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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

PETROLEUM (SUBMERGED LANDS) LEGISLATION AMENDMENT BILL 2001

REVISED EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Industry, Science and Resources,
Senator the Hon Nick Minchin)

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

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GENERAL OUTLINE

The proposed amendments in this Bill to the *Petroleum (Submerged Lands) Act 1967* (the Act) fall into three categories: a partial revision of the Commonwealth-State/Northern Territory relationship in managing offshore petroleum resources, a change in the datum provisions of the Act and a number of technical corrections.

Under the Act, administration of offshore petroleum resources is shared between the Commonwealth and the States/Northern Territory. Major decisions are made by Joint Authorities consisting of the Commonwealth Minister for Industry, Science and Resources and the respective State or Northern Territory Minister responsible for petroleum. On the other hand, day-to-day administration is carried out by the Designated Authority (ie, the State or Northern Territory Minister) on behalf of the Commonwealth.

An evaluation of the role of the Commonwealth Government in offshore petroleum exploration and development was completed in 1998. One of the decisions emanating from the evaluation is an initiative to reform the joint administrative arrangements, while retaining the basic administrative framework put in place as part of the 1979 Offshore Constitutional Settlement. An element of this is the transfer of certain powers under offshore petroleum legislation from the Joint Authority to the Designated Authority. These transfers of power are addressed in this Bill and cover areas of routine administration such as extending the application period for a production licence after a petroleum discovery or approving title transfers. A small number of amendments of this same type are proposed for the *Petroleum (Submerged Lands) (Registration Fees) Act 1967* and these are presented in the Petroleum (Submerged Lands) (Registration Fees) Amendment Bill 2000.

Adoption of the Geocentric Datum of Australia in Commonwealth legislation forms part of the Government's Australian Spatial Data Infrastructure program. The Geocentric Datum of Australia is essentially a response to increased use of the Global Positioning System for surveying, navigation and similar purposes. After consultation with the States, Northern Territory and the petroleum industry, a plan has been agreed for adopting the Geocentric Datum of Australia in the Act. The amendments in this Bill provide the framework for this to occur. Various elements of the implementation, as specified in this Bill, will be provided for in the regulations to be made after the passage of the amendments.

The remainder of the amendments in the Bill are technical amendments to remedy errors, defects or anomalies in the Act, in the *Petroleum (Submerged Lands) Fees Act 1994* and in the *Primary Industries and Energy Legislation Amendment Act (No. 1) 1998* which was used to amend the *Petroleum (Submerged Lands) Act 1967*. These are explained in the Notes on Individual Clauses.

FINANCIAL IMPACT STATEMENT

If powers are transferred from the Joint Authorities to the Designated Authorities as proposed, there will be annual savings of less than \$0.1m to the Commonwealth Department of Industry, Science and Resources in staff salary, on-costs and administrative expenses.

Implementing the Geocentric Datum of Australia will involve administrative action by the Designated Authorities. Implementation will be progressed at a rate which does not exceed available resources.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

This clause enables the Act that will come into effect if this Bill is passed to be called the *Petroleum (Submerged Lands) Legislation Amendment Act 2001*.

Clause 2 - Commencement

Subclause 2(1) provides that, apart from the exceptions referred to in subclauses (2) to (5), the Act comes into force on Royal Assent.

Subclause 2(2) provides that the transfers of power from the Joint Authorities to the Designated Authorities commence on the 28th day after Royal Assent. This is to enable State and Northern Territory authorities to do things such as organising new delegation instruments before the transfer of powers takes effect. This is allowed under section 4 of the *Acts Interpretation Act 1901*.

Subclause 2(3) provides that the amendments to section 107 dealing with the removal of property from the seabed are taken to have commenced on 7 March 2000, the day the *Petroleum (Submerged Lands) Legislation Amendment Act (No. 1) 2000* came into effect. This is because the amendments in this Bill correct minor technical errors which thwarted the intention of the amendments in that Amendment Act (see Schedule 1, Part 3, item 26 in the Notes on Individual Clauses). As well as this, what was meant to be done in the Amendment Act to section 107 was merely consequential on amendments made to other parts of the Act. In addition, if the correcting amendments in this Bill did not date from 7 March 2000, the possibility would exist that a direction given since 7 March 2000 to a petroleum company under section 107 requiring it to carry out duties for the protection of the marine environment would be invalid because of a technical deficiency in the Act.

Subclause 2(4) provides for a 6 month delay after Royal Assent to the coming into effect of the amendments in relation to datums so as to allow appropriate regulations to be drafted before the date of effect.

