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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM (REGISTRATION FEES) BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Industry, Tourism and Resources,
the Hon Ian Macfarlane, MP)

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GENERAL OUTLINE

This Bill sets out the fees payable in relation to the registration of transfers and dealings in titles under the proposed Offshore Petroleum Act. The Act proposed to be created by this Bill is consequential on the repeal of the *Petroleum (Submerged Lands) (Registration Fees) Act 1967* and is its replacement in conjunction with the Offshore Petroleum Bill 2005 and other Bills achieving the rewrite of the *Petroleum (Submerged Lands) Act 1967* and incorporated Acts.

The proposed Offshore Petroleum Act will provide for the approval and registration of legal transactions that affect the ownership of titles. These transactions have no force until they have been thus approved and registered. This is in order to maintain an accurate public register of the ownership of titles. Replicating the provisions of the Petroleum (Submerged Lands) (Registration Fees) Act, the registration of these transactions attracts a registration fee.

This Bill sets out the different levels of registration fees that are to be payable, which can range from a minimum amount prescribed in regulations to an 'ad valorem' fee of 1.5% of the value of the consideration or of the value of the title or interest.

FINANCIAL IMPACT STATEMENT

The proposal that registration fees be extended (by virtue of clause 4) to cover transfers of, and dealings in, infrastructure licences could be expected, in the long term, to lead to some increase in registration fee revenues. However, during the 5 years for which provision for infrastructure licences has existed in the Petroleum (Submerged Lands) Act, no infrastructure licences have been granted. It would therefore be inappropriate to attempt to quantify what the level of any such revenue increase could be.

Subclauses 6(4) and 6(5) of this Bill include proposals for minor clarification of what appears in subsection 4(6B) of the Petroleum (Submerged Lands) (Registration Fees) Act. At issue is the deduction from the amount of registration fee imposed by the Act of the value of any exploration works to be carried out under the dealing that is being registered. Subsection 4(6B) is not entirely clear on whether these exploration works include works which, for whatever reason, are carried out after the instrument evidencing the dealing is executed but before that instrument is submitted for registration. Subclauses 6(4) and 6(5) would make clear that works of the latter type are to be included.

It is believed that the provision in subsection 4(6B) of the Petroleum (Submerged Lands) (Registration Fees) Act has generally been administered consistently with the interpretation that is now proposed to be made explicit in this Bill. Accordingly, there should be little or no financial impact for Commonwealth revenues from making the clarifying amendments in subclauses 6(4) and 6(5).

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

This clause is a standard provision setting out the title by which the proposed Act is to be cited if it becomes law.

Equivalent provision in the PSL Registration Fees Act: section 1

Clause 2 - Commencement

This clause provides that clauses 1 and 2 would commence on Royal Assent to this Bill. The remaining clauses and Schedule 1 would commence together with the bulk of the provisions in the Offshore Petroleum Bill. This is to be on a date fixed by proclamation. However, a separate proclamation of the Offshore Petroleum (Registration) Act would not be required.

Equivalent provision in the PSL Registration Fees Act: section 2

Clause 3 - Application of Chapter 1 of the *Offshore Petroleum Act 2004*

The main effect of this clause is that, where terms are used undefined in this Bill, they could be defined in Chapter 1 of the Offshore Petroleum Bill, in which case they would have application to this Bill.

Equivalent provision in the PSL Registration Fees Act: section 3

Clause 4 - Application of Part 3.1 of the *Offshore Petroleum Act 2004*

This clause refers to the fact that Part 3.1 of the Offshore Petroleum Bill sets out two definitions which apply to the registration provisions in that Bill, and applies these definitions also to this Bill.

Specifically, Part 3.1 defines a "title" to mean an exploration permit, retention lease, production licence, infrastructure licence, pipeline licence or access authority. It also clarifies the definition of a "dealing" by stating that, if a dealing forms a part of the issue of a series of debentures, all of the dealings constituting the issue of that series of debentures are taken to be one dealing.

Equivalent provisions in the PSL Registration Fees Act: section 3, subsection 4(1)
Policy change: that, by virtue of the adoption of the above definition of a "title", registration fees will be extended to apply to registering transfers of, and dealings in, infrastructure licences

Clause 5 - Imposition of fee-transfer of title

The registration fees imposed by this clause are broadly equivalent to, and imposed in lieu of, State or Northern Territory stamp duty. In brief, the reason for adopting this system is that instruments regulated under Commonwealth legislation (which is what transfers and dealings in titles under the proposed Offshore Petroleum Act are) could not

be made dutiable by State or Northern Territory law. A registration fee under Commonwealth legislation, applicable to all areas administered under the Petroleum (Submerged Lands) Act, was therefore introduced for this purpose in 1967. This was supplemented by identical registration fee arrangements under State and Northern Territory legislation for petroleum operations in each State's and the Northern Territory's coastal waters.

