

Bills Digest
No. 83 2000–01

Petroleum (Submerged Lands) Legislation
Amendment Bill (No.3) 2000

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INFORMATION AND RESEARCH SERVICES

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Petroleum (Submerged Lands) Legislation Amendment Bill
(No.3) 2000

Angus Martyn
Law and Bills Digest Group
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Petroleum (Submerged Lands) Legislation Amendment Bill (No.3) 2000

Date Introduced: 6 December 2000

House: House of Representatives

Portfolio: Industry, Science and Resources

Commencement: Part 1 of Schedule 1 (transfer of powers from the Joint Authority to the Designated Authority) commences 28 days after Royal Assent. Part 3 of Schedule 1 (removal of property) is taken to have commenced on 7 March 2000.¹ Part 4 of Schedule 1 (Datums) commences 6 months after Royal Assent. Schedule 3 is taken to have commenced on 30 July 1998.² The remainder of the Act comes into force on Royal Assent.

Purpose

To amend the *Petroleum (Submerged Lands) Act 1967* to:

- Transfer certain powers from the Joint Authority to the Designated Authority;
- Broaden the scope of protection from liability that government officials enjoy;
- Allow for the transition from the Australian Geodetic Datum to Geocentric Datum of Australia; and
- Correct various previous drafting errors.

Background

Commonwealth / State regulation of offshore petroleum operations

Since 1967, offshore petroleum operations in Australia have been regulated by Commonwealth / State / Territory 'mirror' legislation. The principal Commonwealth legislation is the *Petroleum (Submerged lands) Act 1967* (The P(SL) Act).

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The P(SL) Act was substantially amended in 1980 to reflect the 1979 Offshore Constitutional Settlement. The purpose of this amendment was

to ensure that the national interest in petroleum resources could be asserted, while retaining the valuable role undertaken by the States in administration.³

Features of the P(SL) Act are the entities known as the Joint Authority and Designated Authority respectively. There is a Joint Authority and Designated Authority for each of the State or Territory 'adjacent areas'.⁴

The Joint Authority - which is comprised of the Commonwealth Resources Minister and his or her counterpart from the relevant State or Territory - is the decision-maker regarding the granting of exploration permits, production and pipeline licences etc.

The Designated Authority - which is simply the Minister from the relevant State or Territory - has responsibility for the more day to day administrative aspects of managing the offshore petroleum regime in each adjacent area.

A Commonwealth evaluation of the Commonwealth's role in the offshore petroleum sector recommended that

New administrative arrangements between the Commonwealth and the States / Northern Territory be adopted...[these arrangements would].. progressively shift administrative responsibility to the State / NT and industry while retaining some clearly defined Commonwealth involvement in technical or policy issues which have national implications.⁵

Datums⁶

A datum is a reference surface (eg a spheroid representing the surface of the earth), that when combined with latitude and longitude, allows for the accurate locating of a specific point, line or area.

Currently the P(SL) Act specifies the Australian Geodetic Datum (AGD) as the datum for determining positions. When the AGD was adopted in 1966, it was based on the Australian National Spheroid, which is an ellipsoid designed to be the best estimate of the Earth's shape in the Australian region, rather than from a global perspective. As a result, the AGD is biased to the extent that it has the centre of the spheroid some 200 metres from the Earth's centre.

More recently, *geocentric* datums have been adopted worldwide for most aeronautical and shipping applications due to their international capabilities. A geocentric datum is directly compatible with the Global Positioning System used in satellite navigation and thus compatible across various geographic information systems from the local to global level. Accordingly, Australia has devised, and is in the process of adopting, the Geocentric Datum of Australia (GDA).

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Part 4 of the Bill essentially sets the legislative framework for a transition from the historical AGD to the more contemporary GDA.

Main Provisions

Schedule 1 - Amendment of the *Petroleum (Submerged Lands) Act 1967*

Part 1 - transfer of powers from the Joint Authority to the Designated Authority.