Subclause 2(5) refers to the editorial correction to the *Primary Industries and Energy Legislation Amendment Act (No. 1) 1998* made in Schedule 3. This Act commenced on 30 July 1998. The amendment in this Bill corrects a minor technical error which thwarted the intention of the amendments in the 1998 Amendment Act. Legal advice indicates that, since the date of effect of the 1998 Amendment Act, a court would have interpreted the section concerned in the way that is provided in the correcting amendment. It is therefore appropriate for this correction to date from 30 July 1998.

Clause 3 - Schedule(s)

This clause indicates that three Acts in all are to be amended by this Bill and the amendments in respect of each Act are presented in a separate Schedule.

SCHEDULE 1 - AMENDMENT OF THE PETROLEUM (SUBMERGED LANDS) ACT
1967

Part 1 - Transfer of power to the Designated Authority

Item 1 - Subsection 22A(6)

This item refers to the fact that the Joint Authority may, at any time, by instrument in writing served on an applicant for a permit by way of cash bidding, require the applicant to furnish, within the time specified in the instrument, further information in writing in connection with the application. This power is to be transferred to the Designated Authority.

Item 2 - Paragraphs 22C(b) and (c)

This item amends paragraphs 22C(b) and (c) because each refers to a requirement by the Joint Authority under subsection 36(6). As set out in the next item, “the Joint Authority” in that subsection is replaced by “the Designated Authority”.

Item 3 - Subsections 36(6), (7), (8) and (9)

This item refers to nominating a block or blocks as a location if a petroleum pool is discovered there. Blocks are 5 minute by 5 minute areas that define petroleum tenements under the Act. Nominating a location is a preliminary step in the process of securing a retention lease or production licence over the area in question. Subsections 36(6), (7), (8) and (9) give the Joint Authority powers to require a permittee to nominate a block or blocks, extend the time for compliance with the requirement and nominate the block or blocks if the permittee, after receiving notice of the requirement, fails to do so. All these powers are now to be transferred to the Designated Authority.

Item 4 - Subsection 37

Section 37 deals with declaring a location, revoking the declaration of a location and varying a location (see the previous item for an explanation of a “location”). The section currently vests the Joint Authority with all powers and functions related to these actions. This item transfers all these powers and functions to the Designated Authority.

Item 5 - Subsection 38E(1)(a)

This item corrects subsection 38E(1)(a) because it contains a reference to the Joint Authority in the context of paragraph 38H(3)(b). What is done in the next item means that this reference needs to be changed to “Designated Authority”.

Item 6 - Paragraph 38H(3)(b)

Paragraph 38H(3)(b) deals with the conditions of a retention lease, ie, a holding title available in situations where exploitation of a petroleum discovery is, for the time being, uneconomic. The paragraph specifies one condition to be that the Joint Authority may

request a lessee to re-evaluate the commercial viability of petroleum production in the lease area and inform the Joint Authority in writing of the results of the re-evaluation. This item transfers the power to request and receive this information from the Joint Authority to the Designated Authority.

Item 7 - Subsection 38H(4)

Subsection 38H(4) states that, where a lessee has complied with 2 notices of the kind referred to in paragraph 38H(3)(b) during the term of the lease, the Joint Authority shall not give to the lessee during that term a further notice of that kind. This item changes the mention of the Joint Authority to “Designated Authority” in conformity with the change made to paragraph 38H(3)(b).

Item 8 - Paragraph 39A(5)(b)

Section 39A provides that the application period for a production licence is normally 2 years from the declaration of a location. Paragraph 39A(5)(b) enables this period to be extended for a maximum of 2 years by the Joint Authority. This item transfers this power to the Designated Authority.

Item 9 - Paragraph 40(4)(b)

This item performs an identical transfer of power from the Joint Authority to the Designated Authority as is provided under paragraph 39A(5)(b) except that, in this case, it applies to the holder of a permit to which the *Petroleum (Submerged Lands) (Royalty) Act 1967* applies.

Items 10, 11 and 12 - Subsection 78(1), Subsection 78(2) and Subsections 78(4), (6), (7), (9) and (11)

These items transfer from the Joint Authority to the Designated Authority the power to approve or refuse the transfer of a title, for example, an exploration permit or a production licence.

Items 13 and 14 - Subsections 81(2), (3), (5) and (6) and Subsections 81(10), (11), (12) and (14)

These items transfer from the Joint Authority to the Designated Authority the power to approve or refuse a dealing in an existing title, for example, the creation or assignment of an interest in an existing exploration permit.

