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MINERALS (SUBMERGED LANDS) BILL 1981

Date Introduced: 14 May 1981
House: House of Representatives
Presented by: Rt. Hon. J.D. Anthony, Minister for Trade and Resources

Short Digest of Bill

Purpose

To provide for the recovery of minerals other than petroleum from the continental shelf of Australia and certain Territories.

Background

Australia is a party to the 1958 Conventions relating to the offshore area. The Convention on the Territorial Sea and the Contiguous Zone vests sovereignty in the territorial sea and the airspace above it and the sea-bed and subsoil beneath it in the coastal state. The Convention on the Continental Shelf vests sovereign rights in the sea-bed and subsoil of the continental shelf in the coastal state.

Australia legislated in 1967 to enact the Petroleum (Submerged Lands) Act 1967 covering the mining of petroleum in the territorial sea and continental shelf. This legislation was mirrored by State legislation. Both the Commonwealth and State legislation provided for a Designated Authority who was the relevant State Minister for the adjacent area to the State - i.e. the area of the territorial sea and continental shelf related to that State.

In 1973 Parliament passed the Seas and Submerged Lands Act 1973 which declared that sovereignty and sovereign rights under the relevant Conventions were vested in the Commonwealth and not in the States and the validity of this legislation was upheld by the High Court. When the Bill was introduced it contained a mining code for minerals other than petroleum but this was not accepted by the Senate and the final Act was declaratory only.

Following Agreement between the Commonwealth, the States and the Northern Territory, Parliament in 1980 passed laws conferring legislative powers and proprietary rights on the States and Northern Territory in respect of the existing
3-mile territorial sea and the Petroleum (Submerged Lands) Act 1967 was amended so that it ceased to apply to the territorial sea; and the continental shelf area for each State and the Northern Territory was controlled by Joint Authorities consisting of the relevant Commonwealth and State or Northern Territory Ministers with responsibility for major matters, with day-to-day administration of the legislation subject to the Designated Authorities (the relevant State or Northern Territory Ministers). This Bill makes similar provision for minerals other than petroleum.

Main Provisions

Clause 4 and the definition in sub-clause 3(1) describe the adjacent areas as the areas set out in the Petroleum (Submerged Lands) Act 1967. These are described in Schedules to that Act; they do not include the area that forms the territorial sea or any waters on the landward side of the territorial sea. The adjacent area for Queensland is being amended by the Petroleum (Submerged Lands (Miscellaneous Amendments) Bill 1981. The adjacent area for Commonwealth Territories (Ashmore and Cartier Islands, Norfolk Island, Heard and the McDonald Islands) includes the territorial sea and for Ashmore and Cartier Islands the land mass also.

The Bill relates to minerals as defined in sub-clause 3(1) to include sand, gravel, clay, limestone, rock, evaporates, shale, oil-shale and coal as well as any naturally occurring substance or substances that may be recovered from the sea-bed or subsoil. Petroleum is specifically excluded.

Part II establishes the Joint Authorities to consist of the relevant Commonwealth and State or Northern Territory Ministers (clauses 8 and 9 and definitions in sub-clause 3(1)) with such functions as the Bill confers on them (clause 10). Clause 11 provides that business may be conducted at meetings or in writing. The opinion of the Commonwealth Minister prevails if there is disagreement or if the State Minister has not stated his opinion on a matter within 30 days of being given notice of the Commonwealth Minister's opinion on the matter. However documents signed by the Designated Authority (the State or Northern Territory Minister) are to be deemed, unless the contrary is proved, to be in accordance with a decision of the Joint Authority. Communications to or by the Joint Authority are to be by the Designated Authority and under clause 12 the Designated Authority has power to execute and issue instruments and notify actions on behalf of the Joint Authority.

For Commonwealth Territories (other than the Northern Territory) the Designated Authority is the
Commonwealth Minister who may perform all the functions of the Joint Authority (clause 13).

Part III of the Bill provides for the application of State laws in their adjacent area. This covers all laws applying in any way to all aspects of the mining operations subject to specified exceptions such as laws dealing with acts that would be covered by the Crimes at Sea Act 1979 (this applies of its own force) or laws that would be inconsistent with a law of the Commonwealth or would impose a tax. Provisions can be excluded or modified by regulation (clause 14). Clause 15 vests the relevant State courts with jurisdiction over their adjacent area in all matters arising out of the applied provisions, subject to the limits of their several jurisdictions.

