Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
AMENDMENTS TO THE OFFSHORE PETROLEUM (ROYALTY) AMENDMENT BILL 2011

GENERAL OUTLINE

The purpose of these Government Amendments is to amend the Offshore Petroleum (Royalty) Amendment Bill 2011 (the Royalty Bill) to confer the functions currently exercisable by the Designated Authority under the Offshore Petroleum (Royalty) Act 2006 (Royalty Act) on the responsible State Minister of Western Australia, rather than on the National Offshore Petroleum Titles Administrator (‘Titles Administrator’) as currently provided in the Royalty Bill. It is also necessary to modify a few of the functions that will be conferred on the State Minister by the Royalty Act, to take account of the fact that the State Minister individually does not have any functions under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act).

The amendment is in response to a recommendation contained in the Advisory Report on the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011 and related Bills, which was tabled by the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry (the Committee) on 27 June 2011.

Amendments contained in the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011 will, among other things, abolish the Designated Authorities for each offshore area (i.e. the responsible Minister of the relevant State or the Northern Territory) and establish the Titles Administrator, which will exercise a number of the functions and powers previously exercisable by the Designated Authority under the OPGGS Act.

The Royalty Act applies only to petroleum titles in the North West Shelf project area, which is in the Commonwealth offshore area located beyond Western Australia (WA). Therefore, the functions relating to the administration and collection of royalty under the Royalty Act are at present exercised only by the Designated Authority for the WA offshore area, i.e. the WA Minister for Mines and Petroleum.

As it is presently drafted, the Royalty Bill transfers all of the WA Designated Authority’s functions under the Royalty Act to the Titles Administrator.

In its report, the Committee noted the importance of the royalties to the WA Government, and the expertise that the WA Department of Mines and Petroleum has developed over many years in negotiating and settling royalties. In addition, the Committee found that leaving this matter in the hands of the WA Government would not affect the integrity of the overall offshore petroleum regulatory reforms.

These Government Amendments will therefore amend the Royalty Bill to confer the functions relating to the verification, administration and collection of royalty under the Royalty Act on the WA Minister. The functions will not enable the WA Minister to make decisions affecting the operations of titleholders in the North West Shelf project area.
This amendment will enable the continued use of specialist royalty expertise in the WA Department following the abolition of the Designated Authority.

FINANCIAL IMPACT STATEMENT

Nil financial impact on the Australian Government Budget. The Government Amendments and the Royalty Bill have no impact on the level of royalties paid by industry or on the sharing of those royalties with WA.

REGULATORY IMPACT STATEMENT

This Bill does not impose any new regulatory burden on the petroleum industry.
NOTES ON INDIVIDUAL CLAUSES

Clause 1 – New item 1A before item 1 of Schedule 1 to the Royalty Bill

This clause adds new item 1A before item 1 of Schedule 1 to the Royalty Bill.

Item 1A inserts a definition for “State Minister” into section 4 of the Royalty Act. For the purposes of the Royalty Act, “State Minister” will be the responsible State Minister of Western Australia (i.e. the Western Australian Minister with portfolio responsibility for offshore petroleum matters). The responsible State Minister of Western Australia is also the State member of the Joint Authority for the Commonwealth-Western Australia offshore area.

Clause 2 – Amendment to item 1 of Schedule 1 to the Royalty Bill

This clause omits the words “Titles Administrator” and replaces it with the words “State Minister” in item 1 of Schedule 1 to the Royalty Bill. As amended, item 1 will therefore in effect amend paragraphs 6(4)(a) and (b) of the Royalty Act to replace references to the Designated Authority with references to the State Minister.

Clause 3 – Amendment to item 2 of Schedule 1 to the Royalty Bill

This clause omits the words “Titles Administrator’s” and replaces it with the words “State Minister’s” in item 2 of Schedule 1 to the Royalty Bill. As amended, item 2 will therefore in effect amend paragraph 6(4)(c) of the Royalty Act to replace the reference to the Designated Authority with a reference to the State Minister.

Clause 4 – Amendment to item 3 of Schedule 1 to the Royalty Bill

This clause omits the current item 3 of Schedule 1 to the Royalty Bill, and replaces it with a new item 3. The new item 3 amends subsection 9(1) of the Royalty Act by omitting the reference to the Designated Authority and replacing it with a reference to the State Minister.

Clause 5 – Addition of new items 3A, 3B and 3C before item 4 of Schedule 1 to the Royalty Bill

This clause inserts new items 3A, 3B and 3C before item 4 of Schedule 1 to the Royalty Bill.

Item 3A amends paragraph 10(1)(a) of the Royalty Act to replace the reference to the Designated Authority with a reference to the State Minister.

Item 3B repeals existing paragraphs 10(1)(b) and (c) of the Royalty Act, and replaces them with new paragraphs 10(1)(b) and (c).