Item 15 - Subsection 81A(1)

Section 81A provides for the situation where two or more persons enter into a dealing relating to a title that may come into existence in the future. In that case, a provisional application for approval of the dealing by the Joint Authority may be lodged in the same way as an application for approval of a dealing in respect of an existing title. To conform

with the transfer of power under section 81, this item substitutes, in section 81A, “Designated Authority” for “Joint Authority”.

Item 16 - Subsection 84(1A)

Subsection 84(1A) refers to a dealing approved by the Joint Authority under section 81. To conform with the transfer of power under section 81, this item deletes this reference.

Item 17 - Subsection 85(1)

Subsection 85(1) states that the Designated Authority may require any person to produce or to make available for inspection by the Designated Authority or by or on behalf of the Joint Authority any documents in the possession or under the control of that person relating to a transfer or dealing in relation to which approval is sought. To conform with the transfers of powers under sections 78 and 81, this item substitutes, in subsection 85(1), “Designated Authority” for “Joint Authority”.

Item 18 - Section 92

Section 92 refers to sections 75 to 91 of the Act, which deal with the registration of instruments. Section 92 states, in this context, that “the Supreme Court” has a certain meaning, among other things in relation to a determination of the Joint Authority in respect of the adjacent area in respect of a State or Territory. Since the Joint Authority will no longer have a function under any of the abovementioned sections, this item omits the reference to the Joint Authority.

Item 19 - Transitional - acts of the Joint Authority to be attributed to the Designated Authority

This item refers to all the powers and functions that are transferred from the Joint Authority to the Designated Authority under the preceding items. If the Joint Authority has been involved in an action or process under one of these powers before the coming into effect of the amendments, this item allows the process to be continued with the Designated Authority taking the place of the Joint Authority. For example, under paragraph 38H(3)(b), if the Joint Authority has requested a lessee to re-evaluate the commercial viability of petroleum production in the lease area and the lessee has not responded before the amendments come into effect, the lessee may respond to the Designated Authority as if the Designated Authority had made the request.

Item 20 - Transitional - references in instruments to the Joint Authority become references to the Designated Authority

This item inserts a transitional provision for dealing with records which document anything falling under the powers and functions of the Joint Authority that have been transferred to the Designated Authority under the above items. For example, if such a record contains a reference to the Joint Authority and it is unclear whether that reference is pursuant to one of these powers or not, this item enables the Minister to issue a declaration clarifying that the reference should be read as a reference to the Designated Authority. It is not anticipated

that many records will require such a declaration by the Minister as the transitional provisions under item 19 will adequately cover most documents.

Item 21 - Transitional-regulations

This item provides a power to make regulations to deal with matters of a transitional nature arising from the transfer of powers from the Joint Authority to the Designated Authority. This is to cover contingencies not identified or foreseen in drafting these amendments.

Part 2 - Liability of officials etc.

Item 22 - Section 89

This item repeals section 89 because the broadening of the scope of subsection 140AA(2) under the next item makes the provision in section 89 superfluous.

Item 23 - Subsection 140AA(2)

Section 140AA applies to the Joint Authority, a member of the Joint Authority, the Designated Authority, an inspector and a person acting under the direction or authority of the Joint Authority or Designated Authority. Subsection 140AA(2) currently provides that a body or person to whom this section applies is not liable to an action, suit or proceeding for or in respect of an approval given in good faith under this Act, the regulations or a direction under this Act.

By way of background, section 140AA was inserted into the Act in 1994 to ensure that persons or companies requesting approval of plans or proposals under the Act, the regulations or a direction under the Act are liable for any deficiencies in those plans or approvals provided the official concerned gave the approval in good faith. Such plans would include Safety Cases and Environment Management Plans under the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996 and the Petroleum (Submerged Lands) (Management of Environment) Regulations 1999.

In relation to safety and environment protection in offshore petroleum operations, the Commonwealth Government has already moved to *objective-based regulation* and similar action is proposed for other aspects of the regime, for example pipeline construction and management. An advantage of objective-based regulation is that it enables petroleum companies to utilise best practice management and implement innovative technologies as continual improvement, as opposed to prescriptive regulation under which companies would be held back until government had changed regulations to reflect changing practices. Accordingly, the cost for companies in complying with regulations is lower.

Objective-based regulations also ensure that the objectives of government and the expectations of the community in regard to safety and environment protection standards are clearly communicated to companies. This is changing the enforcement function of each Designated Authority as there is progressively less in the way of prescriptive, detailed regulation and on-site inspection and more emphasis on auditing.

