

PETROLEUM LEGISLATION AMENDMENT BILL 2016

Introduction and First Reading

Bill introduced, on motion by **Mr S.K. L'Estrange (Minister for Mines and Petroleum)**, and read a first time.
Explanatory memorandum presented by the minister.

Second Reading

MR S.K. L'ESTRANGE (Churchlands — Minister for Mines and Petroleum) [1.09 pm]: I move —

That the bill be now read a second time.

This bill amends the Petroleum and Geothermal Energy Resources Act 1967 and the Petroleum (Submerged Lands) Act 1982. The bill addresses two main issues—the requirement for apportionment provisions where a petroleum pool extends into two licence areas and amendments to allow for future maritime boundary changes. The bill also makes minor amendments to the Petroleum (Submerged Lands) Act 1982 to remove references to the term “designated authority”, which has been redundant since 2012.

Turning firstly to the petroleum pool apportionment amendments in the bill, the need to provide a more practical mechanism for apportioning petroleum from a resource shared between the state and commonwealth jurisdictions first arose in 2015. This was when negotiations commenced for an apportionment agreement for the Torosa petroleum pool in the Browse retention lease areas that straddle the commonwealth and Western Australian offshore waters. The Torosa resource is extremely large and will be of considerable economic significance to both the commonwealth and the Western Australian economies. The 2015 negotiations were triggered by a reassessment of the maritime boundary between commonwealth and Western Australian waters in the vicinity of the Torosa resource in 2014.

All parties—the commonwealth, the state and the Browse joint venture—were concerned to reach an understanding of the relative proportions of the resource underlying the commonwealth and state jurisdictions. The commonwealth and Western Australia wished to establish their likely future revenue streams from the project, and the titleholders wished to establish their likely future state royalty and commonwealth tax exposure. It quickly became apparent, however, that the existing apportionment provisions of both the state and the commonwealth petroleum legislation required a relatively detailed understanding of the geology of the Torosa resource. At the early stage of the Torosa project, and given the very large and complex nature of the resource, the requirements of the current legislation could not be met with any degree of certainty. In particular, although current geological knowledge indicated that the entire resource was contained within a single pool, it was quite possible that, when future information became available, particularly once production commenced, the current outer bounds of the pool might be found to comprise two pools or multiple pools. If that occurred, the agreement would fail and the benefits to all parties of the agreed apportionment would be lost.

The amendments in the bill also enable the making of an apportionment agreement about a specified part of the seabed that contains a common pool, but where connectivity between jurisdictions is not necessarily confined to the pool. This is where either the outer bounds of the pool are not currently ascertained or there are indications that there is a broader area of the licences on either or both sides of the boundary where petroleum has the potential to move between licence areas in response to changes in pressure in the seabed—for example, as a result of petroleum production. These amendments will therefore ensure greater certainty and flexibility in relation to the development of an apportionment agreement to support future investment decisions.

Although these apportionment amendments have been developed as a consequence of difficulties encountered in negotiating a particular agreement for the Torosa field, the benefits of the amendments are by no means limited to that one agreement. There will be other boundary changes identified within the next few years and it is quite possible that these will require apportionment of a resource that is bisected by a relocated jurisdictional boundary. In that event, governments and titleholders will be able to choose the apportionment mechanism that best suits their situation. The amendments to the state apportionment provisions in this bill have been developed based on proposed changes to the commonwealth’s petroleum legislation. The bill also updates the existing state apportionment provisions for a petroleum pool extending into two licence areas so that they provide a similar regime to the current one found in the commonwealth legislation.

Turning to the second main part of the bill dealing with the maritime boundary amendments, the commonwealth agency Geoscience Australia has an ongoing responsibility to define the limits of Australia’s maritime jurisdiction. The boundary between commonwealth waters and state coastal waters changes automatically by operation of the commonwealth Coastal Waters (State Title) Act 1980 to reflect actual changes to the territorial sea baseline. In practice, however, changes to Australia’s maritime boundaries are only identified through the publication of new maps or datasets.

In May 2014, the Australian government announced that the maritime boundaries around Scott and Seringapatam Reefs offshore of Western Australia had changed to reflect the outcomes of a Geoscience Australia review of the area's most seaward features. The revised boundaries intersected two state and three existing commonwealth offshore petroleum titles. As a result of the boundary change, affected blocks within those commonwealth petroleum titles now lie within Western Australian jurisdiction. To maintain certainty for offshore petroleum titleholders, both state and commonwealth petroleum legislation contains delaying provisions that postpone the effect of the change in jurisdictional boundary until the affected title ceases to be in force. However, these existing provisions contain a regulatory gap whereby, upon cessation of the existing title, blocks affected by the boundary change would become vacant acreage.

Following the May 2014 boundary changes, to prevent this situation from occurring at Scott Reef, the Western Australian government passed Browse Basin-specific legislation—the Petroleum Titles (Browse Basin) Act 2014. This legislation provided that, upon cessation of the affected commonwealth titles in the Scott Reef and Seringapatam Reef areas, the affected blocks automatically transitioned to analogous Western Australian titles. If the situation were to occur elsewhere, there is currently no generic mechanism in the state legislation to enable affected blocks to transfer with continuity of tenure for the holder of the commonwealth title from commonwealth to state jurisdiction. Instead, affected blocks would become vacant acreage in state waters upon cessation of the commonwealth title and existing titleholders would lose title over those blocks. Those titleholders may have already spent considerable sums of money and effort undertaking exploration activities under their title. It is therefore considered critical that titleholders should have continuity of tenure in the event of a boundary change.

The commonwealth moved to address this issue from its perspective in 2015 by amendments to its petroleum legislation to remove the risk this poses for titleholders. Modelled on the 2015 commonwealth changes, the state's response in this bill ensures that amendments will preserve continuity of tenure for titleholders and provide for the seamless and efficient transition of affected blocks between jurisdictions in the event of future boundary changes.

Finally, the bill also deletes the term “designated authority” from the WA Petroleum (Submerged Lands) Act 1982. This petroleum legislation currently contains references to the term “designated authority”. This term has been redundant since 1 January 2012 when the commonwealth introduced the National Offshore Petroleum Titles Administrator.

In conclusion, this bill addresses the lack of functionality in the petroleum legislation's apportionment provisions where a petroleum resource straddles commonwealth and state jurisdictions, and provides certainty for future revenue and investment decisions. The bill also provides for the creation of like-for-like titles following any future maritime boundary changes and removes the prospect of any sovereign risk that could arise from a loss of tenure.

I commend the bill to the house.

Debate adjourned, on motion by **Ms S.F. McGurk**.