Items 1-18 essentially substitutes the term 'Designated authority' for 'Joint Authority' in a number of sections in the P(SL) Act. On the face of it, all of the powers transferred appear to be administrative in nature.⁷

Item 19 establishes a transitional regime for all the powers that are transferred from the Joint Authority to the Designated Authority under items **1-18**. The effect of **item 19** is that, if the Joint Authority has been involved in an activity or process under one of the **item 1-18** powers before the coming into effect of the amendments, the activity or process can be continued with the Designated Authority being deemed as having taken the place of the Joint Authority.

Item 20 creates a transitional regime in relation to 'instruments' (records, documents, agreements etc) that relate to the powers that are to be transferred from the Joint Authority to the Designated Authority under items **1-18**. Where such an instrument refers to the Joint Authority, **item 20** allows the Commonwealth Minister to declare that reference is to be taken as if it referred to the Designated Authority.

Item 21 enables the making of regulations to cover 'matters of a transitional nature' arising from the transfer of powers from the Joint Authority to the Designated Authority. According to the Explanatory Memorandum to the Bill, this is to 'cover contingencies not identified or foreseen in drafting [the] amendments'.⁸

Part 2 - Liability of Government Officials

Existing sections 89 and 140AA provide protection from legal liability to government officials and related persons where they exercise certain powers under the P(SL) Act, so long as they act in good faith. **Section 89**, which was in the original P(SL) Act, only applies to the transfer and registration of permits, licences etc. Section 140AA, inserted in 1994,⁹ covers any 'approval' given in good faith under the any part of the P(SL) Act. In relation to section 140AA, the Explanatory Memorandum to the Bill states¹⁰

Legal advice indicates that, while actions by an official giving “an approval” under the Act would generally be covered by the provision in section 140AA, the same coverage may not extend to an official performing the same action when it is described in different words in the Act, for example “giving a consent” or “accepting a proposal”. Officers acting under the direction or authority of the Joint Authority or

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Designated Authority may also be involved in giving technical advice to petroleum companies...thus the phrase "an approval given" inadequately expresses the range of situations that need to be covered by subsection 140AA(2).

Item 23 amends section **140AA** to essentially substituted the broader expression 'act or matter' (the expression used in section 89) for the existing 'approval given'. As this proposed change then makes section 89 redundant, **item 22** repeals section 89.

Item 24 confirms that **item 23** does not affect the existing rights of a person to seek a review of a decision under the *Administrative Decisions (Judicial Review) Act 1977* or any other court or tribunal.

Item 25 provides that the proposed amendments under Part 2 only apply to acts or matters done or omitted to be done after the commencement of Part 2 (which is on Royal Assent).

Part 3 - Removal of property etc by permit / lease / licence holder

Items 26-28 amend various parts of existing section 107. Section 107 allows the Designated Authority to direct a holder or former holder of a permit, lease or licence holder to remove property, plug a well, prevent or repair environment damage etc. The Explanatory Memorandum to the Bill notes some minor drafting errors were made in amending this section in 2000. **Items 26-28** correct these errors.

Part 4 - Datums

As mentioned in the background section to this Digest, **Part 4** makes a range of technical amendments to the P(SL) Act to facilitate the transition from the historical Australian Geodetic Datum (AGD) to the more contemporary Geocentric Datum of Australia (GDA) without affecting the existing petroleum permits, production licenses etc.

New section 150M provides that the AGD will continue to be used to describe the position of any block for permitting, licensing and other purposes under the P(SL) Act. However, **new section 150N** allows that future regulations may declare a new datum (eg the GDA) is to be used in describing positioning.

New section 150T clarifies that no change in the position on the surface of the Earth of any point, line, block, pipeline route or other title area is authorised, either as a result of describing them under a new datum or as a result of variation to title under **new section 150R**.

