

40TH PARLIAMENT



Report 106

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Petroleum Legislation Amendment Bill 2017

Presented by
Hon Michael Mischin MLC (Chairman)

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Standing Committee on Uniform Legislation and Statutes Review

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REPORT 106

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

PETROLEUM LEGISLATION AMENDMENT BILL 2017

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EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATION FOR THE
REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW
PETROLEUM LEGISLATION AMENDMENT BILL 2017

EXECUTIVE SUMMARY

- 1 On 14 June 2017 the Petroleum Legislation Amendment Bill 2017 (Bill) was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) for consideration and report. The reporting date is 15 August 2017, being the next sitting day after the 45 day period mandated by Standing Order 126.
- 2 The Bill contains common mining code amendments to Western Australia's two principal petroleum Acts – the *Petroleum (Submerged Lands) Act 1982* (PSLA 82) and the *Petroleum and Geothermal Energy Resources Act 1967* (PGERA 67).
- 3 The Bill addresses two main issues:
 - The requirement for apportionment provisions where a petroleum pool extends into two licence areas.
 - Amendments to allow for future maritime boundary changes.
- 4 The Bill comprises 3 Parts and 48 clauses. It is modelled on Commonwealth legislation to give effect to a uniform scheme based on the Offshore Constitutional Settlement agreement of 1979.
- 5 Although an amendment bill, its effects are substantive and significant. They arise from a new agreement between the Commonwealth, the State and the Browse Joint Venture participants.
- 6 The Committee concludes that the Bill is materially consistent with the 2015 Torosa Apportionment Deed of Agreement.
- 7 Under its terms of reference, the Committee is confined to investigating whether the Bill has an impact on the parliamentary sovereignty and law-making powers of the Parliament of Western Australia.

8 The Committee has found that the Bill impacts upon parliamentary sovereignty to the extent that it:

- Requires the State to take certain action within a limited timeframe set by the Executive.
- Provides that the Executive determines the commencement date, if any, of the Bill.
- Does not contain a review clause.

9 Nevertheless, the Committee is of the opinion that the impacts on parliamentary sovereignty have been adequately explained and justified.

FINDINGS AND RECOMMENDATION

10 The findings and recommendation appear in the text at the page numbers indicated:

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Finding 1: The Committee finds that clauses in intergovernmental agreements may impose upon parliamentary sovereignty by requiring the State to take certain action within a timeframe set by the Executive. This may result in the Parliament being pressed to expedite consideration of legislation at the possible cost of adequate scrutiny.

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Finding 2: The Committee finds that notwithstanding that the State of Western Australia has not complied with the conditions precedent in the Torosa Agreement so far as they imposed obligations on the State, the Government has advised that the Torosa Agreement will not fail. However, it would be prudent for the Government to prioritise Parliamentary consideration of the Bill with a view to its passage, should the Parliament agree to it, as soon as practicable.

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Finding 3: The Committee finds that clause 2(b) of the Petroleum Legislation Amendment Bill 2017, in providing that the Executive determines commencement dates, erodes the Western Australian Parliament's sovereignty and law-making powers.

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Finding 4: The Committee finds that there were sound reasons for leaving the proclamation of the Bill to be determined by the Executive, but that proclamation will be sought at the earliest meeting of the Executive Council following passage of the Bill.

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Finding 5: The Committee finds that, notwithstanding an absence of review provisions in the Bill, effectiveness of the operation of the amendments made by the Bill will be assessed in the course of a more general and comprehensive review by the Government of State petroleum and geothermal legislation.

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Recommendation 1: The Committee recommends that the Legislative Council note the Committee's findings during consideration of the Petroleum Legislation Amendment Bill 2017.

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

PETROLEUM LEGISLATION AMENDMENT BILL 2017

1 INTRODUCTION

- 1.1 On 14 June 2017 the Petroleum Legislation Amendment Bill 2017 (Bill) was referred to the Standing Committee on Uniform Legislation and Statutes Review (Committee) for consideration and report. The reporting date is 15 August 2017, being the next sitting day after the 45 day period mandated by Standing Order 126.

2 INQUIRY PROCEDURE

- 2.1 The Committee posted the inquiry on its website at [Uniform Legislation Committee homepage](#). The general public was immediately notified of the referral via social media.¹ Given the technical nature of this Bill and the Committee's terms of reference, the Committee considered that any broader advertising or invitation for submissions from the public was neither necessary nor warranted.

3 SUPPORTING DOCUMENTS

- 3.1 The Committee received copies of the Bill, the Second Reading Speech and the Explanatory Memorandum when the Bill was introduced into the Legislative Council. Hon Bill Johnson MLA, Minister for Mines and Petroleum (Minister), provided the Committee with the following documentation and information pursuant to Ministerial Office Memorandum MM2007/01:

- A statement as to the timetable for the implementation of the Bill.
- A statement of the Government's policy on the Bill.
- A copy of the Torosa Apportionment Deed of Agreement (Torosa Agreement) naming parties to the Deed as the Commonwealth, the State of Western Australia, BP Developments Australia Pty Ltd, Japan Australia LNG (MIMI Browse) Pty Ltd, Petrochina International Investments (Australia) Pty Ltd, Shell Australia Pty Ltd and Woodside Browse Pty Ltd.²
- A statement outlining the advantages and disadvantages to the State of Western Australia as a party to the Torosa Agreement.

¹ Legislative Council, 14 June 2017, retrieved from <<https://twitter.com/WALegCouncil/status/874914346614370307>>

² Collectively BP Developments Australia Pty Ltd, Japan Australia LNG (MIMI Browse) Pty Ltd, Petrochina International Investments (Australia) Pty Ltd, Shell Australia Pty Ltd and Woodside Browse Pty Ltd are known as the 'Browse Joint Venture'.

- An explanation of relevant constitutional issues in a June 1979 agreement between the Commonwealth and the States called the Offshore Constitutional Settlement, which endeavours to maintain, as far as possible, a common petroleum mining code for the territorial seas, and a summary of its significant features.
- An explanation as to why the State of Western Australia cannot opt out of the terms of the Offshore Constitutional Settlement because of the Preamble in the *Petroleum (Submerged Lands) Act 1982* to ‘*maintain as far as practicable, common principles, rules and practices in the regulation and control of the exploration for and the exploitation of the petroleum resources of all the submerged lands ... that are on the seaward side of the inner limits of the territorial sea of Australia*’.
- The mechanisms by which the Bill, once enacted, can be amended.

3.2 Standing Order 126(5) states:

The Member in charge of a Bill referred to the Committee shall ensure that all documentation required by the Committee is provided to the Committee within 3 working days after referral....

3.3 The documentation referred to above was forwarded to the Committee on 19 June 2017, three working days after referral. The Committee extends its appreciation to the Minister for the timely provision of the supporting documentation and information. Delay in the provision of information to the Committee can hinder the Committee’s inquiry into a bill and result in inconvenience to the Legislative Council.

4 BACKGROUND TO THE BILL

4.1 Western Australia’s offshore legislative arrangements were set out in the Committee’s Report Number 47 – *Petroleum and Energy Legislation Amendment Bill 2009* tabled in 2010. That report includes information on the ‘territorial sea’ and other offshore waters; a 1967 Agreement between the Commonwealth, the States and the Northern Territory in respect of the regulation of offshore petroleum resources; and the 1979 Offshore Constitutional Settlement between the Commonwealth, the States and the Northern Territory.³

4.2 For convenience, the relevant pages of the Committee’s Report 47 are attached as Appendix 1.

³ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 47, *Petroleum and Energy Legislation Amendment Bill 2009*, 22 April 2010, pp 13-17.