Inasmuch as the role of the Designated Authority is moving away from that of a prescriptive regulator, it is incongruous for an official to be held personally liable for legal action in respect of some accident or misadventure affecting a petroleum company, assuming the official acted in good faith. Such liability of officials would also tend to weaken the incentive for the company to accept responsibility to ensure best practice in its management systems. Further, if general personal liability did apply, the kind of risks petroleum companies need to deal with would raise a question about the need for officials to carry personal liability insurance.

Legal advice indicates that, while actions by an official giving “an approval” under the Act would generally be covered by the provision in section 140AA, the same coverage may not extend to an official performing the same action when it is described in different words in the Act, for example “giving a consent” or “accepting a proposal”. Officers acting under the direction or authority of the Joint Authority or Designated Authority may also be involved in giving technical advice to petroleum companies. For the reasons indicated above, personal liability should not apply on account of some deficiency in advice given in good faith by an officer. Thus the phrase “an approval given” inadequately expresses the range of situations that need to be covered by subsection 140AA(2).

However, when it comes to matters related to the registration of instruments, section 89 states, subject to section 88, that the same officials are not liable to an action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in exercise or purported exercise of any power or authority conferred by the Act.

This item proposes to adopt the wording of the existing section 89 in subsection 140AA(2). It would then be unnecessary to retain section 89 as a separate provision.

Item 24 - At the end of section 140AA

Section 88 refers to entries made in the Register of petroleum titles kept by the Designated Authorities. The section provides that, where a person is aggrieved by the omission of an entry from a Register, an entry made in a Register without sufficient cause, an entry wrongly existing in a Register or an error or defect in an entry in a Register, the Supreme Court may make such order as it thinks fit directing the rectification of the Register. The section also specifies certain procedures for implementing this provision. This item inserts subsection (4), which makes the amended section 140AA subject to section 88 because the repealed section 89 is subject to section 88.

This item inserts subsection (5) which makes it clear that section 140AA does not affect a person’s normal rights to obtain judicial review of administrative decisions, whether under the *Administrative Decisions (Judicial Review) Act 1977* or otherwise.

Item 25 - Application of amendments

This item applies the changes to section 140AA to acts or matters done or omitted to be done after the commencement of this item.

Part 3 - Removal of property by permittee etc

Item 26 - Subsections 107(1) and (1A)

This item corrects a part of the drafting errors made in amending section 107 under the *Petroleum (Submerged Lands) Legislation Amendment Act (No. 1) 2000*. The amendments were purely consequential on some of the substantive provisions included in the Act, specifically the creation of infrastructure licences and the indefinite term given to pipeline licences. Account was also taken of a 1998 amendment that made the term of new production licences indefinite.

The uncorrected version has subsections (1) and (1A). Subsection (1), in its first line, refers to “this section” in a way that implies that every title to which section 107 applies is one that has ceased to have effect. However, this is erroneous, as subsection (2) deals with the holders of current titles. This item substitutes a combined version of subsections (1) and (1A) which makes this point clear.

Item 27 - Paragraph 107(3)(b)

Paragraph 107(3)(b) provides that person to whom a direction is given under subsection (2) shall comply with the direction “on or before the date of expiration of the permit, lease, licence, infrastructure licence or pipeline licence concerned.” However, the paragraph should not refer to the date of expiration of an infrastructure licence or a pipeline licence, since these titles are indefinite and cannot expire. Instead, mention needs to be made of the first date on which they, and production licences, can be terminated. Subject to force majeure, the Act provides that this date is 5 years after work on constructing the relevant facility ceased or operation of the constructed facility ceased. Certain production licences can still expire if they were in force when the 1998 amendments to the Act were passed; otherwise, they too are indefinite and can be terminated. This item substitutes new paragraphs 107(3)(b) and (c) addressing these points.

Item 28 - Transitional - section 107 of the *Petroleum (Submerged Lands) Act 1967*

If, since the date of effect of the *Petroleum (Submerged Lands) Legislation Amendment Act (No. 1) 2000*, the Designated Authority has given a person a notice under subsection 107(1A) directing the removal of property or the like, this item deems the direction to be valid and to be under the amended subsection 107(1). This eliminates the possibility that repeal of subsection 107(1A) as proposed could raise questions about the validity of the direction.

Item 28A - Transitional - acts or omissions that happen before Royal Assent

This item makes it clear that no criminal or civil liability will retrospectively fall on any person as a result of the amendments to section 107 being backdated to 7 March 2000.