Under the Offshore Constitutional Settlement (discussed under Part 1.1 to the Offshore Petroleum Bill), given the manner in which the Commonwealth, States and Northern Territory are to share in the administration of offshore areas, the proceeds from these fees are to be remitted to the States and Northern Territory after having been deposited in the Commonwealth Consolidated Revenue Fund. These arrangements are set out in Division 3 of Part 1.3 of the Offshore Petroleum Bill. Thus the States and Northern Territory gain broadly similar revenues from the registration fees imposed on petroleum titleholders in the Commonwealth-controlled offshore areas as they would have gained had the transfer and dealings instruments been subject to State or Northern Territory stamp duty.

This clause imposes a fee for the entry of a memorandum into the Register in relation to a transfer of title in accordance with Part 3.3 of the Offshore Petroleum Bill and the amount of the fee depends on the situation.

Item 1 of the table in subclause (2) refers to the fact that the value of a title may not be the same as the consideration for its transfer. The value of the title would normally be determined by expert opinion and in consultation with the Designated Authority. The consideration normally consists of cash (including payments for data and information and reimbursement for works carried out prior to the transaction) and/or non-monetary items (for example shares or work program obligations). If the consideration for the transfer is higher than the value of the title, item 1 provides that it would be the consideration for the transfer that would attract the 1.5% ad valorem registration fee, and vice versa.

Item 2 provides that the above calculation is subject to a minimum registration fee. At the time of introducing this Bill, the amount prescribed for this purpose under the Petroleum (Submerged Lands) (Registration Fees) Act was $810.

On grounds of reasonableness, item 3 makes provision to charge only a prescribed flat amount of transfer registration fee (which, at the time of introducing this Bill, under the Petroleum (Submerged Lands) (Registration Fees) Act, was also $810) in a case where the transfer is executed for the purpose of giving effect to a dealing and registration fee has already been paid on the dealing under clause 6.

Likewise on grounds of reasonableness, item 4 places a cap on the amount of transfer registration fee that is payable in a case where the companies involved in the transaction satisfy the Designated Authority, in summary, that they are related companies and that the transfer serves only the objective of improved corporate administration. At the time of introducing this Bill, the prescribed amount for this purpose under the Petroleum (Submerged Lands) (Registration Fees) Act was $4040.

Subclause (4) makes clear that registration fees under this clause are a tax. Among other things, this means they do not need to be necessarily commensurate with recovering costs involved in maintaining the Register.

Equivalent provisions in the PSL Registration Fees Act: subsections 4(2), (3) and (4)
Technical changes: making explicit that different amounts may be prescribed for the different situations described in this clause; removing redundant references to "an entry of approval of an instrument" and to "an instrument" which appear in the equivalent provision in the Petroleum (Submerged Lands) (Registration Fees) Act

Clause 6 - Imposition of fee-approval of dealing

The background information set out under clause 5 in relation to registration fees being broadly equivalent to, and imposed in lieu of, State or Northern Territory stamp duty, is equally applicable to the fees imposed on the registration of dealings under this clause.

The complexity of the provisions set out in this clause derives from amendments made to the Petroleum (Submerged Lands) (Registration Fees) Act in 1985, in part to ensure that excessive registration fees cannot be charged in relation to a series of agreements which gives effect to what amounts to a single transaction. In part the amendments were made to also take account of the recommendations of the Royal Commission into the Activities of the Federated Ship Painters' and Dockers' Union, and suggestions made by industry, the States and the Northern Territory.

As is the case with transfers, the value of the interest in a title can be different from the value of the consideration for the dealing. The value of an interest would normally be determined by expert opinion and in consultation with the Designated Authority. The consideration normally consists of cash (including payments for data and information and reimbursement for works carried out prior to the transaction) and/or non-monetary items (for example shares or work program obligations).

Item 1 of the table in subclause (2) sets out the basic provision for calculating the registration fee if none of the special circumstances set out in the rest of the table apply. The fee is then 1.5% of the value of the consideration for the dealing. Item 3 sets out an almost identical case except that there the dealing relates to 2 or more titles and item 3 provides a simple formula for determining the registration fee in that situation.

