employee or contractor to answer any questions put by the investigator, and to produce any documents requested by the investigator if they are reasonably connected with the conduct of the investigation. The clause also provides that a person must not, without reasonable excuse, fail to comply with a requirement under this clause. This leaves the way open for the person to refuse to answer a question or produce a document on the ground that the information so furnished, the answer to the question or the production of the document might tend to incriminate him or her.

Such a right is not available under section 115, which sets out the power to require information vested on inspectors under the Act. Under that section a person is not excused from furnishing information, answering a question or producing a document when required to do so on the ground that the information furnished, the answer to the question or the production of the document might tend to incriminate the person or make him or her liable to a penalty. However, the information furnished or the answer to the question is not admissible in evidence against the person except in proceedings on a charge of giving false or misleading information in the answer.

This item removes the anomaly between section 115 and clause 32 by inserting in clause 32 the same provision as exists in section 115.

Item 170 - Subclauses 34(5) and 35(4) of Schedule 7 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by an employer to ensure compliance with a direction by an investigator that the workplace not be disturbed or failure by an employer to ensure compliance with a prohibition notice.

Item 171 - Subclause 36(6) of Schedule 7 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to failure by a responsible person to ensure compliance with an improvement notice issued by an investigator.

Item 172 - Clause 46 of Schedule 7 (penalty)

Section 4AB of the *Crimes Act 1914* provides a formula for the conversion of pecuniary penalties in Commonwealth Acts to penalty units. This item expresses in penalty units the pecuniary penalty that currently applies to employers levying a charge on employees in respect of anything done or provided, in accordance with the Act or the regulations, to ensure the health, safety or welfare of employees at work.

Part 3 – AMENDMENT OF THE PETROLEUM (SUBMERGED LANDS) FEES ACT 1994

SCHEDULE 2

Item 1 – After paragraph 4(1)(c)

Section 4 of this Act provides that the holder of an exploration permit, a retention lease, a production licence or a pipeline licence must pay a fee in respect of each year of the term of the permit, lease or licence. This item adds an infrastructure licence to the titles to which the obligation to pay a fee applies.

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