Clauses 16 and 17 make similar provision for the Northern Territory and other Commonwealth Territories.

Clause 18 makes it clear that the application of State and Territory laws is not to have effect on the operation of the mining code in Part IV or the provisions of Part V.

Part IV contains the Mining Code. Clauses 19 and 20 provide for the relevant Designated Authority for each adjacent area and for delegation by a Designated Authority of his powers under the Bill.

Clause 21 provides for the calculation of blocks for the purposes of the Bill, each to consist of so much of any areas, which are one minute of arc of latitude by one minute of arc of longitude, that fall within the relevant adjacent area. The Explanatory Memorandum circulated by the Minister states that this gives an average area per block of about 3 sq. km (with larger blocks to the North and smaller blocks to the South). The Joint Authority may declare by instrument published in the Gazette that vacant blocks may not be the subject of a permit, licence or works authority while the declaration remains in force (clause 22).

Division 2 of Part IV sets out detailed rules for the granting of exploration permits. An application may be made to the Designated Authority for the grant of a permit by the Joint Authority to explore for minerals (clause 23). There is a limit of 500 blocks which should constitute a single area and where more than one block is applied for the Designated Authority may, and shall if directed by the Commonwealth Minister (or Joint Authority), require consultations about the shape of the area. There is a fee of $3,000 (clause 24). Permits are granted or refused under clause 25 by the Joint Authority. Where the Joint Authority
refuses a permit the matter ends but applicants must further request the grant of the permit, subject to the conditions specified by the Joint Authority, within a month after being notified by the Joint Authority or the application lapses. Permits confer rights to explore each block for all or only some minerals (depending on the permit), to take samples and to carry out necessary works (clause 26). Permits remain in force for two years (clause 27) but may be renewed but for a reduced number of blocks (clauses 28 and 29). For the first four renewals the Joint Authority must grant the renewal if the permit conditions and relevant laws have been complied with but has a discretion in other cases. Where this is for non-compliance with conditions, certain notification requirements are necessary (clause 30).

Division 3 of Part IV deals with production licences. Permittees may apply to the Designated Authority for the grant of a licence by the Joint Authority for recovery of the minerals to which the permit relates from a block or blocks covered by the permit. Other applicants may apply for a licence for a block or blocks where no permit or licence is in force (clause 31). Applications are limited to 50 blocks and there is a fee of $3,000 (clause 32). The provisions relating to determining the shape of a permit area apply in like manner to an application for a licence (sub-clause 32(2)). The Joint Authority may not refuse to grant a licence to a permittee without giving reasons and allowing submissions to be made but may do so in other cases. As with the grant of a permit it notifies the applicant of the conditions on which a licence will be granted and the applicant must request the grant of the licence or the application lapses (clause 33).

A licence confers rights to recover the minerals to which the licence relates from the block or blocks specified, to explore blocks for minerals and to carry on necessary operations and works (clause 34). Under sub-clause 33(8) any relevant permit lapses once a licence is granted so only one set of fees is payable (see Digests of accompanying Fees Bills). Licences are in force for maximum periods of 21 years (clause 35) but may be renewed (clause 36) and shall not be refused without giving the licencee reasons for the refusal and an opportunity to make submissions.

Clause 38 provides for works to be carried out in the first year of the term of a new licence of not less than $5,000 for each block of the licence; and with other provisions for other years of a licence or for the first year of a renewed licence depending on the recovery of minerals from the licence area and the landed value (which has the same meaning as in the Royalty Act and means an
amount agreed between the Joint Authority and the licensee or failing agreement such amount as is determined by the Joint Authority). The amounts required under the section can be waived or varied in special circumstances but otherwise are a debt due and payable to the Commonwealth and recoverable in a court of competent jurisdiction.

Division 4 of Part IV relates to works authorities. Permittees and licencees can apply to the Designated Authority for the grant by the Joint Authority of a works authority which covers works and operations in a part of the adjacent area not covered by the permit or licence, if they are directly connected with works or operations under the permit or licence (clauses 39 and 41). There are similar provisions for granting or refusing an authority as there are for permits and licences (clause 40). The works authority may cover the area of another person's permit, licence or works authority in which case the Joint Authority must give notice to the other person and an opportunity to make submissions. The term of a works authority is linked to the permit or licence to which it relates (clause 42).

