

PETROLEUM AND GAS LEGISLATION AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL

Short Title

The Bill's short title is *Petroleum and Gas Legislation Amendment Bill 1997*.

Objectives of the Legislation

The objective of this Bill is to amend the *Petroleum Act 1923*, *Petroleum (Submerged Lands) Act 1982* and the *Gas Act 1965*.

Reasons for the Bill

Amendments to the *Petroleum Act 1923* and *Petroleum (Submerged Lands) Act 1982* are necessary to facilitate the approval of access principles and the grant of a pipeline licence for the proposed Papua New Guinea to Queensland natural gas pipeline being sponsored by Chevron Asiatic Limited and others. These project sponsors are using a competitive tender process to select a developer of the pipeline.

Amendments to the *Petroleum Act 1923* are necessary to make it clear that the selection process being undertaken by the project sponsors, and the proposed PNG to Queensland pipeline, fall within the scope of section 70A. This will enable the Minister to agree with the applicant for the pipeline licence about access principles, conditions of the licence and other matters under that section unless the Minister is not satisfied the selection process is competitive. Amendments to the *Petroleum (Submerged Lands) Act 1982* are to allow the *Petroleum Act 1923* to apply to that part of the proposed pipeline in Queensland offshore territory.

In addition, the *Petroleum (Submerged Lands) Act 1982 (Qld)* needs to

be amended to ensure that petroleum pipelines originating from outside Australia come within the scope of the Act and also to ensure that changes to the territorial sea baseline do not impact on any pipeline licence granted within Commonwealth or State offshore areas. The *Petroleum (Submerged Lands) Act 1967 (Cwlth)* has recently been amended along similar lines.

Further amendments to the *Petroleum Act 1923* are necessary to enable access principles to be approved for application to an extension of an existing pipeline, without necessarily opening up to review all of the original access principles for the existing pipeline. This is to be achieved by providing for existing access principles to be amended for application to an extended pipeline, provided the Minister has considered the relevant specified matters. The changes will enable an entire pipeline system under one company's ownership to be covered by a single licence with an integrated set of access principles, thereby assisting pipeline users in understanding access arrangements as well as simplifying administration and management for the pipeline operator.

Other minor but important changes to the *Petroleum Act 1923* are proposed, including to facilitate the effective administration of pipelines and for the possible transition to the National Gas Access Code.

An amendment to the *Gas Act 1965* is necessary to put beyond doubt the validity of certain fees and charges and, in some instances, security deposits imposed on franchise customers by gas franchisees. Doubts about the validity of such fees, charges and security deposits have been raised by legal advice from Senior Counsel.

Also, it is necessary to extend the regulation-making powers in the *Gas Act 1965* to cover fees and charges incidental to the supply of gas so that appropriate and effective regulatory control can be exercised over such fees if circumstances warrant it.

In addition, the opportunity is being taken to repeal section 43 of the *Gas Act 1965*, which was identified in the 1994 CoAG Agreement on Free and Fair Trade in Gas process as being potentially anti-competitive.

Estimated Cost for Government Implementation

There will be no cost for Government in implementing this legislation other than the administrative costs associated with the making of the legislation.

Consistency with Fundamental Legislative Principles

The proposed amendment to the *Gas Act 1965* to put beyond doubt the validity of certain fees, charges and security deposits collected by gas franchisees has retrospective application. However, the amendment will not impose, either retrospectively or otherwise, new obligations on gas customers or gas franchisees but will simply clarify the presently unclear provisions of the *Gas Act 1965*.

A recent legal opinion throws doubt on the validity of the long-standing accepted practices of gas franchisees. In contrast, at least one franchisee has a legal opinion to the effect that those practices are valid. The proposed amendment seeks to make the position clear.

Parliamentary Counsel has also mentioned that the selection process identified for the purposes of the application of section 70A of the *Petroleum Act 1923* to the PNG to Queensland pipeline may be regarded as imprecise because it is a reference to an on-going process. However, this process can be identified in fact and the Bill provides that the Minister need not act under that section if the Minister is not satisfied that the process is in fact a competitive process.

Consultation

Consultation has taken place with:—

- Department of the Premier and Cabinet
- Department of Economic Development and Trade
- Queensland Treasury
- Office of Rural Communities
- Office of Consumer Affairs
- Crown Solicitor
- Solicitor-General
- private sector parties with commercial interests in the arrangements.

