

PETROLEUM AND ENERGY LEGISLATION AMENDMENT BILL 2009

EXPLANATORY MEMORANDUM

GENERAL OUTLINE

This is a Bill to amend the State's upstream petroleum legislation, primarily for the purpose of bringing it in line with amendments made in recent years to the petroleum common mining code which applies in Australia's offshore waters under Commonwealth law.

Part 1 introduces the Bill and provides for commencement of the various provisions.

Part 2 introduces changes to the *Petroleum and Geothermal Energy Resources Act 1967*.

Part 3 introduces changes to the *Petroleum (Submerged Lands) Act 1982*.

Part 4 introduces changes to the *Petroleum Pipelines Act 1969*.

Part 5 consequentially amends the:

- *Barrow Island Act 2003*,
- *Crimes at Sea Act 2000*,
- *National Gas Access (WA) Act 2009*,
- *Petroleum (Submerged Lands) Registration Fees Act 1982*, and
- *Workers' Compensation and Injury Management Act 1981*.

PART 1 – PRELIMINARY

Clause 1 – Short Title

The title is the *Petroleum and Energy Legislation Amendment Act 2009*.

Clause 2 – Commencement

This clause provides for Part 1 to come into operation on the day this Act receives Royal Assent. The clause also provides that:

- Section 187, other than sub-sections 5, 6, 8 and 9 is deemed to have come into operation on 20 May 2002,
- Section 190, other than sub-sections 3, 4, 5, 7 and 8 is deemed to have come into operation on 22 December 2004, and
- The remainder of the Act comes into operation on a day fixed by proclamation and that different days may be fixed for different provisions.

PART 2 – PETROLEUM AND GEOTHERMAL ENERGY RESOURCES ACT 1967

Clause 3 - Act amended in this Part

This clause provides that amendments in this Part are to the *Petroleum and Geothermal Energy Resources Act 1967*.

Clause 4 – Section 5 amended

Sub-clause (1) defines the Barrow Island lease by reference to existing section 128.

Sub-clause (2) is a drafting improvement which clarifies the reference to a listed occupational safety and health (OSH) law.

Sub-clause (3) is also a drafting improvement clarifying the definition of “operator” in respect to the Barrow Island lease.

Sub-clause (4) redefines petroleum to include carbon dioxide as a separate element and not merely as a mixture with other elements. This is required to enable the disposal of carbon dioxide underground.

Sub-clause (5) extends the definition of petroleum operations on the Barrow Island lease to also include any renewal, substitution or variation of that lease.

Clause 5 – Section 6A inserted

This clause provides that any changes to the baseline (generally the coastline at mean low water) do not alter the area of a title granted under this Act, in circumstances where a title made under the *WA Petroleum (Submerged Lands) Act 1982* shares a common boundary. Aligns with the common mining code.

Clause 6 – Section 31 amended

This clause makes the lodgment of an application for a permit easier by removing the need for such application to be in accordance with an approved form. Aligns with the common mining code.

Clause 7 – Section 32A inserted

This clause provides for the Minister to grant a permit to the most deserving application where two or more applications are received for the same block or blocks. It also allows for the Minister to rank competing bids, invite additional work bids for equally deserving applications and to exclude any undeserving applications. These provisions ensure that in these situations the Minister does not need to recommence the entire process by issuing a new public invitation for permit applications. Aligns with the common mining code.

Clause 8 – section 32 amended

The clause clarifies that an application for a permit referred to in section 32 and the following, newly inserted sections 33A and 33B, can be an application made as the result of advertising blocks, as provided in section 30 or by way of the special prospecting authority acreage option provisions in section 105 (3)(a)(ii).

Clause 9 – Sections 33A, 33B, 33C inserted

This clause provides for permit applicants to withdraw their applications before the granting of the permit. In the case of a joint application, the application remains in effect for the remaining party or parties but only if all parties to the application agree that those parties may withdraw. Where two or more applications are received for an advertised block or blocks and provided not all applications are withdrawn or lapse (an offer not being taken up within the specified period), the Minister is able to offer a permit to the next highest ranked applicant. Aligns with the common mining code.

Clause 10 – Section 33 amended

This clause removes the requirement for an application for a permit in respect to surrendered blocks, commonly known as a premium bid, to be made in accordance with an approved form. A premium bid is an application for a permit over blocks known to contain petroleum or geothermal energy resources. Aligns with the common mining code.