5 THE INTERGOVERNMENTAL AGREEMENTS

1979 Offshore Constitutional Settlement agreement

- 5.1 The Offshore Constitutional Settlement agreement was the outcome of negotiations between the Commonwealth and the States following the 1975 High Court of Australia decision in the *Seas and Submerged Lands Case*.⁴ That case held that the Commonwealth has sovereignty over waters to the edge of the ‘territorial sea’, including the seabed beneath.⁵
- 5.2 While Australia has sovereignty over the territorial sea, which extends 12 nautical miles from the ‘territorial sea baseline’ (the mean low water mark), pursuant to the Offshore Constitutional Settlement the State of Western Australia has jurisdiction over ‘coastal waters’ three nautical miles from the baseline.
- 5.3 The Offshore Constitutional Settlement is an agreement between the Commonwealth and the States to, among other things, endeavour to maintain, as far as practicable, a common (petroleum) mining code for the territorial sea.⁶ The Offshore Constitutional Settlement is not contained in a single document, but is found in the *Petroleum (Submerged Lands) Act 1982 (WA)* (PSLA 82), including amendments to existing legislation, which implemented it. The PSLA 82 is the primary piece of legislation implementing the agreement in Western Australia in so far as that intergovernmental agreement relates to petroleum and minerals.
- 5.4 The Minister described the following constitutional issues as relevant regarding the Offshore Constitutional Settlement:
- The States and the Northern Territory have title to all waters landward of the three nautical mile limit and have the same power to legislate over these coastal waters as they do over their land territory.
 - Laws on both sides of the three mile jurisdictional boundary are identical in structure, thereby continuing to provide a high degree of uniformity and consistency in administration of the offshore petroleum regime.
 - Within coastal waters, executive powers are vested in the State or Territory Minister.

⁴ *New South Wales v Commonwealth* (1975) 135 CLR 337.

⁵ The Settlement also includes arrangements for managing oil, gas and other seabed minerals, the Great Barrier Reef Marine Park, other marine parks, historic shipwrecks, shipping, marine pollution and fishing. In general, the States have responsibility for areas up to three nautical miles from the territorial sea baseline, which are termed ‘coastal waters’.

⁶ Hon Bill Johnston MLA, Minister for Mines and Petroleum, Letter, 19 June 2017.

- Beyond the coastal waters, cooperative governance of the Commonwealth's legislation vests executive powers jointly in Commonwealth and State/Territory Ministers (the 'Joint Authority' in respect of each adjacent area) on all major decisions affecting petroleum exploration and development, with the Commonwealth Minister's view to prevail in the event of disagreement.⁷

5.5 With regard to petroleum exploration and production, the Commonwealth, the States and the Northern Territory have agreed that:

Commonwealth offshore petroleum legislation should be limited to the area that is outside the coastal waters of the States and the Northern Territory; and

For this purpose, the outer limits of State and Northern Territory coastal waters should start three nautical miles from the baseline of the territorial sea; and

The States and the Northern Territory should share, in the manner provided by [the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)], in the administration of the Commonwealth offshore petroleum legislation; and

States and Northern Territory offshore petroleum legislation should apply to State and Northern Territory coastal waters; and

The Commonwealth, the States and the Northern Territory should try to maintain, as far as practicable, common principles, rules and practices in regulating and controlling the exploration for, and exploitation of, offshore petroleum beyond the baseline of Australia's territorial sea.⁸

5.6 It is this last point that underpins the changes to the PSLA 82 in the Bill and provides the model for the amendments to the *Petroleum and Geothermal Energy Resources Act 1967 (WA) (PGERA) 67.*⁹

5.7 The Offshore Constitutional Settlement preceded the Ministerial Council on Mineral and Petroleum Resources which was established in June 2001. The amendments in the Bill have their origins in the State's commitment to the Settlement and the State's

⁷ *ibid.*

⁸ *ibid.*

⁹ *ibid.*

long-standing policy to follow the offshore legislation model in its onshore legislation.¹⁰

2015 Torosa Apportionment Deed of Agreement

- 5.8 Negotiations leading to the Torosa Agreement between the State, the Commonwealth and the Browse Joint Venture participants¹¹, to agree on the apportionment of the Torosa gas field, commenced in December 2014. Negotiations concluded in June 2015 and the Torosa Agreement was signed by Commonwealth and State Ministers on 22 July 2015.¹²
- 5.9 A copy of the Torosa Agreement provided to the Committee by the then Department of Mines and Petroleum is attached as Appendix 2.
- 5.10 The Committee draws the Legislative Council's attention to clause 3 of the Torosa Agreement, which it considers affects parliamentary sovereignty and the Parliament's law-making powers.

Clause 3 – Conditions Precedent

- 5.11 Clause 3.1 of the Torosa Agreement provides that it will not commence until certain 'conditions precedent' contained in it have been satisfied. These include, among other things, the Western Australian Minister, as one of the seven signatories to the Torosa Agreement, notifying the other parties of the '*commencement of an enactment*' to make provision for agreements entered into pursuant to the PSLA 82 and the PGERA 67 to apply to certain petroleum pools.¹³
- 5.12 This and other conditions precedent concerning the commencement of a relevant enactment¹⁴ were required to be satisfied within 24 months of the date of the Torosa Agreement (22 July 2015).
- 5.13 In order to achieve this deadline, the Bill needed to pass through the Parliament before the end of the 2017 Autumn parliamentary session. The last sitting day of that session was 29 June 2017.
- 5.14 The State has encountered difficulties in complying with that condition precedent. Among other things, Parliament rose in November 2016 and was prorogued for the State election before an earlier version of the Bill introduced into the Legislative

¹⁰ *ibid.*

¹¹ Collectively: BP Developments Australia Pty Ltd, Japan Australia LNG (MIMI Browse) Pty Ltd, Petrochina International Investments (Australia) Pty Ltd, Shell Australia Pty Ltd and Woodside Browse Pty Ltd.

¹² Hon Bill Johnston MLA, Minister for Mines and Petroleum, Letter, 19 June 2017.

¹³ Torosa Apportionment Deed of Agreement, clause 3.2(a)(i).

¹⁴ Torosa Apportionment Deed of Agreement, clause 3.2(a)(ii) and (iii).

Assembly of the Thirty Ninth Parliament could be debated and passed. Parliament did not reconvene until May 2017 and, as noted, this Bill was referred to the Committee on 14 June 2017 and must still pass through both Houses of Parliament.

- 5.15 The Committee observes that, in general, this type of clause in an intergovernmental agreement can impose upon parliamentary sovereignty by pressing the Parliament to enact legislation within a timeframe set by the Executive, and its being asked to expedite consideration of legislation at the possible cost of adequate scrutiny.
- 5.16 In this case, the Committee notes the Minister's advice that the Torosa Agreement 'will not fall over if the Bill is not passed by 30 June 2017'.¹⁵
- 5.17 Nevertheless, in order to show that the State is making its best efforts to comply with its obligations under the conditions precedent, the Government will need to prioritise the consideration of the Bill by the Parliament with a view to its passage as soon as practicable.
- 5.18 Accordingly the Committee draws the Legislative Council's attention to the need for timely consideration of the Bill if it is of the view that the Torosa Agreement should be preserved.

Finding 1: The Committee finds that clauses in intergovernmental agreements may impose upon parliamentary sovereignty by requiring the State to take certain action within a timeframe set by the Executive. This may result in the Parliament being pressed to expedite consideration of legislation at the possible cost of adequate scrutiny.

Finding 2: The Committee finds that notwithstanding that the State of Western Australia has not complied with the conditions precedent in the Torosa Agreement so far as they imposed obligations on the State, the Government has advised that the Torosa Agreement will not fail. However, it would be prudent for the Government to prioritise Parliamentary consideration of the Bill with a view to its passage, should the Parliament agree to it, as soon as practicable.

6 OVERVIEW OF THE BILL

- 6.1 The Bill contains 'common mining code' amendments to Western Australia's two principal petroleum Acts – the PSLA 82 and the PGERA 67.¹⁶

¹⁵ Hon Bill Johnston MLA, Minister for Mines and Petroleum, Letter, 19 June 2017.