Item 2 refers, under paragraph (e), to the creation or assignment of an interest in an existing production licence, infrastructure licence or pipeline licence or the creation or assignment of a right (conditional or otherwise) to the assignment of an interest in one of these licences. Specifically in relation to an existing production licence, the item also refers to the creation or assignment of an overriding royalty interest, production payment, net profits interest or carried interest. The item also refers to the creation or assignment of an interest that is similar to the ones described above, where the interest relates to petroleum produced from operations authorised by an existing production licence or revenue derived as a result of carrying out operations authorised by an existing production licence.

Under paragraph (f), item 2 refers to the possibility of a series of dealings affecting an interest in a production licence, infrastructure licence or pipeline licence where each of those dealings is entered into in pursuance of a previously registered dealing. In such a case, the fee imposed by this item is to be paid only once. Thus, if a fee at 1.5% of the value of the interest has previously been paid, the fee will not again be calculated on the

basis of the value of the interest but will be determined by the provisions set out in one of the other items of the table, as applicable.

Subject to all these criteria, if the value of the interest is greater than the value of the consideration for the dealing, the registration fee is set at 1.5% of the value of the interest.

Item 4 sets out an almost identical case except that there the dealing relates to 2 or more titles and the value of the interest is greater than the amount worked out by dividing the value of the consideration for the dealing by the number of titles in relation to which the dealing is approved by the Designated Authority. In this case likewise the registration fee is set at 1.5% of the value of the interest.

Item 5 provides for a prescribed minimum registration fee which would apply if a calculation based on 1.5% of the value of the interest or of the consideration would lead to a dollar amount less than this prescribed amount. At the time of introducing this Bill, the amount prescribed for this purpose under the Petroleum (Submerged Lands) (Registration Fees) Act was $810. This flat amount is also to apply, regardless of the value of the interest or consideration, if the dealing has to be registered only because it creates, varies or terminates a charge over some or all of the assets of a body corporate.

Item 6 places a cap on the amount of dealing registration fee that is payable in a case where the companies involved in the transaction satisfy the Designated Authority, in summary, that they are related companies and that the transfer serves only the objective of improved corporate administration. At the time of introducing this Bill, the prescribed amount for this purpose under the Petroleum (Submerged Lands) (Registration Fees) Act was $4,040.

Subclause (4) refers to dealings in exploration permits and retention leases generally, and to dealings in production licences where the value of the consideration is higher than the value of the interest. Subclause (5) refers to dealings in production licences where the value of the interest is higher than the value of the consideration.

In either case, the subclause provides that the cost of any exploration works to be carried out as a requirement of a dealing may be deducted from the value of the consideration, or the value of the interest, before calculation of the fee payable on the dealing. The relevant date is the date of execution of the instrument evidencing the dealing. Any permitted exploration works specified in the instrument that are carried out after that date qualify for a deduction, whether they are carried out before or after the instrument evidencing the dealing is submitted for registration by the Designated Authority. The value of any reimbursement for works carried out prior to the execution of the dealing does not qualify for deduction from the value of the consideration.

In the case of a production licence, while exploration works are permitted, the proposed Offshore Petroleum Act does not enable a production licence to require any specific type of exploration or to specify the amount to be spent on exploration. For this reason, the word “required” is absent from paragraph 6(5) (b), referring only to production licences, whereas it appears in paragraph 6(4) (b), referring to production licences, exploration permits and retention leases. Under exploration permits and retention leases, exploration works involving expenditure of a specified amount can be required.

Where there is any difficulty in deciding on the actual value of future exploration works, the power to determine the value of those works for the purpose of fees calculations is vested in the Designated Authority. This would be done on the basis of the best available information.

Subclause (6) makes clear that registration fees under this clause are a tax. Among other things, this means they do not need to be necessarily commensurate with recovering costs involved in maintaining the Register.

Equivalent provisions in the PSL Registration Fees Act: subsections 4(2), (3), (4), (5), (6), (6A) and (6B)
Technical change: making explicit that different amounts may be prescribed for the different situations described in this clause
Policy changes: exclusion of any inference that exploration works to a determined money amount could be required by a production licence; that the deduction for exploration works should apply in respect of all exploration works that are, as at the date of the instrument evidencing the dealing, to be carried out under the dealing and permitted or required (where applicable) to be carried out by or under the relevant title

Clause 7 - Regulations

This clause provides that the Governor-General may make regulations prescribing the amounts payable as registration fees under subclause 5(2) items 2, 3 and 4 and subclause 6(2) items 5 and 6. Different amounts may be prescribed under some or all of these items.