Clause 11 – Section 34 amended

This clause removes the discretionary authority of the Minister to refund the 10% deposit paid against a premium bid in circumstances where a successful applicant has rejected the offer of the permit. Aligns with the common mining code.

Clause 12 – Section 35 amended

This clause deletes the option of paying for premium bids for blocks by an installment payment facility. This will be removed when section 103 is deleted in clause 49. Aligns with common mining code.

Clause 13 – Section 36 amended

Like clause 12, this clause deletes to the option of paying for the grant of a permit in respect of an advertised block by an installment payment facility. Previously provided in section 103 but this is to be deleted in Clause 49. Aligns with common mining code.

Clause 14 – Section 37 amended

Again, like clause 12, the clause deletes the option of paying for a permit by an installment payment facility previously provided in section 103.

Clause 15 – Section 39 amended

Provides for a new subsection which in sub-clause (2) sets out the provisions that will apply if a permittee, whose permit cannot be renewed, applies for a production licence or retention lease and the title has not been granted at the time when the permit would expire. It provides that the term of the permit continues in force over the block or blocks covered by the application in the following circumstances:

- a) prior to the production licence or retention lease is granted, until the permittee withdraws the application or the application lapses, or
- b) in the event of a retention lease not being granted, until the end of a period of one year after the day on which the notice of the refusal was given to the permittee; or
- c) where a production licence is not granted, until the notice of the decision is given to the permittee.

Aligns with the common mining code.

Clause 16 – Section 40 amended

This clause removes the requirement for an application for the renewal of a permit to be by way of an approved form. The clause also amends the provisions for renewal of a permit to include that certain permits cannot be renewed more than twice. The conditions for this are covered in clause 18. Aligns with common mining code.

Clause 17 – Section 41 amended

This clause amends the formula for the mandatory relinquishment of blocks upon the renewal of a permit by:

- a) including a formula for renewal of permits over blocks which total less than six;
- b) removing the requirement for renewal of discrete areas of blocks to comprise more than one adjoining block;
- c) removing the discretion for the Minister to allow the renewal of up to 16 blocks in circumstances where the relinquishment formula calculates to less than 16 blocks.

These amendments together with that of new clause 42A are for the purpose of intensifying the exploration effort. While this amendment generally aligns with the common mining code it differs in that it enables the renewal of a one block permit. This was deemed necessary given the limited area of blocks available in W.A.'s coastal water areas.

Clause 18 – Section 42A inserted

This clause provides that certain permits (that is, those granted on or after the commencement date of these amendments) cannot be renewed more than twice. This together with the removal of the Minister's discretion to maintain the renewal of 16 blocks (see clause 17), removes the possibility of a permit being retained indefinitely. Aligns with the common mining code.

Clause 19 – Section 43B amended

This clause removes the requirement for a drilling reservation application to be made in accordance with an approved form. Aligns with the common mining code.

Clause 20 – Section 43CA inserted

This clause enables the Minister, using published criteria, to rank bids for drilling reservations, exclude undeserving bids from the ranking and, if two or more parties have tendered the best and equal work program bids, invite them to submit supplementary bids as a further basis for the selection of the successful applicant. The ranking also enables the field of applicants to be revisited if a drilling reservation offer is not taken up. These provisions ensure that there is no need in these situations for the Minister to recommence the entire process by issuing a new public invitation for permit applications. Aligns with the common mining code.

Clause 21 – Section 43DA, 43DB & 43DC inserted

This clause provides for applicants to withdraw their application before the granting of the drilling reservation. In the case of a joint application, the application remains in effect for the remaining party or parties but only if all parties agree that those parties withdraw. Where two or more applications are received for an advertised block or blocks and provided not all applications are withdrawn or lapse (an offer not being taken up within the specified period), the Minister is able to offer a permit to the next highest ranked applicant. Aligns with the common mining code.

Clause 22 – Section 44 amended

Section 44 requires the immediate reporting of petroleum and geothermal energy resources discoveries in exploration permit and drilling reservation areas. This is to ensure that the Minister has the full range of options open to him/her such as instructing the permittee or lessee to collect a specific type of core, cutting or sample when the drilling operations are still on-going.

This clause also introduces a penalty of a fine of \$10,000 for not notifying the Minister of the discovery of petroleum or geothermal energy resources while removing the requirement for the holder of a permit or drilling reservation to provide immediate technical information about petroleum or a geothermal resource discovered. These matters are more appropriately covered in regulations. However, it retains the requirement for the discovery of petroleum or a geothermal resource to be made known to the Minister and provides a penalty for not doing so. Aligns with the common mining code.