¹⁶ *ibid.*

- 6.2 The amendments in the Bill are a requirement of the Offshore Constitutional Settlement agreement for the PSLA 82. Western Australia has also extended that common mining code to the PGERA 67 for its onshore petroleum legislation.¹⁷
- 6.3 Parliament has already by virtue of its passage of the PSLA 82 and PGERA 67 endorsed the policy expressed by the Offshore Constitutional Settlement to ‘endeavour to maintain, as far as practicable, common principles, rules and practices in the regulation and control of the exploration for and the exploitation of the petroleum resources’¹⁸ of submerged lands within the territorial sea and coastal waters.
- 6.4 The Committee is confined by its terms of reference to consider parliamentary sovereignty and law-making issues that may be raised in the Bill. Any such issues arising from the Offshore Constitutional Settlement and existing legislation have not been considered.
- 6.5 The Bill addresses two main issues:
- The requirement for apportionment provisions where a petroleum pool (‘a naturally occurring discrete accumulation of petroleum’¹⁹) extends into two licence areas.
 - Amendments to allow for future maritime boundary changes.
- 6.6 The Bill also makes minor amendments to the PSLA 82 to remove references to the term ‘Designated Authority’, which has been redundant since 2012 after the Commonwealth introduced the term *National Offshore Petroleum Titles Administrator*.²⁰

Petroleum pool apportionment amendments

- 6.7 According to the second reading speech, the need to provide a more practical mechanism for apportioning petroleum from a resource shared between the State and Commonwealth jurisdictions first arose in 2015.²¹

¹⁷ *ibid.*

¹⁸ *Petroleum (Submerged Lands) Act 1982* Preamble.

¹⁹ *Petroleum (Submerged Lands) Act 1982* s 4(1) and *Petroleum and Geothermal Energy Resources Act 1967* s 5(1).

²⁰ Petroleum Legislation Amendment Bill 2017, *Explanatory Memorandum*, Legislative Council, p 3. The National Offshore Petroleum Titles Administrator is responsible for the day-to-day administration of petroleum and greenhouse gas titles in Commonwealth waters in Australia.

²¹ Hon Alannah MacTiernan MLC, Minister for Regional Development representing the Minister for Mines and Petroleum, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 14 June 2017, p 838.

6.8 The recent discovery of small islands in the Scott Reef area by Geoscience Australia²² has led to a revision of the boundaries between Western Australia and Commonwealth jurisdictions, resulting in the Western Australian administered area increasing in size.²³

6.9 The circumstances were conveniently summarised in a report of *The West Australian* newspaper on 4 March 2015 as follows:

Three tiny rocky outcrops discovered 300km off WA's north-west coast have become the world's most valuable real estate, worth at least \$5 billion to State coffers in gas royalties.

Each no bigger than a dining table, their chance discovery on North Scott Reef during a satellite sweep of Australia's territorial seas last year has prompted a radical redrawing of maritime boundaries.

Though no more than 1m above sea level at high tide, they are considered "islands", meaning much of Scott Reef and nearby Seringapatam Reef belong to WA rather than the Commonwealth.

*Crucially, the islands sit directly above the lucrative Torosa gas field that dominates the massive Browse resource.*²⁴

6.10 Negotiations commenced for an apportionment agreement for the Torosa petroleum pool in the Browse retention lease areas that straddle the boundary between Commonwealth and Western Australian offshore waters.²⁵

6.11 According to the second reading speech the 2015 negotiations were triggered by a reassessment in 2014 of the maritime boundary between Commonwealth and Western Australian waters in the vicinity of the Torosa resource.²⁶

6.12 All parties were concerned to reach an understanding of the relative proportions of the resource underlying Commonwealth and State jurisdiction.²⁷ The Commonwealth and Western Australia wished to establish their likely future revenue streams from the

²² The Commonwealth agency Geoscience Australia has an ongoing responsibility to define the limits of Australia's maritime jurisdiction.

²³ Government of Western Australia, Department of Mines and Petroleum, *Browse Basin*. Available at: <<http://www.dmp.wa.gov.au/Petroleum/Browse-Basin-10988.aspx>>. Viewed 27 June 2017.

²⁴ Andrew Probyn, Federal Political Editor, Golden rocks worth \$5b to WA, *Media Statement, The West Australian*, Perth, 4 March 2015. The Browse resources are located in the Browse Basin, located offshore approximately 425 km north of Broome in Western Australia.

²⁵ Hon Alannah MacTiernan MLC, Minister for Regional Development representing the Minister for Mines and Petroleum, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 14 June 2017, p 838.

²⁶ *ibid.*

²⁷ *ibid.*

project, and the titleholders wished to establish their likely future State royalty and Commonwealth tax exposure.²⁸

- 6.13 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.²⁹
- 6.14 The requirements of the current legislation could not be met with any degree of certainty at this early stage of the Torosa project, given the very large and complex nature of the resource.³⁰ The second reading speech explained that while current geological knowledge indicated that the entire resource was contained within a single pool, it was 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.³¹
- 6.15 If that occurred, the agreement would fail and the benefits to all parties of the agreed apportionment would be lost.³² The Bill proposes to address this problem.
- 6.16 The amendments proposed 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.³³
- 6.17 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.³⁴
- 6.18 In her second reading speech introducing the Bill, the Minister representing the Minister for Mines and Petroleum said:

*These amendments will therefore ensure greater certainty and flexibility in the development of an apportionment agreement to support future investment decisions.*³⁵

28 *ibid.*

29 *ibid.*, pp 838-9.

30 *ibid.*, p 839.

31 *ibid.*

32 *ibid.*

33 *ibid.*

34 *ibid.*

35 *ibid.*

- 6.19 The amendments to the State apportionment provisions in the Bill have been developed based on changes to the Commonwealth's petroleum legislation.³⁶
- 6.20 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.³⁷

Maritime boundary amendments

- 6.21 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.³⁸
- 6.22 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.³⁹
- 6.23 To maintain certainty for offshore petroleum titleholders, both State and Commonwealth petroleum legislation contains delaying provisions which postpone the effect of the change in jurisdictional boundary until the affected title ceases to be in force.⁴⁰
- 6.24 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.⁴¹
- 6.25 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

³⁶ *ibid.* The Commonwealth legislation is section 54 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth).

³⁷ Hon Alannah MacTiernan MLC, Minister for Regional Development representing the Minister for Mines and Petroleum, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 14 June 2017, p 839.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*

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.⁴² It was a stand-alone Bill that dealt only with the changes to the maritime boundaries in the Scott Reef and Seringapatam Reef areas.⁴³

- 6.26 If the situation was 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.⁴⁴
- 6.27 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.⁴⁵
- 6.28 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.⁴⁶
- 6.29 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.⁴⁷

7 THE PETROLEUM LEGISLATION AMENDMENT BILL 2017

Structure of the Bill

7.1 The Bill comprises three Parts and 48 clauses:

- Part 1 contains preliminary clauses such as the commencement clause.
- Part 2 amends the *Petroleum and Geothermal Energy Resources Act 1967*.
- Part 3 amends the *Petroleum (Submerged Lands) Act 1982*.

⁴² *ibid.*

⁴³ Hon Bill Johnston MLA, Minister for Mines and Petroleum, Letter, 19 June 2017.

⁴⁴ Hon Alannah MacTiernan MLC, Minister for Regional Development representing the Minister for Mines and Petroleum, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 14 June 2017, p 839.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

7.2 The Minister explained that the Bill is modelled on the following Commonwealth Bills:

- the *Offshore Petroleum and Greenhouse Gas Storage Amendments (Miscellaneous Matters) Bill 2015*
- the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Bill 2016*.⁴⁸

7.3 ‘Model’ legislation, also known as mirror legislation, involves the enactment of uniform legislation in Western Australia with local variations as necessary to achieve the agreed uniform national policy when legislation forms part of the local law. Former President of the Legislative Council, Hon Barry House MLC, described this structure as, in theory, the least potentially disadvantageous structure for a State from a legislative sovereignty viewpoint because it is the ‘*only structure where the legislation and any amendments are always within the control of each jurisdiction’s own Parliament, as they each implement their own version of an agreed model law.*’⁴⁹

Clauses that may impinge upon Parliamentary sovereignty and law-making powers

Clause 2 – Commencement

7.4 Clause 2(a) of the Bill provides that Part 1 will come into operation on the day of the Royal Assent and clause 2(b) provides that the rest of the Act will come into operation on a day or different days fixed by proclamation.⁵⁰ This is an Executive action.