Sub-item (1) defines “the transitional period”, noting that it began at the beginning of the item, which, according to subclause 2(3), occurred on 7 March 2000. The period is to end the day before Royal Assent to this Bill.

Sub-item (2) refers to the amendments in Schedule 1, Part 3 of the Bill, which contains only the amendments being made to section 107. The act or omission would be failure by a person to comply with a direction given by the Designated Authority to remove property from a past or current offshore petroleum exploration or production area or do certain other things to restore the area to a satisfactory state. If both the date of giving the direction and the deadline date for compliance with it fell during the transitional period, then the person receiving the direction and not complying with it would not be liable to prosecution on account of that specific direction.

Sub-item (3) refers to what can normally occur if a title-holder (past or present) has not complied with a direction given under section 107. Section 108 provides that the Designated Authority may do the things directed and, if there is a question of removal of property, the Designated Authority may direct the *owner* of the property, rather than the title-holder, to remove the property. This sub-item provides that, if a section 107 direction has not been complied with during the transitional period as envisaged in sub-item (2), then the owner of the property cannot be directed to remove it as a consequence of that non-compliance.

Sub-item (4) refers to the powers normally given under section 113 to the Designated Authority to deal with a situation where neither the title-holder nor the owner removes property after a direction under section 107 or 108. The Designated Authority may then remove and sell the property and deduct costs and expenses or recover them through a court of competent jurisdiction. This sub-item provides that, if a section 107 direction has not been complied with during the transitional period as envisaged in sub-item (2), then cost recovery, whether by deduction from the proceeds of sale or court action, shall not apply.

Part 4 - Datums

Item 29 - Subsection 5(1)

This item inserts a definition of the term “datum,” which is not defined in the existing Act. The note expands on the definition.

To grasp the meaning of a “datum”, one needs to understand that, if the latitude and longitude of a point are given, that information does not in itself provide the means of identifying the position of that point on the surface of the Earth with any accuracy. A datum, the reference surface for the latitude and longitude, also needs to be specified. If the coordinate and datum of a point are specified and one then keeps the same coordinate and specifies a different datum, that will send anyone trying to find the point to a different location. The issue is similar to quoting a volume with appropriate units, eg 100 imperial gallons is different from 100 US gallons.

In onshore surveying, the traditional technique for accurately locating a specified point on the ground has been to measure to existing trig points with known positions on surrounding elevated land features. The coordinates of these trig points are not in themselves the datum but they are derived from the datum and can be said to represent it. The coordinate of each

trig point was originally obtained by a process of working outwards from a primary reference point. In Australia, since the 1960s, that primary reference point has been the Johnston Geodetic Station in the Northern Territory. The latitude and longitude of that Station has been determined very accurately, and also its elevation above the spheroid representing the Earth (the Earth not being a perfect sphere). All this information, together with measurements indicating the size and shape of the spheroid, constitutes a datum, namely the Australian Geodetic Datum (AGD) (see Annex A).

When it comes to surveying offshore, the coordinate of a point can be given with reference to the AGD just as it can be onshore. At the moment, for purposes of offshore petroleum exploration and production, the Act indeed specifies the AGD as the datum for determining the position of a point, line or area. This being the case, if one is trying to find the location of a point that is mentioned in some title or other instrument issued under the Act, there is generally no alternative to using a computer-based transformation program to give geocentric coordinates that can then be used with satellite positioning to identify the position of that point on the seabed.

When the AGD was adopted in 1966, it was based on the Australian National Spheroid, which is an ellipsoid designed to be the best estimate of the Earth's shape in the Australian region, rather than from a global perspective. As a result, this Datum is biased to the extent that it has the centre of the spheroid some 200 metres from the Earth's centre.

A geocentric datum is one that is based on a spheroid having its centre at the centre of the Earth. In recent decades, geocentric datums have been adopted worldwide for most aeronautical and shipping applications due to their international capabilities. A geocentric datum is directly compatible with the Global Positioning System used in satellite navigation and will ensure compatibility across various geographic information systems at the local, regional, national and global level. In view of these benefits, Australia has devised, and is in the process of adopting, the Geocentric Datum of Australia (GDA) (see Annex B).

Item 30 - Subsection 5(1)

In the geodetic sense, a "coordinate" is a set of two pieces of information, specifically the measurement of latitude and the measurement of longitude of a specific point. This item makes it clear that, for purposes of the definition of "datum", the term "geographic coordinate" can mean a coordinate in that sense, and it can alternatively mean a specified meridian of longitude by itself or a specified parallel of latitude by itself.

