REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)

THIS EXPLANATORY MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED
GENERAL OUTLINE

The purpose of the Bill is to amend the Offshore Petroleum (Royalty) Act 2006 (the Royalty Act) to confer the functions currently exercisable by the Designated Authority under that Act on the responsible State Minister.

This Bill also modifies a few of the functions that will be conferred on the responsible 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 Royalty Act applies only to petroleum titles in the North West Shelf project area, which is in the Commonwealth offshore area located adjacent to 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.

Amendments to the OPGGS Act 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. This Bill will therefore enable the continued use of specialist royalty expertise in the WA Department following the abolition of the Designated Authorities by effectively conferring 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.

FINANCIAL IMPACT STATEMENT

Nil financial impact on the Australian Government Budget.

REGULATORY IMPACT STATEMENT

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

Clause 1 - Short title

Clause 1 is a formal provision specifying the short title of the Act.

Clause 2 - Commencement

Sections 1 to 3 in the Bill will commence on the day the amending Act receives Royal Assent.

Schedule 1 will commence at the same time as Part 1 of Schedule 2 to the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011 commences.

Clause 3 - Schedules

This clause gives effect to the provisions in the Schedules to this Bill.

Schedule 1 - Amendments

Item 1A – Section 4

This clause inserts a definition for “State Minister” into section 4 of the Royalty Act. For the purposes of the Royalty Act, “State Minister” will effectively be the responsible State Minister of Western Australia (i.e. the Western Australian Minister with portfolio responsibility for offshore petroleum matters) as offshore petroleum royalties only apply to the North West Shelf project area. The responsible State Minister of Western Australia is also the State member of the Joint Authority for the Commonwealth-Western Australia offshore area.

Item 1 - Paragraphs 6(4)(a) and (b)

This item replaces the reference to the Designated Authority with a reference to the State Minister.

Item 2 - Paragraph 6(4)(c)

This item replaces the reference to the Designated Authority with a reference to the State Minister.

Item 3 – Subsection 9(1)

This item replaces the reference to the Designated Authority with a reference to the State Minister.
Item 3A – Paragraph 10(1)(a)

This item replaces the reference to the Designated Authority with a reference to the State Minister.

Item 3B – Paragraphs 10(1)(b) and (c)

This items 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 – Subsection 10(2)

This item 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.

Items 3D to 3H – Sections 11; Section 12; Section 13; Section 14; Subsection 15(1)

These items replace references to the Designated Authority, wherever occurring, with references to the State Minister.

Item 3J – After section 16

This item inserts a new section 16A into the Royalty Act 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.

A similar provision to specifically provide the Joint Authority with the power to delegate its functions and powers under the Royalty Act is not required. 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.

Item 4 – Transitional - instruments

This item provides a transitional provision to provide that an instrument previously made or given by the Designated Authority under the Royalty Act is taken to have been made or given by the State Minister after the commencement of this Act.

This does not include, however, approval given by the Designated Authority under paragraph 10(1)(b) or (c) or subsection 10(2). The Royalty Act will no longer require these approvals.

Item 5 – Transitional - acts of Designated Authority to be attributed to the State Minister etc.

This item provides a transitional provision to provide that an act or thing previously done by the Designated Authority under the Royalty Act is taken to have been done by the State Minister after the commencement of this Act.

This does not include, however, acts or things done by the Designated Authority under paragraph 10(1)(b) or (c) or subsection 10(2). The Royalty Act will no longer require these acts or things to be done.
Item 6 – Application of amendments – exemptions from royalty

This item ensures that the amendments to section 10 of the Royalty Act made by this Bill, relating to exemptions from royalty, apply only to activities in relation to petroleum that occur after the commencement of this item.