7.5 This affects the Parliament’s sovereignty as the commencement dates will be controlled by the Executive. There is nothing in the Bill that requires proclamation within a specified time. It is conceivable that a proclamation may never be made and the will of the Parliament, in passing the Bill, would be frustrated.

7.6 The Committee concedes that a failure to proclaim is unlikely in this case due to the ‘condition precedent’ imperatives in clause 3.2(a) of the Torosa Agreement.

7.7 Nevertheless, the Committee takes the view that Parliament should be responsible for determining when laws are to come into force.

⁴⁸ Hon Bill Johnston MLA, Minister for Mines and Petroleum, Letter, 19 June 2017.

⁴⁹ When a Nod and a Wink Amounts to an Intergovernmental Agreement. Issues faced by the Legislative Council of Western Australia in the identification and scrutiny of uniform legislation. A paper presented by former President of the Legislative Council, Hon Barry House MLC, Parliament of Western Australia, Darwin, July 2010.

⁵⁰ ‘proclamation’ means *a proclamation made by the Governor [‘with the advice and consent of the Executive Council’] and published in the Gazette*: *Interpretation Act 1984* ss 5 and 60.

- 7.8 The Explanatory Memorandum merely repeats the effect of the provision without any explanation as to why the provisions commence on a day or days fixed by proclamation.
- 7.9 The Committee raised the issue with the Minister by letter dated 21 June 2017.
- 7.10 He responded by letter dated 26 June 2017 to advise that commencement by proclamation was stipulated so that the commencement of the State provisions could be linked with the commencement of the related Commonwealth provisions.⁵¹ The Minister stated that:
- With the passage of the [Commonwealth] Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Bill 2017 in February this year, this is no longer a consideration. Therefore commencement the day after Royal Assent would be acceptable.*⁵²
- 7.11 The Minister advised that proclamation would be sought at the earliest meeting of the Executive Council following passage of the Bill.⁵³

Committee comment

- 7.12 The Committee is of the view that the lack of express commencement date or dates for the majority of clauses in this Bill is an erosion of the Western Australian Parliament's sovereignty and law-making powers.
- 7.13 However, the Committee accepts that, in all the circumstances, there were sound reasons for leaving the proclamation of the Bill to be determined by the Executive. The Committee notes the Government's advice that proclamation will be sought at the earliest meeting of the Executive Council following passage of the Bill.

Finding 3: The Committee finds that clause 2(b) of the Petroleum Legislation Amendment Bill 2017, in providing that the Executive determines commencement dates, erodes the Western Australian Parliament's sovereignty and law-making powers.

⁵¹ Hon Bill Johnston MLA, Minister for Mines and Petroleum, Letter, 26 June 2017.

⁵² *ibid.*

⁵³ *ibid.*

Finding 4: The Committee finds that there were sound reasons for leaving the proclamation of the Bill to be determined by the Executive, but that proclamation will be sought at the earliest meeting of the Executive Council following passage of the Bill.

Absence of a review clause

- 7.14 The Bill lacks a review clause.
- 7.15 Thornton defines a review clause as a clause ‘*[t]he purpose of [which] is to oblige the responsible Minister or some other identified authority or person to review the operation of legislation after a specified period and to report to Parliament with appropriate recommendations.*’⁵⁴
- 7.16 Given that the Bill introduces a significant number of substantial amendments to two Western Australian Acts, it is arguable there should be legislative provisions for a review of the operation of the amendments, including whether they have been effective in carrying out the purpose of the Bill.
- 7.17 The Committee has previously commented on the lack of a review clause in uniform legislation. Review clauses are desirable as a mechanism for accountability to Parliament and to enable oversight of the operation of legislation.⁵⁵
- 7.18 The Committee asked the Minister about the possibility of the Bill being amended to include provisions in the PSLA 82 and the PGERA 67 for a review of the operation of the amendments effected by the Bill.
- 7.19 The Minister advised that:

*Whilst there are no plans to undertake a review of the amendments effected by the Bill, the Department of Mines and Petroleum (the ‘Department’) has commenced a major legislative reform project titled the ‘Petroleum 2020’ project. The aims of this project are to modernise and streamline the State’s petroleum and geothermal legislation.*⁵⁶

⁵⁴ GC Thornton, *Legislative Drafting*, (4th edition, 1996) Butterworths, London, p 216.

⁵⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 91, *Rail Safety National Law (WA) Bill 2014*, 24 March 2015, p 24. See also Committee Report 92, *Directors’ Liability Reform Bill 2015*, 21 April 2015, pp 14-16, Report 91, *Business Names (Commonwealth Powers) Bill 2011*, 6 March 2012, pp 20-21 and Committee Report 96, *Co-operatives Amendment Bill 2015*, 25 February 2016, pp 17-18.

⁵⁶ Hon Bill Johnston MLA, Minister for Mines and Petroleum, Letter, 26 June 2017.

7.20 He stated that:

The primary focus of the Petroleum 2020 project will be to amalgamate the current three main Petroleum Acts and the two Registration Fees Acts into a single common 'Petroleum Act' to cover all petroleum and geothermal operations conducted in Western Australia out to the Commonwealth/State boundary.⁵⁷

7.21 Importantly, the Minister further advised that:

During the life of the project all sections of the three main petroleum acts [sic] will be reviewed as part of the amalgamation process to assess their relevance in the new petroleum legislation.⁵⁸

7.22 The Committee notes the Minister's advice that it would be difficult to undertake a review of the operation of the amendments in isolation and that, given the wider review of petroleum legislation being undertaken, the Department is of the view that a specific review provision is not required.⁵⁹

Finding 5: The Committee finds that, notwithstanding an absence of review provisions in the Bill, effectiveness of the operation of the amendments made by the Bill will be assessed in the course of a more general and comprehensive review by the Government of State petroleum and geothermal legislation.

8 CONCLUSIONS

8.1 The Committee concludes that the Bill is materially consistent with the 2015 Torosa Agreement.

8.2 Under its terms of reference, the Committee is confined to investigating whether the Bill has an impact on the parliamentary sovereignty and law-making powers of the Parliament of Western Australia. Notwithstanding that some issues have been identified that may affect parliamentary sovereignty and Parliament's law-making powers as identified in this report, the Committee is of the opinion that they have been adequately explained and justified.

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ *ibid.*

Recommendation 1: The Committee recommends that the Legislative Council note the Committee's findings during consideration of the Petroleum Legislation Amendment Bill 2017.