Item 31 - At the end of subsection 5A(7)

This item refers to subsection 5A(7) which, in describing the Coral Sea area, makes a reference to the parallel of Latitude 25° South. This item adds a note indicating that the datum for this reference will be set out in the new section 150M.

Item 32 - At the end of section 17

This item refers to section 17, which deals with the graticulation of the Earth's surface and the constitution of blocks. This item adds a note indicating that the datum for graticular sections and blocks will be set out in the new section 150M.

Item 33 - After Part IIIA

This item inserts in the Act the new Part IIIB headed "Datums".

The proposed new section 150L deals with the objects of the section. The background to the objects is that, under the Act, areas under petroleum exploration permits, production licences and certain other titles must consist of integral numbers of blocks. The boundaries of these blocks are defined by gridlines at 5 minute intervals of latitude and longitude starting respectively from the equator and from Greenwich. The datum is the AGD.

Because of the 200 metre dislocation mentioned in the note on item 29, if one surveyed for the position of a point that had a certain number of degrees of latitude and a certain number of degrees of longitude referenced to the AGD, one would not end up in the same place on the ground as one would if one surveyed for a point with the same numbers of degrees of latitude and longitude referenced to the GDA. The difference would be some 200 metres. Therefore, simply accepting existing AGD coordinates as GDA coordinates in the Act would mean that holders of existing titles under the Act would find that the area in which they may operate had shifted by about 200 metres over the seabed. Following consultation with stakeholders, the Government has decided that adoption of the GDA in the Act must not lead to this result.

Instead, the GDA is to be adopted in petroleum title administration so that the gridlines that delineate the 5 by 5 minute blocks are relabelled with the new Datum but without moving the title areas from their present position on the seabed. To do this, the coordinates of corner points of title areas, which are currently expressed as whole multiples of 5 minutes, will be transformed to unwhole numbers of minutes under the GDA, eg 16°40'00"South, 118°15'00"East under the AGD will convert to 16°39'55.09"South, 118°15'4.63"East under the GDA.

The Act also includes some other area descriptions, eg the descriptions of the adjacent areas of each of the States and the Northern Territory in Schedule 2 of the Act. Under this Bill, these descriptions are to remain referenced to the AGD. The conversion of these descriptions to the GDA is expected to be addressed in future legislation.

The proposed new section 150M provides that the AGD will determine the position of any block, the parallel of Latitude 25° South mentioned in subsection 5A(7) (see note to item 31), any adjacent area description in Schedule 2 and the area described in Schedule 6, which delineates a prescribed safety zone under section 140A.

Sub-item (2) provides that, while the AGD will determine the position of the things mentioned in sub-item (1), in a title or other instrument under the Act these positions will not need to be *described* under the AGD.

Sub-item (3) provides a transitional provision until the regulations under the Act declare another datum for describing the position of a point, line or area in a title or other instrument under the Act. Until then, the AGD remains the datum for this purpose and no labelling of titles or instruments in terms of the GDA may occur.

The proposed new section 150N provides that regulations may declare a new datum (this will in fact be the GDA) for describing the position on the surface of the Earth of a point, line or area in a title or other instrument under the Act. This new datum is here referred to as “the current datum”, as distinct from “the previous datum”. Another declaration, substituting some other datum again, could be made at some later time, for instance if the GDA was redefined because of small continuous movements occurring in the Earth’s crust.

Sub-item (2) defines the “previous datum” for purposes of making a declaration of the kind referred to above. On the first occasion that such a declaration is made, the previous datum will be the AGD.

Sub-item (3) provides for the time of effect of a declaration of the kind referred to above to be called the “changeover time”.

The proposed new section 150P refers to all the different titles and other types of instruments that may be granted or issued under the Act, but deals only with titles or other instruments granted or issued after the changeover time. These include titles granted for the first time and those granted as a renewal. A permit (ie, an exploration permit), lease (ie, a retention lease) and a licence (ie, a production licence) are titles that may be renewed, subject to various provisions of the Act. Renewal does not apply to any other title or other instrument. An example of another instrument under the Act would be a Gazette notice under section 20 inviting applications for an exploration permit in respect of blocks specified in the notice. This sub-item provides that, after the changeover time, any area, route (for pipelines), line or point that is referred to in any one of these titles or other instruments is to be described by reference to the “current datum”, ie, the new datum. The title or other instrument may be annotated accordingly.