The proposed **new section 150V** makes it clear that none of the above provisions about datums apply to the position on the surface of the Earth of a point or line specified in an International Seabed Agreement, as set out in the existing **section 156A**. **Section 156A** also now is relabelled as **section 150X**. The datum that applies to the position of any such point or line shall continue to be whatever datum is specified in the International Seabed Agreement in question.

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Part 5 - Review of decisions

Existing Section 152 details which decisions made by the Minister or his / her delegate can be the subject of an application to the Administrative Appeals Tribunal. Item 37 inserts **new subsection 152(1)** so as to ensure that a person affected by a “relevant” decision (ie a decision made by a delegate rather than the Minister) *made under regulations* rather than the Act proper may request the Minister to reconsider the decision.¹¹

Item 38 mirrors **item 37**, except that it ensures that a person affected by a “reviewable” decision (ie a decision by the Minister) *made under regulations* rather than the Act proper, may apply to the Administrative Appeals Tribunal for a review.

Schedule 2 - Amendments to the *Petroleum (Submerged Lands) Fees Act 1994*

Items 1 and 2 make technical amendments to existing paragraph 4(2)(b) of the *Petroleum (Submerged Lands) Fees Act 1994*. This Act requires that permit, licence or lease holders pay an annual fee. Under existing subsection 4(2), the fee “is to be calculated in accordance with the regulations.” The Explanatory Memorandum to the Bill comments¹²

Legal advice has been received indicating this means that only a method of calculation of the fee may be prescribed, for example, \$3,000 per block for an exploration permit. In other words, it is doubtful whether a flat fee per title could be prescribed. The amendments in these items would change the paragraph to say the fee “is to be specified in, or calculated in accordance with, the regulations.” This would allow, for each of the titles, the prescribing of either a flat amount or a formula, as deemed appropriate.

Schedule 3 - Amendment of the *Primary Industries and Energy Legislation Amendment Act (No.1) 1998*

Item 1 corrects an editing error in the *Primary Industries and Energy Legislation Amendment Act (No.1) 1998*. As part of the post-Parliamentary editing stage of that Act, items 39A to 39H were relabelled as items 40 to 47. Existing item 47 erroneously retained a reference to items 39A to 39G instead of items 40 to 46. **Item 1** corrects this mistake.

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Endnotes

- 1 This is because Part 3 is designed to correct errors in the *Petroleum (Submerged Lands) Legislation Amendment Act (No.1) 2000* which came into force on that date.
- 2 This is because Schedule is designed to correct errors in the *Primary Industries and Energy Legislation Amendment Act (No.1) 1998* which came into force on that date.
- 3 'Current Legislative Arrangements in Offshore Petroleum Exploration and Development' in *DPIE Portfolio evaluation of the Role of the Commonwealth in Offshore Petroleum Exploration and Development* October 1997
- 4 The adjacent areas is the area that extends from 3 nautical miles seawards of each of the State or Territories low water mark out to a defined boundary on the continental shelf.
- 5 *DPIE Portfolio evaluation of the Role of the Commonwealth in Offshore Petroleum Exploration and Development* Op Cit, p. 13.
- 6 More information on datums and the AGD and GDA are contained in the Explanatory Memorandum to the Bill at p. 11. The background section on Datums in this Digest is derived mainly from the Explanatory Memorandum.
- 7 The Explanatory Memorandum to the Bill gives a description of the functions of each of the sections covered by **items 1-18**.
- 8 Explanatory Memorandum, p. 8.
- 9 The Explanatory Memorandum states that 'section 140AA was inserted into the Act in 1994 to ensure that persons or companies requesting approval of plans or proposals under the Act, the regulations or a direction under the Act are liable for any deficiencies in those plans or approvals provided the official concerned gave the approval in good faith. Such plans would include Safety Cases and Environment Management Plans under the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* and the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*.'
- 10 Explanatory Memorandum, p. 9.
- 11 A 'relevant decision' must be reconsidered by the Minister before an application can be to the Administrative Appeals Tribunal.
- 12 Explanatory Memorandum, p. 16.

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