**Hon Michael Mischin MLC
Chairman**

15 August 2017

APPENDIX 1

EXTRACT FROM REPORT 47

FORTY-SEVENTH REPORT

- FLP 3 - *Does the Bill allow delegation of administrative power only in appropriate cases and to appropriate persons? The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.*
- FLP 7 - *Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?*
- FLP 10 - *Does the Bill have sufficient regard to Aboriginal tradition and Island custom?*
- FLP 11 - *Is the Bill unambiguous and drafted in a sufficiently clear and precise way?*
- FLP 12 - *Does the Bill allow delegation of legislative power only in appropriate cases and to appropriate persons?*
- FLP 15 - *Does the Bill affect Parliamentary privilege in any manner?*

6.19 The FLPs may inter-relate. For example, in raising questions as to whether particular provisions of the Bill were drafted in a sufficiently clear way (FLP 11), the response of the DMP on occasion acknowledged that the drafting was unclear but asserted that the lack of clarity should be maintained for uniformity with equivalent Commonwealth provisions (FLP 15).²¹

7 BACKGROUND TO THE BILL

Offshore legislative arrangements

Territorial Sea and other offshore waters

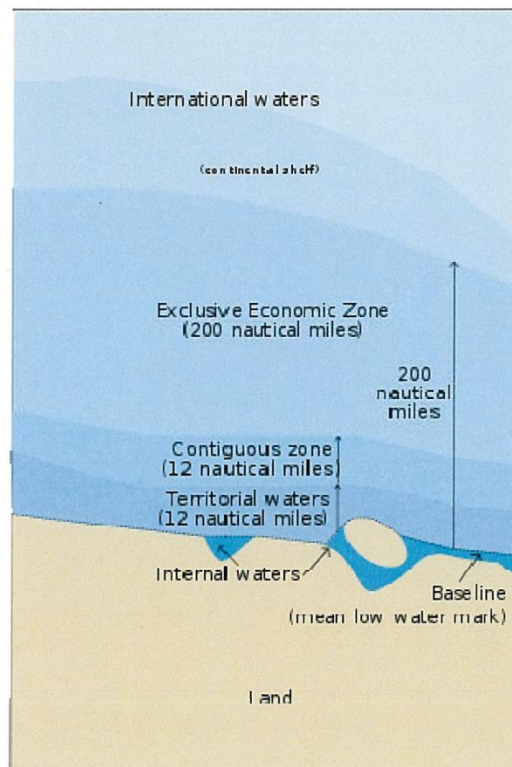
7.1 A series of four international Conventions was negotiated in 1958 to provide ground rules in respect of the competition for the resources of the sea. These established that

²¹ On the question of the retention of a deeming provision in the definition of “*adjacent area*” (section 5(1) of the *Petroleum (Submerged Lands) Act 1982* - that the territorial sea is three nautical miles (when in fact it is twelve) - “*I think the answer to this goes back to the offshore constitutional settlement of 1979, which led ultimately, in 1982, to the drafting of the Petroleum (Submerged Lands) Act 1982. In the preamble to the 1982 legislation ... it requires the states and territories to follow, as close as practicable, the rules, regulations and layout, basically, of the commonwealth legislation. Given the history of uncertainty as to the breadth of the territorial sea and the commonwealth’s overarching mandate in offshore matters, it has always been seen to be prudent that the commonwealth drafting style has been adopted*”. (Mr Colin Harvey, Principal Legislation and Policy Officer, Petroleum and Environment Division, Department of Mines and Petroleum, *Transcript of Evidence*, 9 February 2010, p6).

a nation has full and exclusive sovereignty over its 'territorial sea'.²² There are also, in extending distances from the shore and descending levels of sovereignty: a contiguous zone over which some control is permissible; an economic zone; and rights associated with the extent of the continental shelf.²³

7.2 There may also be waters between the coast of a nation and the 'territorial sea baseline', from which 'baseline' the 'territorial sea', 'contiguous zone' and 'economic zone' are calculated. The territorial sea 'baseline' is generally the low-water mark (low-tide) but where there are bays, a peninsula or islands close to the coast, straight lines may be used to join appropriate points.²⁴

7.3 The different areas of the waters surrounding a nation are illustrated below:



²² Article 2.3 of the United Nations Convention on the Law of the Sea 1982 provides: "The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law". There are some requirements in international law, for example, to recognise the right of innocent passage (Article 17 of United Nations Convention on the Law of the Sea 1982).

²³ See Commonwealth of Australia, Attorney-General's Department website http://www.ag.gov.au/www.agd/agd.nsf/Page/InternationalLaw_AustraliasMaritimeBoundariesandZones, (viewed on 22 January 2010) for further explanation. See also Convention on the Continental Shelf 1958.

²⁴ Convention on the Territorial Sea and Contiguous Zone 1958 and Convention on the Law of the Sea 1982.

- 7.4 Traditionally, the States asserted sovereignty over territorial waters of 3 nautical miles, as well as those waters falling between the coast and the territorial sea baseline. However, prior to 1975, there was considerable uncertainty surrounding the constitutional division of powers in respect of Australia's territorial sea.²⁵
- 7.5 There was, until the 1982 United Nations Convention on the Law of the Sea, uncertainty in international law as to the breadth of the territorial sea. Article 3 of that Convention, (which came into effect in 1994) provides that a nation may claim a territorial sea of up to 12 nautical miles. Australia declared its territorial sea to be 12 miles in 1990.

1967 Agreement and constitutional uncertainty

- 7.6 The Commonwealth, the States and the Northern Territory entered into an agreement in 1967 in respect of the regulation of offshore petroleum resources (**1967 Agreement**),²⁶ which was intended to establish national offshore petroleum regulation regardless of which government had legislative power over the territorial sea of Australia²⁷ (at that time 3 nautical miles).
- 7.7 The 1967 Agreement resulted in the *Petroleum (Submerged Lands) Act 1967* (Cwlth) and mirror legislation in each State and the Northern Territory.²⁸ The 1967 Agreement agreed:

to the enactment by the Commonwealth and each State of a common petroleum mining code for the 'adjacent area' of each State to be administered by a 'Designated Authority'.²⁹

- 7.8 However, the Commonwealth was of the view that the constitutional uncertainty as to sovereignty required resolution.³⁰ In 1973 the Commonwealth asserted sovereignty over the continental shelf, territorial sea and internal waters outside state limits as at

²⁵ Commonwealth of Australia, Department of Industry, Science and Resources, Offshore Safety and Security, Petroleum and Electricity Division, Australian Offshore Petroleum Safety Case Review, *Future Arrangements for the Regulation of Offshore Petroleum Safety*, August 2001, p20.

²⁶ 'Agreement in relation to the Exploration for, and the Exploitation of, the Petroleum Resources and certain other Resources, of the Continental Shelf of Australia and of certain Territories of the Commonwealth and of certain other Submerged Land', (*Halsbury's Laws of Australia*, LexisNexis Butterworths online, (viewed on June 13 2005), paragraph 170-4010).

²⁷ *Halsbury's Laws of Australia*, LexisNexis Butterworths online, (viewed on June 13 2005), paragraph 170-4010.

²⁸ *Halsbury's Laws of Australia*, LexisNexis Butterworths online, (viewed on June 13 2005), paragraph 170-4010.

²⁹ Commonwealth of Australia, Attorney-General's Department, *Offshore constitutional settlement: A milestone in co-operative federalism*, Australian Government Publishing Service, Canberra, 1980, pp2-4.

³⁰ *Ibid*, p4.

Uniform Legislation and Statutes Review Committee

1901 by enacting the *Seas and Submerged Lands Act 1973* (Cwlth).³¹ The States challenged that assertion but, in 1975, the High Court upheld the Commonwealth's right to legislate in respect of those waters.³² The States, nonetheless, retained some legislative rights.

7.9 As a result of the 1975 High Court decision, the 1967 Agreement, and the legislation giving that agreement effect, was reconsidered.

1979 Offshore Constitutional Settlement IGA

7.10 In June 1979 the Commonwealth, the States and the Northern Territory entered into the Offshore Settlement IGA. The Offshore Settlement IGA is not set out in one single document but is found in the legislation which implements it.³³ The Submerged Lands Act is the major piece of legislation implementing the agreement in Western Australia in so far as that intergovernmental agreement relates to petroleum and minerals.

7.11 The preamble to the Submerged Lands Act recites the Offshore Settlement IGA in so far as it relates to petroleum resources as follows:

- the Commonwealth's legislation is limited to petroleum resources in respect of lands that are beneath the waters beyond the outer limits of the territorial sea, "*being outer limits based, unless and until otherwise agreed, on the breadth of that sea being 3 nautical miles*";
- the States and the Northern Territory legislation is to apply to petroleum resources of submerged land in the "*area adjacent to the State*" that is landward of the waters regulated by the Commonwealth; and
- the Commonwealth, States and the Northern Territory agree that they should try to maintain, so far as practicable, common principles, rules and practices in regulating and controlling the exploration for, and exploitation of, offshore petroleum beyond the baseline of Australia's territorial sea (known as the common mining code).³⁴

³¹ Ibid and *Halsbury's Laws of Australia*, Lexis Nexis Butterworths online, (viewed on 13 June 2005), paragraph 170-4010.