No public consultation was undertaken.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Bill.

Clause 2 provides that part 2 of the Act amends the *Petroleum Act 1923*.

Clause 3 amends the long title of the *Petroleum Act 1923* to clarify that the Act applies to pipelines in Queensland conveying petroleum whether or not the petroleum is recovered in Queensland.

Clause 4 amends section 2 (Interpretation) by amending the definition of “access principles” in the *Petroleum Act 1923* to remove the requirement for access principles to consist of three specific parts, namely, indicative access conditions, tariff setting principles and an indicative tariff schedule. This allows more flexibility in the form of access principles. In line with this change, the term “indicative tariff” replaces the term “indicative tariff schedule”, the term “tariff setting principles” is deleted and the definition of “facility” is amended. The clause also amends the definition of “pipeline” to remove any doubt that a pipeline licence may be granted for part of a pipeline system which originates from outside the jurisdiction of Queensland.

Clause 5 inserts a new section 7A (Act applies out to coastal waters of the State) to make it clear that the Act applies to the area between the low water mark and the territorial sea baseline, from which point the Queensland *Petroleum (Submerged Lands) Act 1982* applies. While this area is not within the territory of the State, the Commonwealth has given the State legislative power over the area under section 5 of the *Coastal Waters (State Powers) Act 1980*.

Clause 6 amends section 70A (Decisions relating to the grant of pipeline licences after a competitive selection process) to enable the Minister, if satisfied a competitive selection process has been completed for the grant of a pipeline licence, to make agreements and decisions about matters not only under the *Petroleum Act 1923* but also under another Act about access to pipelines. The heading of the section is changed to ‘Powers that may be exercised after competitive selection process’ to better reflect the content of the section.

Clause 7 amends section 104 (Application of part to pipelines) to provide that if a pipeline stops being the subject of a regulation exempting it from the application of part 8 of the Act (Provisions about access to facilities), part 8 then applies to the pipeline. The section is also amended to stipulate

that such a declaration may only be terminated if, in the opinion of the Minister, there are no longer any reasons for which a pipeline may be exempted.

Clause 8 amends section 109 (Access principles for existing pipelines) to apply the section to previously exempted pipelines if the exemption is terminated. The effect of this is that the owner of the pipeline must give the Minister proposed access principles for the pipeline within 3 months after the termination. Further, the Minister must approve or decide access principles for the pipeline within 6 months after the termination.

Clause 9 replaces section 112 (Approval of access principles) with a new section (Access principles—approving or deciding) restating the provisions but with changes to make it clear when the section applies, namely if the Act requires proposed access principles or proposed new access principles to be given to the Minister, or if access principles have been approved in terms of an agreement under section 70A and proposed new access principles must be given to the Minister because a review event happens, or if the Minister decides access principles, for example, under section 113 (Review of access principles). The new section also includes examples of matters access principles may provide for, such as principles for setting tariffs, indicative access conditions and an indicative tariff.

Clause 10 inserts a new division 3A (Amendment of access principles) of part 8 consisting of subdivisions 1 and 2, as follows:

Subdivision 1 (Minor amendments - section 114A) provides that, on application of the owner of a facility, the Minister may approve a minor amendment of the access principles for the facility if the amendment does not adversely affect in a material way the facility owner or users or potential users of the facility.

Subdivision 2 (Amendments for addition to route of pipeline - sections 114B and 114C) authorises the Minister to approve the application of access principles for an existing pipeline to an addition to the route of the pipeline (with or without amendment). However, the Minister may only approve the application if the Minister has given due regard to the matters mentioned in section 112 (Access principles—approving or deciding) that are relevant to the extended pipeline. New section 114C (Effect of approval on access agreements) also provides that if an existing access agreement is inconsistent with an amendment to the access principles, within 6 months the parties to the agreement must amend the agreement to remove the inconsistency unless the Minister otherwise approves.

Clause 11 amends section 123 (Restrictions on access agreements) to give the Minister discretion to approve the making of an access agreement that is inconsistent with the access principles, in line with other similar discretions in that section and section 114 (Effect of approval of access principles). The section is also amended to refer to new or amended access principles, rather than just new access principles, as a consequence of new division 3A (Amendment of access principles). Subsection (5) is omitted because it is superfluous as section 114 and the new section 114C provide what this subsection was intending to provide.