Clause 23 – Section 45 repealed

This amendment repeals the provision which enables the Minister to direct the holder of a petroleum or geothermal energy title to do such things necessary to determine the properties and quantity of the discovered resource. As the required information is technical in nature it is better dealt with under Regulations to the Act. Aligns with the common mining code.

Clause 24 – Section 47 amended

This clause includes a new sub-section in the declaration of location provisions and clarifies that the Minister's power to form an opinion as to the existence of petroleum or geothermal energy in the location area can be based on information gained from any source. Aligns with the common mining code.

Clause 25 – Section 48A amended

This clause removes the requirement for an application for a retention lease to be made in accordance with an approved form. Aligns with the common mining code.

Clause 26 – Section 48B amended

This clause expands on the two requirements that must be satisfied before the Minister will grant a retention lease. That is, the block, or any one or more of the blocks, specified in the application contains petroleum or geothermal energy resources and that the recovery of this is not presently commercially viable but is likely to become so within 15 years. The clause also enables the Minister to refuse a Retention Lease being granted over blocks specified in the application where the Minister is not satisfied that petroleum or geothermal energy resources exist. Aligns with common mining code.

Clause 27 – Section 48BA amended

The clause clarifies that in circumstances where a permit or part of a permit is in the process of being converted to a retention lease and the ownership of the permit is transferred, this amendment enables the Minister to recognise the transferee as the applicant for the retention lease.

Clause 28 – Sections 48CA, 48CB, 48CC inserted

This clause provides for the Minister to grant or refuse an application from the holder of a production licence for a retention lease in the circumstance where petroleum or geothermal energy recovery operations are not being undertaken over all or part of the licence area. In granting the lease, the Minister would need to be satisfied that the resource is not presently commercially viable but likely to become so within 15 years.

This section is required due to a new provision (section 64A) which enables termination of a licence if no operations for the recovery of petroleum or geothermal energy resources have been carried out for a continuous period of at least five years. The application period for a retention lease, in this circumstance, is five years commencing from the date the production licence was granted or from the date recovery operations ceased.

A further provision in section 48CC, enables, in circumstances where a licence has been transferred, for the Minister to recognise the transferee party as being the applicant for the retention lease. Aligns with the common mining code.

Clause 29 – Section 48F amended

This clause removes the requirement for an application for the renewal of a retention lease to be made in accordance with an approved form. Aligns with the common mining code.

Clause 30 – Section 48H amended

This clause provides that during the five year term of a retention lease, the Minister can only give one notice requiring a re-evaluation of the commercial viability of the recovery of petroleum from the petroleum lease area and geothermal energy resources from the geothermal lease area. This amendment is based on national competition policy reviews of the petroleum legislation that concluded that two re-evaluation notices were likely to impose additional costs to the titleholder. Aligns with the common mining code.

Clause 31 – Section 48J amended

This clause removes the requirement for the holder of a retention lease to provide technical information about any petroleum or geothermal energy resources discovered. These matters would be more appropriately covered by regulations, however, it retains the requirement for the discovery of petroleum and geothermal energy resources to be made known to the Minister and provides a penalty for not doing so. Aligns with the common mining code.

Clause 32 – Section 51 amended

This clause removes the requirement for a Production Licence application to be made in accordance with an approved form. Aligns with the common mining code.

Clause 33 – Section 52 amended

This clause provides for a definition of tight gas and allows for a royalty rate of not less than 5% or more than 12.5% for tight gas projects operating under a secondary production licence.

Clause 34 – Section 53 amended

This clause enables the Minister to restrict the grant of a production licence to a block or blocks which the Minister is satisfied contains petroleum or geothermal energy resources. Where the Minister is not satisfied that petroleum or geothermal energy resources exist or an applicant has failed to supply information requested by the Minister, the Minister may decline to grant the licence. Aligns with the common mining code.

Clause 35 – Section 54 amended

This clause enables the grant of a production licence only over a block or blocks which the Minister is satisfied contains petroleum or geothermal energy resources. It replaces the previous provision which compelled the Minister to grant a production licence over all of the blocks applied for. Aligns with the common mining code.