The proposed new section 150Q refers to all the different titles and other types of instruments that may be granted or issued under the Act and that are in force immediately before the changeover time. Any area, route (for pipelines), line or point that is referred to in any of these titles or other instruments is to be described by reference to the previous datum. Section 150Q makes the point that this is the situation as long as no regulations have been made under section 150R. However, if regulations have been made only under some sub-items of section 150R, the titles or other instruments that have not been dealt with under these sub-items will still be described by reference to the previous datum.

The proposed new section 150R enables regulations to be made to authorise variations to be made by the Designated Authority to titles and other instruments. The titles and other instruments that may be varied are all titles and other instruments that have been granted or issued under the Act before the changeover time. Under sub-items (1) to (6), the purpose of the variation would be for relabelling, using coordinates based on the current datum, any area or route (for pipelines) that is referred to in the title to which the regulations relate. If

a regulation were made under sub-item (7), the purpose of the variation would be for relabelling, using coordinates based on the current datum, any point, line or area in some other instrument under the Act. Sub-item (8) provides a regulation-making power so that the Designated Authority may insert an annotation in any title or other instrument stating what datum applies to that title or other instrument.

The proposed new section 150S provides a regulation-making power so that the Designated Authority may vary an application for a title if the area for which the title is sought is referenced to the previous datum. The coordinates of the area in the application would then be relabelled under the current datum and the title, if granted, would refer to that relabelled area.

The proposed new section 150T is an overarching provision that makes it clear that no change in the position on the surface of the Earth of any point, line, block, pipeline route or other title area is authorised, either as a result of describing any of them under section 150P or as a result of relabelling any of them under section 150R (the note to section 150L refers).

The proposed new section 150U provides a power to make regulations to cover matters of a transitional nature arising from the change from the previous datum to the current datum. This is to cover contingencies not identified or foreseen in drafting the rest of Part IIIB.

The proposed new section 150V makes it clear that none of the above provisions about datums apply to the position on the surface of the Earth of a point or line specified in an International Sea-bed Agreement, as set out in the existing section 156A, which is to be relabelled “section 150X”. The datum that applies to the position of any such point or line shall continue to be whatever datum is specified in the International Sea-bed Agreement in question.

The proposed new section 150W provides, for purposes of the Division, definitions of “Australian Geodetic Datum”, and “title” and clarifies the meaning of “instrument under this Act” and “this Act”. A copy of the Gazette Notice No. 84 of 6 October 1966, which established the AGD, is given at Annex A.

Under Division 2 of Part IIIB, the proposed new section 150X is inserted, which is identical in substance to the existing section 156A dealing with the datum that applies to International Sea-bed Agreements. Section 156A is to be repealed under the next item.

Item 34 - Sections 156 and 156A

This item repeals section 156, which is replaced by Part IIIB Division 1, and repeals section 156A, which is relabelled (unchanged in substance) as section 150X.

Item 35 - Schedule 2

This item updates a sub-heading under the heading of Schedule 2. Mention of section 5 was appropriate here before certain amendments were made to the Act in 1980. Since then, the appropriate section to be cited in relation to this Schedule has been section 5A. The other

reason for updating this sub-heading is to indicate that, to be aware of the datum with reference to which all the coordinates in the Schedule are to be understood, one needs to consult section 150M.

Item 36 - Schedule 6

This item updates a sub-heading under the heading of Schedule 6 to indicate that, to be aware of the datum with reference to which all the coordinates in the Schedule are to be understood, one needs to consult section 150M.

Part 5 - Review of decisions

Item 37 - Subsection 152(1) (definition of *relevant decision*)

Section 152 provides for the review of certain decisions by the Commonwealth Minister. Both a “relevant” and a “reviewable” decision can be the subject of an application to the Administrative Appeals Tribunal. The difference between them is that a “relevant” decision is one by a delegated decision-maker and must be reconsidered by the Minister before an application to the Tribunal.

The current definition of a “relevant decision” says, in part, that it is a decision of a delegate of the Minister “under this Act”. This item amends this to read “under this Act or the regulations” so that there is no doubt that decisions made under the regulations are equally subject to the policy that an administrative decision that will, or is likely to, affect the interests of a person should be subject to merits review.

Item 38 - Subsection 152(1) (paragraph (a) of the definition of *reviewable decision*)

The current definition of a “reviewable decision” says, in part, that it is a decision of the Minister (not being a decision of a delegate of the Minister) “under this Act”. For the same reason as the previous item, this item amends this to read “under this Act or the regulations”.

Item 39- Application of amendments

This item makes it clear that the amendments set out in items 37 and 38 do not have any retrospective application.

