Date Introduced: 23 September 1987
House: House of Representatives

Digest of Bill

Purpose
To abolish the special arrangement with Western Australia for resolution of disagreements within the Joint Authority; to alter the basis for constituting a location for petroleum exploitation; to amend the arrangements for public access to information related to petroleum exploration and exploitation; and to continue the system of cash bidding for exploration permits.

Background
The exploration for and exploitation of oil reserves beyond the three-mile territorial sea is regulated by the Petroleum (Submerged Lands) Act 1967 (the Principal Act). Except for the area surrounding the Ashmore and Cartier Islands, which is under sole Commonwealth control, State legislation governs exploration and exploitation within the three-mile territorial sea.

In 1967, the Principal Act was passed as part of a co-operative venture between the Commonwealth and the States, with the constitutional issue of respective powers of the Commonwealth and the States unresolved. The States enacted complementary legislation so that in the event of either being found invalid, the other would continue.

The Seas and Submerged Lands Act 1973 declared the sovereignty of the Commonwealth over the territorial sea and the continental shelf. This was upheld by the High Court in 1975.1

Current constitutional arrangements for the offshore area are based on section 51(xxxviii) of the Constitution. The Coastal Waters (State Powers) Act 1980 confers on the States legislative power over the three-mile territorial sea, while State title to the property in the sea-bed below the territorial sea and rights to the space above the sea-bed is conferred by the Coastal Waters (State Title) Act 1980. Separate legislation exists for the Northern Territory.

Since the commencement of the Petroleum (Submerged Lands) Amendment Act 1980, these arrangements have been implemented by a Joint Authority, one for each
State and the Northern Territory consisting of the Commonwealth Minister and the relevant Minister for each State or the Northern Territory. Generally, in the event of disagreement between the members of a Joint Authority, the Commonwealth view prevails. The exception is Western Australia. Under a special arrangement, which this Bill seeks to abolish, the Commonwealth Minister will not exercise the power to decide a matter unless satisfied that the Western Australian Minister's decision would endanger or prejudice the national interest. At that point, the matter becomes one for negotiation between the Prime Minister and the Premier.

Joint Authorities have power to grant exploration permits, retention leases, production licences and pipeline licences. If an exploration permit holder is successful in the search for oil, the block in which the petroleum is discovered will be declared a 'location', along with other blocks covered by the permit that immediately adjoin the 'discovery block'. A production licence may then be granted to allow exploitation. Fees are payable on both exploration permits and production licences. Royalties are also payable on oil produced. Concern has been expressed about the way in which a location is constituted, because it fails to take into account a petroleum discovery falling partly within and partly without the permit boundary. Unless allocation can be declared over the entire area of the discovery, the permit holder may be unable to develop a petroleum discovery fully. Another problem stems from the number of blocks constituting a location. The nine blocks that generally make up a location are usually more than are necessary to cover the area of a discovery. In order to cater for an entire petroleum discovery, the Bill will alter the method of constituting a location, basing it on the area covered by a petroleum pool, and will provide for a declaration of location to include only so many blocks as are necessary to cater for a discovery.

Permits for exploration were originally granted on a work-program basis only. Under this system, interested bodies submit proposals to the Commonwealth indicating the number and types of exploratory works that they will perform in the area. Several problems came to be identified with this scheme. First, it requires the Government to compare and choose between various applicants, although their programs may be of a similar character and size. Successful applicants are committed to an exploration program that may run for several years even though changing circumstances may make the exploration uneconomic. Further, the scheme has been found to be both costly and difficult to administer. These problems are particularly exacerbated in areas with a high chance of successful exploration and a correspondingly high number of applications.

The cash bidding system, introduced by the Petroleum (Submerged Lands) (Cash Bidding) Amendment Act 1985, is designed to complement the work program system and to be used where there is strong competition for exploration permits in an area controlled by the Commonwealth. It allows bodies meeting certain requirements to bid for the right to explore in an area. An exploration permit will generally go to the highest bidder and remain in force for six years. The permit may contain an option to renew for a further five years. The Bill will extend the operation of the cash bidding system by removing the 'sunset clause' which provides for its discontinuance in November 1987.

Main Provisions

Amendments of the Petroleum (Submerged Lands) Act 1967 (the Principal Act).
Sub-section 8D(9) of the Principal Act provides, in effect, that disagreements between members of the Joint Authority for Western Australia (the Commonwealth Minister and the Western Australian Minister) are to be resolved by the Prime Minister and Western Australian Premier. Clause 4 will repeal the sub-section.

Section 8E of the Principal Act deals with the performance by the Designated Authority (the State or Northern Territory Minister) of certain functions specified in Schedule 5 to the Act. The section provides that the Commonwealth Minister may direct the Joint Authority to consider proposals for action made by the Designated Authority. Clause 5 will repeal the section. In future, such proposals will go automatically to the Joint Authority for consideration (clause 13).

Section 36 of the Principal Act provides for a block from which petroleum has been recovered under permit, to be nominated by the permit-holder for declaration as a location. Section 37 of the Principal Act provides for the Designated Authority to declare such a block, along with any adjoining blocks covered by the permit, to be a location. The Designated Authority may revoke a declaration at the request of a permit-holder. Clause 9 will repeal these sections and insert new sections 36 and 37 into the Principal Act. Proposed section 36 will enable a permit-holder to nominate for declaration as a location, the block or blocks to which a pool extends from which petroleum has been recovered. Where two or more such pools are discovered, the permit-holder may nominate all the blocks over which the pools extend. These latter nominations may only be made where adjoining blocks each contain part of a pool. Proposed section 37 will provide for the Joint Authority to declare a block or blocks to be a location; to revoke or vary a declaration at the request of a permit-holder; or, of its own volition, to vary a declaration after considering matters put to it on the issue by the permit-holder.

Sub-section 81(4) of the Principal Act requires an application for approval of a dealing creating an interest in an existing title to be accompanied by an instrument containing particulars prescribed by regulation. Clause 11 will amend the sub-section to allow for optional lodgement of the prescribed instrument. Sub-section 81(13) of the Principal Act provides that, following registration, a copy of the instrument evidencing the dealing is to be available for public inspection. Clause 11 will substitute a new sub-section 81(13) into the Principal Act to provide that where the prescribed instrument has been lodged with the application for approval it, instead of a copy of the instrument evidencing the dealing, is to be available for public inspection.

Proposed sub-sections 118(9) and (10) will enable information or samples relating to the sea-bed, subsoil or petroleum, supplied by a title-holder to the Designated Authority before or after 22 July 1985, to be made available to the public after two years. A conclusion or opinion based on information supplied before or after that date may be made available at the end of five years, except where it is subject to a formal objection on the grounds of confidentiality (clause 14).

Amendment of the Petroleum (Submerged Lands) (Cash Bidding) Amendment Act 1985.

Section 3 of this Act provides that the Act will cease to be in force two years after it comes into effect. Clause 19 will repeal the section and therefore allow the cash bidding scheme to continue.
References

1. NSW v Commonwealth 135 CLR 337.

For further information, if required, contact the Economics and Commerce Group.

Bills Digest Service

15 October 1987
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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