³² *New South Wales v the Commonwealth* (1975) 135 CLR 337 (known as the Seas and Submerged Lands Act case).

³³ Letter from Hon Norman Moore MLC, Minister for Mines and Petroleum, 11 December 2009, Appendix p1.

³⁴ Ibid, Appendix p2 and Hon Norman Moore MLC, Minister for Mines and Petroleum, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 26 November 2009, p9858.

- 7.12 Although Australia proclaimed its territorial sea to be 12 nautical miles in 1990,³⁵ the States' area of legislative power remains confined to the 3 nautical miles agreed in the Offshore Settlement IGA.
- 7.13 The Offshore Settlement IGA also confers power for the States to legislate outside the "adjacent area" in respect of port-type facilities and underground mining extending from land within the State and stipulates that regulation for offshore mining for minerals other than petroleum will be the same as that for petroleum.³⁶

Amendments to the common mining code

- 7.14 The bulk of the Bill proposes amendments to reflect the following amending Acts in respect of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (as the principal Act is now known) (**Commonwealth Act**):
- the *Petroleum (Submerged Lands) Legislation Amendment Act (No. 1) 2000* (Cwlth);
 - the *Petroleum (Submerged Lands) Legislation Amendment Act 2001* (Cwlth); and
 - the *Petroleum (Submerged Lands) Amendment Act 2003* (Cwlth).
- 7.15 As reported above, the Bill has been in development for some years. The desire for uniformity with legislation passed by the Commonwealth some years previously appears to have led to the proposal that clauses 187(1), (2), (3), (4), (7), (9) and (10) and clauses 190(1), (2) and (6) have significant retrospective effect (see clause 2(b) and (c) of the Bill). This is discussed below.

Intergovernmental agreements in respect of carbon storage

- 7.16 The COAG and MCMPR intergovernmental agreements to expedite the introduction of nationally consistent legislation in respect of carbon storage, in accordance with the CCS Principles, have been noted above. The broader context for these intergovernmental agreements is the decisions by various Australian governments to impose a cost on carbon dioxide emissions and identification of Australia as having significant geographic potential for carbon dioxide sequestration.³⁷
- 7.17 At the hearing, Mr Harvey explained:

³⁵ Under section 7 of the *Seas and Submerged Land Act 1973* (Cwlth), Australia's territorial sea is set by proclamation of the Governor General.

³⁶ Commonwealth of Australia, Attorney-General's Department, *Offshore constitutional settlement: A milestone in co-operative federalism*, Australian Government Publishing Service, Canberra, 1980, p6.

³⁷ Global CCS Institute. *Strategic Analysis of the Global Status of Carbon Capture and Storage Report No. 3: Country Studies Australia*, p5.

APPENDIX 2
TOROSA APPORTIONMENT DEED OF AGREEMENT

Torosa Apportionment Deed of Agreement

Commonwealth-Western Australia Offshore Petroleum
Joint Authority

Western Australian Minister for Mines and Petroleum

BP Developments Australia Pty Ltd

Japan Australia LNG (MIMI Browse) Pty Ltd

PetroChina International Investment (Australia) Pty Ltd

Shell Australia Pty Ltd

Woodside Browse Pty Ltd

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THIS DEED is made on 22 July 2015

BETWEEN:

- (1) **The Honourable Ian Elgin Macfarlane MP**, the Minister for Industry and Science, and **The Honourable William Richard Marmion MLA**, the Minister for Mines and Petroleum, referred to in this Deed as the **Commonwealth Minister** and the **Western Australian Minister** respectively, in their capacities as responsible Commonwealth Minister and responsible Western Australian Minister respectively as members of the Commonwealth-Western Australia Offshore Petroleum Joint Authority constituted under section 56 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth);
 - (2) **The Honourable William Richard Marmion MLA**, the Minister for Mines and Petroleum, being the Minister of the Crown to whom the administration of the *Petroleum (Submerged Lands) Act 1982* (WA) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA) is for the time being committed by the Governor of the State acting for and on behalf of the said State and its instrumentalities from time to time; and
 - (3) **BP Developments Australia Pty Ltd** (ABN 54 081 102 856) of Level 8, 250 St Georges Terrace, Perth, Western Australia;
 - (4) **Japan Australia LNG (MIMI Browse) Pty Ltd** (ABN 94 157 922 211) of Level 41, 152-158 St Georges Terrace, Perth, Western Australia;
 - (5) **PetroChina International Investment (Australia) Pty Ltd** (ABN 47 152 953 529) of Level 28, 111 Eagle Street, Brisbane, Queensland;
 - (6) **Shell Australia Pty Ltd** (ABN 14 009 663 576) of 2 Victoria Avenue, Perth, Western Australia; and
 - (7) **Woodside Browse Pty Ltd** (ABN 11 120 237 381) of 240 St Georges Terrace, Perth, Western Australia,
- collectively referred to in this Deed as the **Torosa Titleholder**.

RECITALS:

- (A) The Torosa Titleholder is proposing to develop the Browse resources.
- (B) The Browse resources include the discovered Petroleum resource known as Torosa, which is partly in each of the Torosa Retention Leases held by the Torosa Titleholder.
- (C) Section 54 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**OPGGSA**), section 9 of the *Petroleum (Submerged Lands) Act 1982* (WA) (**PSLA**) and section 7A of the *Petroleum and Geothermal Energy Resources Act 1967* (WA) (**PGERA**) provide for agreements to be entered into for the purpose of determining the proportion of petroleum recovered from a petroleum pool that is taken to be recovered from each relevant title area.
- (D) The Parties have agreed to the proportions of petroleum recovered from the Torosa Petroleum Pool that are taken to be recovered from each relevant title area and to enter into a deed of agreement pursuant to the legislative provisions referred to in Recital C.
- (E) Legislative amendments to the PSLA and PGERA are proposed to make provision for agreements pursuant to the Western Australian legislative provisions referred to in Recital C to apply to petroleum pools that are partly in the title areas of titles granted under each of the OPGGSA, PSLA and PGERA.

- (F) Additional legislative amendments to the OPGGSA, PSLA and PGERA are also proposed to enable satisfaction of the Conditions Precedent set out in clauses 3.2(a)(ii) and 3.2(a)(iii) of this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Deed:

Conditions Precedent means the conditions precedent described in clause 3.2.

J40 Regional Play Interval means the J40 regional play interval as defined in Figure 4 of Marshall, N.G. and Lang, S.C. 2013, A New Sequence Stratigraphic Framework for the North West Shelf, Australia.

Joint Authority means the 'Commonwealth-Western Australia Offshore Petroleum Joint Authority' (as constituted under section 56 of the OPGGSA).

Parties means the parties to this Deed and **Party** means any one of them.

Petroleum means 'petroleum' (as defined in section 7 of the OPGGSA, section 4 of the PSLA and section 5 of the PGERA).

Torosa Petroleum Pool means, subject to clause 6, the 'petroleum pool' (as defined in section 7 of the OPGGSA, section 4 of the PSLA and section 5 of the PGERA) that:

- (a) in respect of areal extent, is bounded by the outer boundary of the title areas of the Torosa Retention Leases when viewed as a single area; and
- (b) in respect of vertical extent, is within the following depth range:
 - (i) at and below the J40 Regional Play Interval; and
 - (ii) at and above 4758 mTVDss MSL (true vertical depth subsea relative to mean sea level).

Torosa Petroleum Titles means the Torosa Retention Leases and any other titles derived from the Torosa Retention Leases under each of the OPGGSA, PSLA and PGERA.

Torosa Retention Leases means petroleum retention leases WA-30-R, TR/5 and R2 under the OPGGSA, PSLA and PGERA respectively.

