PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1980

Date Introduced: 23 April 1980
House: House of Representatives
Presented by: Rt. Hon. J.D. Anthony, M.P.,
Minister representing the Minister for National Development and Energy

Short Digest of Bill

Purpose

To amend the Petroleum (Submerged Lands) Act 1967 so that it no longer operates in the three mile territorial sea; to create Joint Authorities for each adjacent area beyond the territorial sea and to define their powers; and to revise certain aspects of the mining code.

Background

The Petroleum (Submerged Lands) Act 1967 of the Commonwealth applies uniformly to the territorial sea and continental shelf areas. It was passed as part of a co-operative venture whereby the Commonwealth and States both passed mirror legislation so that in the event of either Act being found invalid, the other would continue. This left unresolved the constitutional question of the respective powers of the Commonwealth and States in the off-shore area. Administration under the Commonwealth and State Acts was by a "Designated Authority", in practice the State Minister for Mines.

The Seas and Submerged Lands Act 1973 declared the sovereignty of the Commonwealth in the territorial sea and its sovereign rights in the continental shelf area. This Act was upheld by the High Court in 1975. Following this the Commonwealth Act of 1967 has continued to operate with administration by State authorities.

A series of Premier's Conferences in 1967, 1968 and 1969 has arrived at a complete readjustment of constitutional arrangements for the offshore area in line with the Government's policy of co-operative federalism. This involves the use of section 51(xxxxviii) of the Constitution for Commonwealth legislation to confer legislative powers on the States over the three mile territorial sea and also legislation to confer on the States title to the property in the sea-bed below the territorial sea and rights to the space above the sea-bed, as if the
The constitutional settlement for offshore petroleum provides for State legislation within the three-mile territorial sea; and Commonwealth legislation beyond with joint authorities, consisting of relevant Commonwealth and State Ministers, with the Commonwealth view prevailing if there is disagreement, responsible for granting and refusing titles and the terms and conditions. State Ministers and their Departments are to continue to administer day to day operations and to conduct all dealings with the public. A special arrangement was negotiated with Western Australia for the exercise of the Commonwealth Minister's powers.

Main Provisions

A detailed account of the provisions of the Bill is set out in the Explanatory Memorandum circulated by the Minister. The main provisions relating to the constitutional settlement are as follows:

Clause 6 amends the interpretation section 5. The definition of "adjacent area" (now covering both the territorial sea and continental shelf area adjacent to each State or Territory) is replaced by a new definition which refers to new section 5A; the adjacent area for each State and the Northern Territory is now to cover only the part of the area described in Schedule 2 for the State or Territory, which is beyond the outer limits of the territorial sea and within the outer limits of the continental shelf; the territorial sea referred to is to remain at three miles regardless of any changes for other purposes.

"Continental shelf" is also redefined to include any continental shelves generated by islands.

Clause 9 inserts new Part 1A dealing with the Joint Authorities. There is a Joint Authority for each State and for the Northern Territory. It consists of the Commonwealth Minister (the Minister administering the Act or a Minister acting for him or on his behalf) and the relevant State or Northern Territory Minister (the Minister authorized under State or Northern Territory Law to be the Designated Authority or a Minister acting for him or on his behalf) (new sections 8A and 8B and definitions inserted by clause 6).
New section 8D covers the procedure of a Joint Authority. The relevant Ministers may either meet, write or use other communications. Where there is disagreement or where the State Minister does not communicate his view within 30 days, the decision of the Commonwealth Minister will prevail. New sub-section 8D(9) refers to the agreement between Western Australia and the Commonwealth which has the force of law. The provisions are set out in new Schedule 4 to the Act (inserted by clause 59). The procedure in cases of disagreement between the Commonwealth and Western Australian Ministers is that the Commonwealth Minister will not exercise his power to decide the matter unless he is satisfied that the State Minister's decision would endanger or prejudice the national interest; he must within 30 days inform the State Minister of the decision he proposes to make and of the grounds on which he is satisfied that the national interest would be endangered or prejudiced; the Premier may make representations to the Prime Minister within a further 30 days; the Prime Minister may attempt to have the matter settled by the Joint Authority; if not he may inform the Premier and the decision of the Commonwealth Minister will prevail; if these procedures are not followed the State Minister's decision will prevail.

Schedule 1 to the Bill sets out amendments to provisions where, generally, powers previously exercised by the Designated Authority are now to be exercised by the Joint Authority. New section 8E sets out the procedure for referring other matters to the Joint Authority. These matters are listed in new Schedule 5 to the Act inserted by clause 59.

Clause 10 substitutes new section 9 dealing with the application of the relevant State laws in the adjacent areas. This does not include criminal laws within the meaning of the Crimes at Sea Act 1979; and laws imposing a tax or inconsistent with any Commonwealth law are not to apply. Under new section 10 State courts are invested with federal jurisdiction to determine matters arising under the applied laws. Similar provision is made for Northern Territory laws and courts. None of these applied laws is to affect the operation of the mining code or miscellaneous provisions later in the Act.

Clause 11 substitutes new sections 14 and 15 dealing with the appointment of Designated Authorities and their powers of delegation.

Clause 62 sets out detailed transitional provisions. Existing licences and permits which are within the newly defined adjacent area continue in force. Where a permit or pipeline licence is partly in the territorial sea
and partly in the continental shelf area a special scheme, set out in Schedule 4 to the Bill, provides for the one permit or licence to be deemed to be two, but to be administered as one until renewal.

Clause 61 and Schedules 2 and 3 (to the Bill) substantially increase monetary amounts in the Act (generally by a factor of three) and penalties (generally by a factor of five).

30 April 1980

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