SCHEDULE 2 - AMENDMENT OF THE PETROLEUM (SUBMERGED LANDS) FEES ACT 1994

Items 1 and 2 - Paragraph 4(2)(b)

Section 4 of the *Petroleum (Submerged Lands) Fees Act 1994* provides that the holder of an exploration permit, a retention lease, a production licence, an infrastructure licence or a pipeline licence must pay a fee in respect of each year of the term of the permit, lease or licence. Subsection 4(2) states that the fee is payable to the Designated Authority and “is to be calculated in accordance with the regulations.”

Legal advice has been received indicating this means that only a method of calculation of the fee may be prescribed, for example, \$3,000 per block for an exploration permit. In other words, it is doubtful whether a flat fee per title could be prescribed. The amendments in these items would change the paragraph to say the fee “is to be specified in, or calculated in accordance with, the regulations.” This would allow, for each of the titles, the prescribing of either a flat amount or a formula, as deemed appropriate.

SCHEDULE 3 - AMENDMENT OF THE PRIMARY INDUSTRIES AND ENERGY
LEGISLATION AMENDMENT ACT (NO. 1) 1998.

Item 1 - Paragraph 47(1)(a) of Schedule 1

When the Bill which became the *Primary Industries and Energy Legislation Amendment Act (No. 1) 1998* was considered by Parliament, it contained amendments to the Petroleum (Submerged Lands) Act 1967 which were designated as items 39A to 39G. It also contained item 39H which stated, in part, that if the operation of any of items 39A to 39G would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth would be liable to pay compensation in respect of the acquisition.

After the Bill was passed by Parliament, it was edited so that items 39A to 39H were relabelled as items 40 to 47. However, a mention of items 39A to 39G in item 47 was inadvertently left unchanged. This item corrects the error.

Copy of Notice published in Commonwealth Gazette No. 84 - 6th October 1966, page 4984.

DEPARTMENT OF NATIONAL DEVELOPMENT

NATIONAL MAPPING COUNCIL

At the twenty-fourth meeting of the National Mapping Council held in Melbourne the Council, on the 21st April 1966, adopted the following datum for Australian Geodetic Surveys:

Designation. - The Australian Geodetic Datum.

Reference Spheroid. - The Australian National Spheroid with a major (equatorial) radius of 6,378,160 metres and a flattening of 1/298.25.

Origin - The Johnston Geodetic Station situated in the Northern Territory at East Longitude 133° 12' 30.0771" and South Latitude 25° 56' 54.5515" and with a ground level elevation of 571.2 metres above the Spheroid.

B. P. LAMBERT, Director of National Mapping,
Chairman of National Mapping Council.

Copy of Notice published in Commonwealth of Australia Gazette No. GN 35 - 6 September 1995, page 3369

NEW GEODETIC DATUM FOR AUSTRALIA

The meeting of the Inter-governmental Committee on Surveying and Mapping held in Canberra on 28-29 November 1994 adopted the following new geodetic datum for Australia and recommended its progressive implementation Australia-wide by 1 January 2000:

Designation.- The Geocentric Datum of Australia (GDA).

Reference Ellipsoid.- Geodetic Reference System 1980 (GRS80) ellipsoid with a semi-major axis (a) of 6 378 137 metres exactly and an inverse flattening (1/f) of 298.257 222 101.

Reference Frame.- The GDA is realised by the co-ordinates of the following Australian Fiducial Network (AFN) geodetic stations referred to the GRS80 ellipsoid determined within the International Earth Rotation Service Terrestrial Reference Frame 1992 (ITRF92) at the epoch of 1994.0:

	<i>South Latitude</i>	<i>East Longitude</i>	<i>Ellipsoidal Height</i>
AU 012 Alice Springs	23° 40' 12.44592"	133° 53' 07.84757"	603.358 metres
AU 013 Karratha	20° 58' 53.17004"	117° 05' 49.87255"	109.246 metres
AU 014 Darwin	12° 50' 37.35839"	131° 07' 57.84838"	125.197 metres
AU 015 Townsville	19° 20' 50.42839"	146° 46' 30.79057"	587.077 metres
AU 016 Hobart	42° 48' 16.98506"	147° 26' 19.43548"	41.126 metres
AU 017 Tidbinbilla	35° 23' 57.15627"	148° 58' 47.98425"	665.440 metres
AU 019 Ceduna	31° 52' 00.01664"	133° 48' 35.37527"	144.802 metres
AU 029 Yaragadee	29° 02' 47.61687"	115° 20' 49.10049"	241.291 metres

H. Houghton
Chairman
Inter-governmental Committee on Surveying and Mapping