1.2 Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context requires otherwise:

- (a) a reference to:
 - (i) a legislative provision or legislation is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) this Deed, or a provision of this Deed, is to this Deed or that provision as amended, supplemented, replaced or novated;

- (iii) a Party includes a successor, permitted substitute or a permitted assign of that Party; and
- (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (d) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (e) The expression **this Deed** includes the agreement, arrangement, understanding or transaction recorded in this Deed.

2. **SCOPE**

- (a) This Deed applies to the Torosa Petroleum Pool and Petroleum that is recovered by the Torosa Titleholder from the Torosa Petroleum Pool.
- (b) This Deed does not apply to any petroleum pool (as defined in the OPPGSA, PSLA and PGERA) that is not contained within the areal and vertical extents of the Torosa Petroleum Pool.

3. **CONDITIONS PRECEDENT**

3.1 **Commencement**

This Deed will not commence until each of the Conditions Precedent has been satisfied, except for the provisions contained in:

- (a) Clause 1 (Definitions and Interpretation);
- (b) Clause 3 (Conditions Precedent);
- (c) Clause 7 (Approval and Registration as Dealing);
- (d) Clause 8 (Permitted Assignments);
- (e) Clause 9 (Governing Law);
- (f) Clause 10 (No amendments);
- (g) Clause 11 (Notices);
- (h) Clause 12 (Public Announcements);
- (i) Clause 13 (No Fetter); and
- (j) Clause 14 (Entire Agreement),

which will commence on the date of this Deed.

3.2 **Conditions Precedent**

- (a) The Conditions Precedent are:

- (i) notification to the other Parties by the Western Australian Minister of the commencement of an enactment to make provision for agreements entered into pursuant to section 9 of the PSLA and section 7A of the PGERA to apply to petroleum pools that are partly in title areas of titles granted under each of the OPGGSA, PSLA and PGERA; and
 - (ii) notification to the other Parties by the Western Australian Minister of the commencement of an enactment which authorises the Parties to enter into an agreement in the terms of clause 6 of this Deed; and
 - (iii) notification to the other Parties by the Joint Authority of the commencement of an enactment which authorises the Parties to enter into an agreement in the terms of clause 6 of this Deed.
- (b) The Joint Authority and the Western Australian Minister must keep the Torosa Titleholder apprised of progress in satisfying the Conditions Precedent.
 - (c) Upon satisfaction of the Conditions Precedent, this Deed will be of full force and legal effect until the termination of this Deed in accordance with clause 3.3.
 - (d) The date for satisfying the Conditions Precedent is the day that is 24 months after the date of this Deed (**Cut-Off Date**). If all of the Conditions Precedent are not satisfied by the Cut-Off Date, then during the period commencing on the Cut-Off Date and ending when the Conditions Precedent have been satisfied, the Torosa Titleholder may give written notice to the other Parties terminating this Deed with immediate effect.

3.3 Termination

This Deed will terminate when the Torosa Titleholder ceases to have authority to explore for, or recover, Petroleum from any part of the Torosa Petroleum Pool.

4. APPORTIONMENT

- (a) For the purposes of section 54 of the OPGGSA, section 9 of the PSLA and section 7A of the PGERA, there will be taken to be recovered in:
 - (i) the title area of any Torosa Petroleum Title under the OPGGSA 34.6% of all of the Petroleum recovered from the Torosa Petroleum Pool by the Torosa Titleholder;
 - (ii) the title area of any Torosa Petroleum Title under the PSLA 65.39% of all of the Petroleum recovered from the Torosa Petroleum Pool by the Torosa Titleholder; and
 - (iii) the title area of any Torosa Petroleum Title under the PGERA 0.01% of all of the Petroleum recovered from the Torosa Petroleum Pool by the Torosa Titleholder.
- (b) The Parties agree that the apportionment of the Torosa Petroleum Pool in clause 4(a) has been agreed between the Parties:
 - (i) having regard to the nature and probable extent of the Torosa Petroleum Pool; and
 - (ii) on the basis that there is an even distribution across the title areas of the Torosa Retention Leases of the levels of the non-hydrocarbon substances listed in paragraph (c) of the definition of 'petroleum' in each of the OPGGSA, PSLA and PGERA, the levels of which might otherwise have

impacted differently on recoverability of hydrocarbons from the Torosa Petroleum Pool in a particular title area or title areas.

5. NO REDETERMINATIONS

There will be no redeterminations in relation to the apportionment of the Torosa Petroleum Pool agreed between the Parties in clause 4 (including if it becomes apparent that the matters set out in clause 4(b)(ii) change in any way).

6. MULTIPLE PETROLEUM POOLS

If, at any time after the date of satisfaction of the Conditions Precedent, it becomes apparent that the areal and vertical extents of the Torosa Petroleum Pool as described in clause 1.1 comprise or are likely to comprise more than one petroleum pool (as defined in section 7 of the OPGGSA, section 4 of the PSLA and section 5 of the PGERA), the apportionment set out in clause 4 will apply to the Petroleum recovered from any or all of those petroleum pools regardless of their location but within those vertical and areal extents. For the purposes of this Deed, the expression 'Torosa Petroleum Pool' is to be read as including all the petroleum pools contained within the areal and vertical extents of the Torosa Petroleum Pool as described in clause 1.1.

7. APPROVAL AND REGISTRATION AS DEALING

- (a) The Parties that comprise the Torosa Titleholder will apply for approval and registration of this Deed as a dealing against the Torosa Petroleum Titles pursuant to the OPGGSA, PSLA and PGERA.
- (b) The Parties agree that the mutual promises between the Parties contained in this Deed is the sole consideration under this Deed.

8. ASSIGNMENTS

- (a) If any of the Parties that comprise the Torosa Titleholder (**Transferor**) transfers the whole or any part of its interest in all of the Torosa Petroleum Titles to one of the other Parties that comprise the Torosa Titleholder or a new titleholder (**Transferee**) in accordance with the OPGGSA, PSLA and PGERA, then:
 - (i) the Transferor must assign the benefit of this Deed to the Transferee to the extent of that interest, without any requirement for prior approval from the other Parties for the purposes of this Deed; and
 - (ii) the persons that will constitute the Torosa Titleholder (after the transfer) will execute a deed of covenant in favour of the Parties (in the form of Annexure A to this Deed) to comply with, observe and perform the provisions of this Deed.
- (b) If it is proposed that the Torosa Titleholder will be differently constituted in respect of any of the Torosa Petroleum Titles, then:
 - (i) the Torosa Titleholder will notify the other Parties; and
 - (ii) the Parties will meet and discuss on a commercial in confidence basis and use best endeavours to agree a mutually acceptable solution in relation to the apportionment of the Torosa Petroleum Pool, including, if necessary, reaching agreement on a replacement for this Deed or another agreement that is consistent with the apportionment in and principles and intent of this Deed.

9. **GOVERNING LAW**

This Deed will be governed by the laws in force in the State of Western Australia.

10. **NO AMENDMENTS**

There will be no amendment to the terms of this Deed except where agreed in writing by all of the Parties.

11. **NOTICES**

(a) Any notices to be given or sent in relation to this Deed by:

- (i) the Joint Authority, will be given or sent in accordance with section 63 of the OPGGSA and section 65 of the OPGGSA (which is deemed to apply for the purposes of this Deed);
- (ii) the Western Australian Minister, will be given or sent by any person or persons authorised by the Western Australian Minister by prepaid post or hand delivery; and
- (iii) the Torosa Titleholder, will be given or sent collectively by notice signed by all of the Parties that comprise the Torosa Titleholder by persons authorised by those Parties and forwarded by prepaid post or hand delivery.

(b) Any notices given or sent in relation to this Deed will be deemed to have been duly given or sent on the day on which it was hand delivered or, if delivered in the ordinary post, the day on which it would be delivered in the ordinary post.

(c) For the avoidance of doubt, nothing in this clause 11 constitutes any notice or communications to or by any Party for the purpose of any statutory requirements.