Division 5 of Part IV requires each Designated Authority to maintain a Register of permits, licences, works authorities and instruments varying, cancelling or otherwise affecting them (clause 43); also works authorities for permit licence areas must be noted on the relevant documents (clause 44). Clause 45 requires the approval and registration of any instrument creating or assigning any legal or equitable interest in a permit, licence or works authority; these documents must set out the true consideration for the transaction and any other relevant facts for the calculation of the registration fee under the Registration Fees Bill (see accompanying Digest). The penalty for non-compliance is $10,000 and on conviction the Designated Authority may make a new determination of the amount of the fee which can be appealed against to the relevant Supreme Court (clause 46 and sub-clauses 56(2) and (3)). Approval does not however give any legal effect to any document (clause 49).

Clause 47 relates to devolution of permits; clause 48 allows the lodging of caveats by persons who claim an interest in a permit, licence or works authority.

Clause 51 allows the inspection of the Register on payment of a fee of $6.

Other provisions in Division 5 of Part IV relate to appeals to the Supreme Court for rectification of the Register (clause 53) and for the determination by the
Designated Authority of the fee under the Registration Fees Bill subject to an appeal to the Supreme Court (clause 56).

The most important provision in Division 6 of Part IV is clause 86 which requires the Commonwealth to pay, to the States and the Northern Territory, payments of 60% of the amount of royalty and additional amounts for late payment in respect of minerals in the relevant adjacent area received by the Commonwealth during the month. Under the Royalty Bill payments are made to the Designated Authority who is deemed to receive them on behalf of the Commonwealth. The Commonwealth is also to pay amounts equal to all fees under this Bill and other associated Fees Bills received in respect of an adjacent area to the relevant State or the Northern Territory.

Division 6 of Part IV also contains provisions as follows: details of the conditions to be included in a permit, licence or works authority which are not to include conditions for the payment of money (clauses 60 and 61); requiring the giving of notice in the Gazette when a permit etc. is granted (clause 62); requiring the carrying out of operations in a proper manner subject to penalties for non-compliance ($10,000) (clause 63); enabling the giving of directions by the Designated Authority subject to penalties for non-compliance (clause 64); allowing the making of exemptions or variations to permits or licences (clause 67); allowing terms to be extended in certain circumstances (clause 68); allowing for suspension of rights under a permit in the national interest (clause 69); permitting the surrender of a permit, licence or works authority (clause 70); and providing for cancellation of permits (clauses 71 and 72).

Under clause 78 the Designated Authority may direct operators to maintain records and furnish information with a penalty for non-compliance ($10,000). Clause 79 deals with the release of information to Ministers and to the public. Information about the sea-bed and subsoil (not including conclusions or opinions) and cores, cuttings or samples may be made available to, or be inspected by, the public after the relevant day; this is 12 months after the day on which the information or sample was made available to the Designated Authority, the relevant work or operations were commenced or the relevant permit, licence or works authority expired, whichever is the sooner. Under clause 74 the Joint Authority may authorise scientific investigations in any part of an adjacent area including a permit, licence or works authority area, subject to any conditions specified.

Division 6 of Part IV also creates offences including: making false or misleading statements (Penalty
$10,000) (clause 59); interference with navigation or fishing, conservation or other lawful operations (Penalty $10,000) (clause 75); taking a vessel into a "safety zone" specified by the Designated Authority in a Gazette notice, without consent (Penalty: $100,000 or ten years or both) (clause 76); failing to furnish information (Penalty: $10,000) (clause 84); and exploring for or recovering minerals except as specified in Part IV ($50,000 or imprisonment for five years or both) (clause 90).

Division 7 of Part IV allows for the granting of permits to holders of "prescribed exploration authorities" and of licences to the holders of "prescribed exploitation authorities" under State and Territory laws.

Part V vests State courts with jurisdiction under this Bill and associated Bills and confers jurisdiction on Territory courts (clause 101). Clause 105 allows the making of regulations, including regulations on conservation and protection of natural resources and the safety, health and welfare of personnel engaged in operations.

A detailed analysis of all clauses of the Bill is contained in the Explanatory Memorandum circulated by the Minister.

For further information, if required, contact:

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