Clause 12 amends section 129 (What is an access dispute) to refer to new or amended access principles, rather than just new access principles, as a consequence of new division 3A (Amendment of access principles).

Clause 13 inserts a new section 153 (Papua New Guinea to Queensland pipeline) which relates to the parts of the proposed PNG to Queensland pipeline that are in Queensland or seaward of the State coastline at mean low water and landward of the inner limit of the territorial sea of Australia. These provisions will facilitate the grant of a pipeline licence for the pipeline under the *Petroleum Act 1923* and for the approval of access principles for the pipeline under the *Petroleum Act 1923* for application within Queensland as well as in its offshore area.

The section also empowers the Minister to agree with the applicant for a pipeline licence about the access principles to be approved for the pipeline and, for this purpose, provides that the pipeline is taken to be prescribed under section 70A of the *Petroleum Act 1923* (Powers that may be exercised after competitive selection process) and that the process being used to select a developer of the pipeline is a competitive selection process required for the operation of section 70A unless the Minister is not satisfied it is competitive. New section 153 also makes it clear that section 70A applies to the pipeline whether or not the competitive selection process happened or was started before the commencement of this clause.

Clause 14 provides that part 3 of the Act amends the *Petroleum (Submerged Lands) Act 1982*.

Clause 15 amends the long title of the *Petroleum (Submerged Lands) Act 1982* to extend the coverage of the Act to include the conveying of petroleum recovered outside Australia.

Clause 16 amends section 4 (Interpretation) by, firstly, amending the definition of petroleum to include petroleum recovered from outside the

adjacent area and, secondly, amending the definition of pipeline to include a pipeline or part of a pipeline conveying petroleum from outside the adjacent area.

Clause 17 omits section 5 (Construction of Act) which is no longer necessary in view of section 9 of the *Acts Interpretation Act 1954*, and also inserts a new section 5 (Effect of territorial sea baseline changes on pipeline licence) to ensure that changes in Australia's territorial sea baselines do not impact on any petroleum pipeline licence granted within offshore areas under State jurisdiction. Section 5(1)(c)(ii) refers to an "adjacent area" as defined under the Commonwealth Act. The attachment to these notes set out extracts of the relevant provisions of that Act.

Clause 18 amends section 14 (Application of laws in area adjacent to State) to ensure that, where State laws apply to petroleum related matters in the adjacent area, they also include matters relating to the conveying of petroleum recovered from outside the adjacent area.

Clause 19 amends section 64 (Application for pipeline licence) to enable a person to apply for a licence to construct and operate a pipeline for the conveyance of petroleum recovered from outside the adjacent area. Also, subsection (2) is amended to clarify that the reference to "the licensee" is to the holder of the petroleum production licence for the area, and an editorial change is made to subsection (4).

Clause 20 amends section 65 (Grant or refusal of pipeline licence) to enable the Minister to grant, or refuse to grant, a pipeline licence regardless of whether the petroleum to be conveyed is recovered from within or from outside the adjacent area.

Clause 21 inserts a new section 151A (Papua New Guinea to Queensland pipeline) to enable the sections of the *Petroleum Act 1923* dealing with access to pipelines to be applied to the part of the PNG to Queensland pipeline that is in the adjacent area (Queensland offshore territory). Further, the section states that the pipeline is taken to be a pipeline prescribed under a regulation under section 70A of the *Petroleum Act 1923* (Powers that may be exercised after competitive selection process) and also makes it clear that section 70A applies to the pipeline whether or not the competitive selection process happened or was started before the commencement of this amendment.

The application of section 70A empowers the Minister to agree with the applicant for a pipeline licence about the access principles to be approved for

the pipeline and, for this purpose, this clause provides that the process being used to select a developer of the pipeline is a competitive selection process required for the operation of section 70A unless the Minister is not satisfied the process is competitive.

Clause 22 provides that part 4 of the Act amends the *Gas Act 1965*.

Clause 23 inserts a new section 5A in the *Gas Act 1965* giving a meaning to “supply charge”, being a charge or tariff of a fuel gas supplier for the supply of gas to a consumer as well as a fee or charge incidental to and associated with the supply of gas. This relates to the new sections 29A and 29AA being inserted by clause 25.