The new paragraph 10(1)(b) provides that royalty is not payable in relation to petroleum if two requirements are satisfied. The first is that the State Minister is satisfied that the petroleum titleholder used the petroleum for the purposes of
petroleum exploration operations or operations for the recovery of petroleum, and the second is that the use of the petroleum did not contravene the OPGGS Act or regulations under that Act.

In effect, this new paragraph 10(1)(b) differs from the existing paragraph 10(1)(b) by replacing the reference to the Designated Authority with a reference to the State Minister. It also requires that the use of petroleum for the purposes of petroleum exploration or recovery must have been in accordance with the OPGGS Act or associated regulations. The State Minister’s role under the Royalty Act relates only to the verification, administration and collection of royalties, and does not extend to enabling the State Minister to approve the use of petroleum for petroleum exploration or recovery.

The new paragraph 10(1)(c) provides that royalty is not payable in relation to petroleum if two requirements are satisfied. The first is that the State Minister is satisfied that the petroleum has been flared or vented in connection with operations for the recovery of petroleum, and the second is that the use did not contravene the OPGGS Act or regulations under that Act.

In effect, this new paragraph 10(1)(c) differs from the existing paragraph 10(1)(c) by replacing the reference to the Designated Authority with a reference to the State Minister. It also requires that the flaring or venting of petroleum in connection with operations for the recovery of petroleum must have been in accordance with the OPGGS Act or associated regulations. The State Minister’s role under the Royalty Act relates only to the verification, administration and collection of royalties, and does not extend to enabling the State Minister to approve the flaring or venting of petroleum.

Item 3C repeals existing subsection 10(2) of the Royalty Act and replaces it with a new subsection 10(2).

The new subsection 10(2) provides that royalty is not payable where two requirements are satisfied. The first is that the State Minister is satisfied that the petroleum has been returned to a natural reservoir, and the second is that the return of the petroleum did not contravene the OPGGS Act or regulations under that Act.

In effect, this new subsection 10(2) differs from the existing subsection 10(2) by requiring that the return of petroleum to a natural reservoir did not contravene the OPGGS Act or associated regulations. For example, in the case of a petroleum production licence, the return of petroleum must be consistent with an accepted field development plan in force for a field in the licence area. The State Minister’s role under the Royalty Act relates only to the verification, administration and collection of royalties, and does not extend to enabling the State Minister to approve the return of petroleum to a natural reservoir.

Clauses 6 to 10 – New items 3D to 3H after proposed item 3C of Schedule 1 to the Royalty Bill

These clauses add new items 3D to 3H to Schedule 1 to the Royalty Bill. These items amend sections 11 to 14 and subsection 15(1) of the Royalty Act to replace references
to the Designated Authority, wherever occurring, with references to the State Minister.

Clause 11 – New item 3J after proposed item 3H of Schedule 1 to the Royalty Bill

This clause adds new item 3J to Schedule 1 to the Royalty Bill to provide the State Minister with the power to delegate functions and powers of the State Minister under the Royalty Act to an employee of Western Australia.

Existing section 3 of the Royalty Act applies Chapter 1 of the OPGGS Act to the Royalty Act. Section 66 of the OPGGS Act, which provides the Joint Authority with the ability to delegate its functions and powers, is in Chapter 1, and this therefore applies to provide the Joint Authority with the power to delegate its functions and powers under the Royalty Act.

Clause 12 – Amendment to item 4 of Schedule 1 to the Royalty Bill

This clause amends item 4 so that the transitional provision in subitem 4(1) does not continue in force approvals given by the Designated Authority under paragraph 10(1)(b) or (c) or subsection 10(2)). The Act will no longer require these approvals.

Clauses 13 and 14 – Amendments to items 4 and 5 of Schedule 1 to the Royalty Bill

These clauses amend item 4 and the heading to item 5 of Schedule 1 to the Royalty Bill to replace references to the Titles Administrator with references to the State Minister.

Clause 15 – Amendment to item 5 of Schedule 1 to the Royalty Bill

This clause amends item 5 so that the transitional provision in subitem 5(1) does not continue in force acts or things done under paragraph 10(1)(b) or (c) or subsection 10(2). The Act will no longer require such acts or things to be done.

Clause 16 - Amendment to item 5 of Schedule 1 to the Royalty Bill

This clause amends the text of item 5 of Schedule 1 to the Royalty Bill to replace the reference to the Titles Administrator with a reference to the State Minister.

Clause 17 – Addition of new item 6 at the end of Schedule 1 to the Royalty Bill

This clause inserts new item 6 at the end of Schedule 1 to the Royalty Bill.

Item 6 ensures that amendments relating to exemptions from royalty as listed in section 10 of the Royalty Act apply only to activities in relation to petroleum that occur after the commencement of this item.