12. **PUBLIC ANNOUNCEMENTS**

Except for disclosure:

- (a) required pursuant to any laws or any rules or requirements of any government or stock exchange having jurisdiction over a Party (or its affiliates);
- (b) required pursuant to any legal proceedings or because of any order of any court or legislative or administrative body binding upon a Party (or its affiliates); and
- (c) to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the Commonwealth of Australia or State of Western Australia (as applicable),

any public announcements in relation to this Deed must be pre-agreed in writing by all of the Parties.

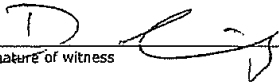
13. **NO FETTER**

Nothing contained in this Deed or contemplated by this Deed has the effect of constraining the Joint Authority or the Western Australian Minister or placing any fetter on the Joint Authority's or the Western Australian Minister's discretion to exercise or not to exercise any of their respective statutory rights, duties, powers or functions.

14. **ENTIRE AGREEMENT**

This Deed contains the entire agreement between the Parties in relation to the matters covered by this Deed.

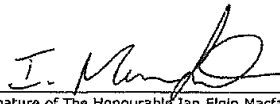
EXECUTED as a deed by
**THE HONOURABLE IAN ELGIN
MACFARLANE MP**
in his capacity as responsible
Commonwealth Minister and
Commonwealth member of the
Commonwealth-Western Australia
Offshore Petroleum Joint Authority:



Signature of witness

DEANUS KING

Name

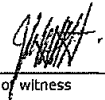


Signature of The Honourable Ian Elgin Macfarlane MP

IAN MACFARLANE

Name

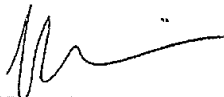
EXECUTED as a deed by
**THE HONOURABLE WILLIAM
RICHARD MARMION MLA**
in his capacity as responsible Western
Australian Minister and Western Australian
member of the Commonwealth-Western
Australia Offshore Petroleum Joint
Authority and in his capacity as Western
Australian Minister for Mines and
Petroleum:



Signature of witness

JEFFREY HUNTLY HAWORTH

Name

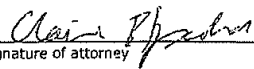


Signature of The Honourable William Richard Marmion
MLA

WILLIAM RICHARD MARMION

Name

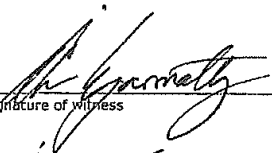
EXECUTED as a deed by
**BP DEVELOPMENTS AUSTRALIA PTY
LTD** by its duly appointed attorney in the
presence of:



Signature of attorney

CLAIRE HELEN FITZPATRICK

Name

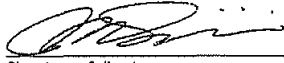


Signature of witness

AKOS GYARMATHY

Name


EXECUTED as a deed by
**JAPAN AUSTRALIA LNG (MIMI
BROWSE) PTY LTD** in accordance with
section 127(1) of the Corporations Act
2001 (Cth):



Signature of director

MASASHI SHIRATSCHI

Name

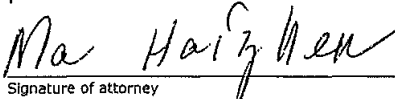


Signature of director/secretary

Tak Ngan

Name

EXECUTED as a deed by
**PETROCHINA INTERNATIONAL
INVERSTMENT (AUSTRALIA) PTY LTD**
by its duly appointed attorney in the
presence of:



Signature of attorney

Ma Haizhen

Name

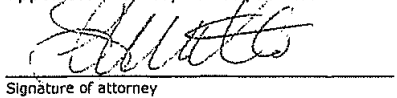


Signature of witness

SAKHANAT KABIR

Name

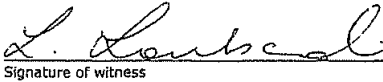
EXECUTED as a deed by
SHELL AUSTRALIA PTY LTD by its duly
appointed attorney in the presence of:



Signature of attorney

STEVE PALMISTE

Name

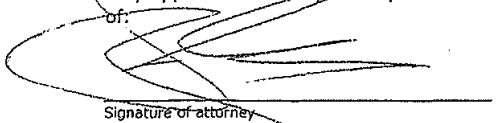


Signature of witness

Lucia Maria Lombardo

Name

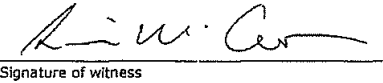
EXECUTED as a deed by
WOODSIDE BROWSE PTY LTD by its
duly appointed attorney in the presence
of:



Signature of attorney

Robert EDWARDS

Name



Signature of witness

Pionon M'Carthy

Name

ANNEXURE A

Deed of Covenant

THIS DEED POLL is made on [insert date]

BETWEEN:

- (1) [insert]
- (2) [insert]
- (3) [insert]
- (4) [insert]; and
- (5) [insert],

collectively referred to in this Deed as the **Torosa Titleholder**;

in favour of:

- (6) each of the other parties to the Apportionment Deed.

RECITALS:

- (A) The Transferee is acquiring an interest from the Transferor.
- (B) The Apportionment Deed requires the Torosa Titleholder to enter into this Deed.
- (C) The Torosa Titleholder therefore enters into this Deed.

THE TRANSFEREE AGREES AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

- (a) The following definitions apply in this Deed.

Apportionment Deed means the Torosa Apportionment Deed of Agreement between the Commonwealth-Western Australia Offshore Petroleum Joint Authority, the Western Australian Minister for Mines and Petroleum and BP Developments Australia Pty Ltd, Japan Australia LNG (MIMI Browse) Pty Ltd, PetroChina International Investment (Australia) Pty Ltd, Shell Australia Pty Ltd and Woodside Browse Pty Ltd dated [insert].

Transferee means [insert].

Transferor means [insert].

- (b) Unless the context otherwise requires, capitalised terms in this Deed not otherwise defined herein shall have the same meaning as given to such terms in the Apportionment Deed.

1.2 Rules for interpreting this Deed

The provisions set out in clause 1.2 (interpretation) of the Apportionment Deed apply to this Deed as if set out in full herein.

2. COVENANT BY TOROSA TITLEHOLDER

From the date of execution of this Deed, the Torosa Titleholder agrees to comply with, observe and perform the provisions of the Apportionment Deed.

3. GENERAL

3.1 Governing Law

This Deed will be governed by the laws in force in the State of Western Australia.

3.2 Liability for expenses

The Transferee must pay its expenses incurred in negotiating and executing this Deed.

4. APPROVAL AND REGISTRATION AS DEALING

The parties that comprise the Torosa Titleholder will apply for approval and registration of this Deed as a dealing against the Torosa Petroleum Titles pursuant to the OPGGSA, PSLA and PGERA.

EXECUTED as a deed.

EXECUTED by **[INSERT]**:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **[INSERT]**:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **[INSERT]**:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [INSERT]:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [INSERT]:

Signature of director

Signature of director/secretary

Name

Name

Standing Committee on Uniform Legislation and Statutes Review

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'6. Uniform Legislation and Statutes Review Committee

- 6.1 *A Uniform Legislation and Statutes Review Committee is established.*
- 6.2 The Committee consists of 4 Members.
- 6.3 The functions of the Committee are –
 - (a) to consider and report on Bills referred under Standing Order 126;
 - (b) on reference from the Council, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to Standing Order 126;
 - (c) to examine the provisions of any treaty that the Commonwealth has entered into or presented to the Commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;
 - (d) to review the form and content of the statute book; and
 - (e) to consider and report on any matter referred by the Council.
- 6.4 In relation to function 6.3(a) and (b), the Committee is to confine any inquiry and report to an investigation as to whether a Bill or proposal may impact upon the sovereignty and law-making powers of the Parliament of Western Australia.'



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4 Harvest Terrace, West Perth WA 6005
Telephone: 08 9222 7300
Email: lcco@parliament.wa.gov.au
Website: www.parliament.wa.gov.au