Clause 24 amends section 28 (Duty of fuel gas supplier to supply consumers) to make it clear that the gas supplier must respond to a request from a consumer for a supply of gas within a reasonable time of receiving the request.

Clause 25 replaces sections 29 (Application for a supply of fuel gas) and 29A (Security for supply and charges) with three new sections as follows:

Section 29 (Request for fuel gas supply) provides that a consumer who wants a supply of gas from a gas supplier must request the supply in a way approved by the supplier (for example, a written application may be required or, alternatively, a telephone call may be acceptable).

Section 29A (Consumer’s liability for supply charges) makes it clear that a consumer who accepts a supply of gas from a supplier must pay the supplier for all supply charges associated with the supply. The section also provides that if a regulation requires the amount of a supply charge to be approved, the supply charge imposed on the consumer must not be more than the approved amount. The section has retrospective application to put beyond doubt the validity of the various fees and charges incidental to the supply of gas that have been imposed on consumers over many years in accordance with the long-standing accepted practices of gas suppliers. The retrospective obligation is confined to six years past, in line with the period of statutory limitation.

Section 29AA (Security for supply or supply charges) recasts the existing section 29A to make it clear that a gas supplier, in all cases and not just for applications treated as “special”, may require a consumer to give the supplier a security deposit for the charges associated with the gas supply. The section also provides that if a regulation requires the amount of a security deposit to be approved, the security deposit required of the

consumer must not be more than the approved amount. The section has retrospective application to put beyond doubt the validity of “ordinary” security deposits that have been required of consumers over many years in accordance with the long-standing accepted practices of gas suppliers. As existing section 29A provides, the section also allows a gas supplier to require the consumer to commit to taking supply for at least 1 year in a case where a gas main must be extended to provide supply.

Clause 26 omits section 43 (Allocation of fuel gas resources), which prohibits the making of certain contracts for the sale of gas without the approval of the Governor in Council. This section was identified through the 1994 CoAG Free and Fair Trade in Gas process as being potentially anti-competitive. It is considered that removal of the section will not adversely impact on the sufficiency of gas supplies to meet demand in Queensland, in view of the existing reserves and ongoing development as well as the Government’s power to take certain actions to ensure sufficiency of supply contained within section 44 of the *Gas Act 1965*.

Clause 27 amends section 11 of Schedule 2 to make it clear that, where a gas supplier contracts with a local government, authority or other person for the supply of gas, the supplier’s obligation to supply gas to the local government, authority or person is subject to the conditions of that contract.

Clause 28 amends section 11 of Schedule 4 so there is power to make regulations with respect to all types of supply charges, not just gas prices or tariffs.

Schedule makes a number of minor amendments to the *Petroleum Act 1923*, the *Petroleum (Submerged Lands) Act 1982* and the *Gas Act 1965* of an editorial nature, all of which, other than consequential cross-reference changes, have been initiated by Parliamentary Counsel with a view to tidying-up the Acts consistent with present drafting standards.

ATTACHMENT

EXTRACTS FROM OTHER LEGISLATION REFERRED TO IN THE PETROLEUM (SUBMERGED LANDS) ACT 1982

‘PETROLEUM (SUBMERGED LANDS) ACT 1967

(CWLTH)**Interpretation**

5.(1) In this Act, unless the contrary intention appears:

“adjacent area” means an adjacent area in respect of a State or Territory ascertained in accordance with section 5A and **“the adjacent area”** means the adjacent area in respect of the State or Territory concerned;

Adjacent areas

5A.(1) For the purposes of this Act, but subject to subsection (2), the adjacent area in respect of a State other than Western Australia is so much of the area described in Schedule 2 under the heading that refers to that State as comprises waters of the sea that:

- (a) are not within the outer limits of the territorial sea of Australia (including the territorial sea adjacent to any island forming part of Australia); and
- (b) are within the outer limits of the continental shelf.