Equivalent provision in the PSL Registration Fees Act: section 5.

Clause 8 - Transitional provisions

This clause gives effect to the transitional arrangements in Schedule 1. These will enable registration fees to be determined without interruption or double imposition despite the repeal of the Petroleum (Submerged Lands) (Registration Fees) Act and its replacement by the proposed Offshore Petroleum (Registration Fees) Act.

Equivalent provision in the PSL Registration Fees Act: nil.

Schedule 1

Schedule 1 clause 1 - Pre-commencement entries etc.

Subclause (1) is a provision setting out the way in which the Petroleum (Submerged Lands) (Registration Fees) Act is proposed to be terminated, ie it is terminated in relation to entries made after the commencement of the proposed new Act, and it continues to apply in relation to entries made before that commencement.

Subclause (2) refers to the fact that, if a transfer was executed for the purpose of giving effect to a dealing and a fee was imposed by clause 6 on the entry in the Register of an approval of the dealing, then the level of the registration fee is a prescribed amount, as set out in item 3 under subclause 5(2). The subclause also refers to the fact that, under items 2 and 4 of subclause 6(2), it is a criterion for determining the amount of registration fee

that the Designated Authority is satisfied that the dealing was not made under another dealing that relates to the same title, where a fee has been paid under clause 6 in relation to an entry of the approval of the other dealing. The subclause also refers to the fact that, under item 6 of subclause 6(2), it is a criterion for determining the amount of registration fee that the Designated Authority is satisfied that the dealing was not entered into substantially for the purpose of avoiding or reducing the fees that would, apart from that item, be payable under clause 6 on the entry of approval of the dealing.

Subclause (2) makes it clear that equivalent events under subsection 4(5) of the Petroleum (Submerged Lands) (Registration Fees) Act have the same significance after the repeal of that Act in determining the amount of registration fee payable under the proposed Act. This subclause also makes it clear that, after the repeal of the Petroleum (Submerged Lands) (Registration Fees) Act, the Designated Authority must still consider whether there was any intention on the part of the applicant to try to avoid or reduce fees payable under that Act as in force at the time when the application was lodged.

Subclause (3) refers to the fact that, under item 4 of subclause 5(2), it is a criterion for determining the amount of registration fee that the Designated Authority is satisfied that the transfer was not entered into substantially for the purpose of avoiding or reducing the fees that would, apart from that item, be payable under clause 5 on the entry of approval of the transfer. This subclause makes it clear that, after the repeal of the Petroleum (Submerged Lands) (Registration Fees) Act, the Designated Authority must still consider whether there was any intention on the part of the applicant to try to avoid or reduce fees payable under that Act as in force at the time when the application was lodged.

Equivalent provision in the PSL Registration Fees Act: nil.

Schedule 1 clause 2-Transitional-regulations

This item provides a seamless transition for the effect of regulations prescribing the level of certain fees under the Petroleum (Submerged Lands) (Registration Fees) Act if and when that Act is replaced by the proposed Act. The same fees would apply under the equivalent provisions of the proposed Act (clause 7 refers) without the regulations needing to be remade. However, for reasons of good administrative practice, it is planned that new regulations prescribing the same amounts under the new Act would be drafted in due course.

The *Legislative Instruments Act 2003* provides that legislative instruments made after 1 January 2005 have to be registered in order to be effective, and any legislative instruments made before 1 January 2005 that are still in force will need to be registered by a specified date. Legislative instruments include regulations made under the Petroleum (Submerged Lands) (Registrations Fees) Act. At the time the proposed Act comes into effect, any regulations that have been made to that date under the Petroleum (Submerged Lands) (Registrations Fees) Act will have been registered. Accordingly, paragraph (2) (b) is relevant in the context of the Legislative Instruments Act only in that the paragraph ensures that a regulation under the Petroleum (Submerged Lands) (Registrations Fees) Act does not need to be re-registered merely because it has become, by virtue of the transitional provisions, a legislative instrument pursuant to the new Act.

Equivalent provision in the PSL Registration Fees Act: nil.

Schedule 1 clause 3 – Re-enactment of the *Petroleum (Submerged Lands) (Registration Fees) Act 1967*

This clause will provide a useful means by which other legislation could refer to the proposed enactment. If other legislation refers to "the *Petroleum (Submerged Lands) (Registration Fees) Act 1967* or any Act that re-enacts it", that reference will need no change if and when the proposed new Act comes into effect.

Equivalent provision in the PSL Registration Fees Act: nil.