SCHEDULE 2**AREA THAT INCLUDES THE ADJACENT AREA IN RESPECT OF QUEENSLAND**

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the Northern Territory of Australia and the State of Queensland and runs:

- (1) thence north-easterly along the geodesic to the point of Latitude 15 South, Longitude 138 East;
- (2) thence north along the meridian of Longitude 138 East to its intersection by the parallel of Latitude 14 South;
- (3) thence east along that parallel to its intersection by the meridian of Longitude 139 East;
- (4) thence north along that meridian to its intersection by the parallel

of Latitude 11° South;

- (5) thence north-westerly along the geodesic to the point of Latitude 10 South, Longitude 139 East;
- (6) thence north-westerly along the geodesic to the point of latitude 10 South, Longitude 139 East;
- (7) thence south-easterly along the geodesic to the point of latitude 11 South, Longitude 139 East;
- (8) thence north-easterly along the geodesic to the point of Latitude 10 South, Longitude 140 East;
- (9) thence north-easterly along the geodesic to the point of Latitude 9 South, Longitude 142 East;
- (10) thence north-easterly along the geodesic to the point of Latitude 9 South, Longitude 142 East;
- (11) thence north-easterly along the geodesic to the point of Latitude 9 South, Longitude 142 East;
- (12) thence north-easterly along the geodesic to the point of Latitude 9, Longitude 142 East;
- (13) thence north-easterly along the geodesic to the point of Latitude 9 South, Longitude 143 East;
- (14) thence north-easterly along the geodesic to the point of latitude 9 South, Longitude 143 East;
- (15) thence east along the parallel of Latitude 9 South, to its intersection by the meridian of Longitude 143 East;
- (16) thence north-easterly along the geodesic to the point of latitude 9 South, Longitude 143 East;
- (17) thence north-easterly along the geodesic to the point of Latitude 9 South, Longitude 144 East;
- (19) thence south-easterly along the geodesic to the point of Latitude 9 South, Longitude 144 East;
- (20) thence south-easterly along the geodesic to the point of latitude 12 South, Longitude 146 East;
- (21) thence south-easterly along the geodesic to the point of Latitude 12 South, Longitude 147 East;
- (22) thence south-easterly along the geodesic to the point of Latitude 12 South; Longitude 147 East;

- (23) thence south along the meridian of Latitude 147 East to its intersection by the parallel of Latitude 14ø South;
- (24) thence west along that parallel to its intersection by the meridian of Longitude 146 East;
- (25) thence south along that meridian to its intersection by the parallel of latitude 17 South;
- (26) thence east along that parallel to its intersection by the meridian of Longitude 147 East;
- (27) thence south along that meridian to its intersection by the parallel of latitude 18 South;
- (28) thence east along that parallel to its intersection by the meridian of Longitude 150 East;
- (29) thence south along that meridian to its intersection by the parallel of Latitude 20ø South;
- (30) thence east along that parallel to its intersection by the meridian of Longitude 151 East;
- (31) thence south along that meridian to its intersection by the parallel of Latitude 20 South;
- (32) thence east along that parallel to its intersection by the meridian of Longitude 153 East;
- (33) thence south along that meridian to its intersection by the parallel of Latitude 22 South;
- (34) thence east along that parallel to its intersection by the meridian of Longitude 153 East;
- (35) thence south along that meridian to its intersection by the parallel of latitude 23 South;
- (36) thence east along that parallel to its intersection by the meridian of Longitude 154ø East;
- (37) thence south along that meridian to its intersection by the parallel of Latitude 23 South;
- (38) thence east along that parallel to its intersection by the meridian of Longitude 155 East;
- (39) thence south along that meridian to its intersection by the parallel of Latitude 25ø South;
- (40) thence east along that parallel to its intersection by the meridian of

Longitude 158 East;

- (41) thence south-easterly along the geodesic to the point of Latitude 25 South, Longitude 158 East;
- (42) thence south-easterly along the geodesic to the point of Latitude 26 South, Longitude 163 East;
- (43) thence north-easterly along the geodesic to the point of Latitude 26 South, Longitude 165 East;
- (44) thence south along the meridian of Longitude 165 East, to its intersection by the parallel of Latitude 26 South;
- (45) thence south-westerly along the geodesic to the point of Latitude 27 South, Longitude 154 East;
- (46) thence south-westerly along the geodesic to the point of latitude 27 South, Longitude 154ø East;
- (47) thence south-westerly along the geodesic between the last-mentioned point and the trigonometrical station known as Point Danger near Point Danger to its intersection by the coastline at mean low water; and
- (48) thence along the coastline of the State of Queensland at mean low water to the point of commencement.'