Clause 36 – Section 55 amended

Provides that where the full entitlement to primary production licence blocks have not been taken up and a subsequent application is made to vary the licence to its full entitlement, the Minister is only obliged to grant that variation if the Minister is satisfied that the additional blocks contain petroleum and geothermal energy resources. Aligns with the common mining code.

Clause 37 – Section 57 amended

This clause removes the requirement for a production licence over surrendered blocks application, to be made in accordance with an approved form. Aligns with the common mining code.

Clause 38 – Section 58 amended

This clause removes the discretionary authority of the Minister to refund the 10% deposit paid against a premium bid in circumstances where a successful applicant has rejected the offer of a production licence over surrendered blocks. A premium production licence application is made over blocks in which petroleum or geothermal energy resources have previously been identified and in respect of which the applicant is required to submit a cash premium. Aligns with the common mining code.

Clause 39 – Section 59 amended

This clause deletes the option of paying for premium production licences for blocks by an installment payment facility. This will be removed when section 103 is deleted in clause 49. Aligns with common mining code.

Clause 40 – Section 60 amended

Like clause 39, this clause deletes to the option of paying for the grant of a permit in respect of an advertised block by an installment payment facility. Previously provided in section 103 but this is to be deleted in clause 49. Aligns with common mining code.

Clause 41 – Section 61 amended

This clause removes the requirement for an application for the splitting of a production licence to be made in accordance with an approved form. Aligns with the common mining code.

Clause 42 – Section 63 amended

This clause amends the term for a new production licence and the second renewal of an existing production licence from 21 years to indefinitely commensurate with the productive life of the resource field. Aligns with the common mining code.

Clause 43 – Section 64A inserted

This is a new clause to enable indefinite term production licences to be terminated if the licensee has not carried on any operations for the recovery of petroleum or geothermal energy resources under the licence at any time during a continuous period of at least five years. Dispensation is given for any period where no such operations were carried out due to circumstances beyond the licensee's control (ie: force-majeure). Aligns with the common mining code.

Clause 44 – Section 64 amended

With the changes to the terms for production licences in clause 42, this clause confirms that the provisions for renewal of production licences apply only to those licences which do not have an indefinite term. It also removes the requirement for a production licence renewal application to be made in accordance with an approved form. Aligns with the common mining code.

Clause 45 – Section 65 amended

This amendment provides that the second renewal of a production licence will be granted for an indefinite term as a matter of right provided that operations for the recovery of petroleum or geothermal energy resources have been carried on in the licence area within the period of five years before the application for renewal was made. Aligns with the common mining code.

Clause 46 – Section 67 amended

Provides that the storage of gas underground can be storage for subsequent recovery or permanent storage. The changes to the definition of petroleum in this Bill to include carbon dioxide enables the disposal of carbon dioxide into underground reservoirs. It also confirms that these provisions do not apply to the disposal of carbon dioxide covered by the *Barrow Island Act 2003* which has its own arrangements for disposal of carbon dioxide resulting from the production of LNG from Gorgon gas on Barrow Island. These provisions are unique to the *Petroleum & Geothermal Energy Resources Act 1967* and are not relevant to the common mining code.

Clause 47 – Section 70 amended

This clause removes reference to section 103 as that section, relating to payment for certain permits and licences by installments is to be deleted. Refer clause 49. Aligns with the common mining code.

Clause 48 – Section 94 repealed

This clause removes the requirement for the Minister's approval to drill a well within 300 metres of a title boundary. This provision was made to avoid any uncontrolled deviation of a well into an adjoining property. With the advances made in drilling technology since 1967 this requirement is no longer necessary. In any event, the drilling of any well, including its location, needs to be approved by the Minister. Aligns with the common mining code.

Clause 49 – Sections 103 & 104 repealed

This clause removes the option to pay for premium exploration permits and premium production licences by installments. The financing of such payments is a matter which should be dealt with commercially and need not involve Government. The removal of the payment by instalment scheme also obviates the need for a penalty for late payment of instalments provided by section 104. Aligns with the common mining code.

Clause 50 – Section 105 amended

The clause removes the requirement for a special prospecting authority application to be made in accordance with an approved form. Aligns with the common mining code.

Clause 51 – Section 106 amended

This clause removes the requirement for an access authority application to be made in accordance with an approved form. Clause 51 also provides that the provisions of section 106 (4) relating to the conditions that must be met before the Minister will grant an access authority do not apply if the holder of the title to be accessed has given written consent. Aligns with the common mining code.

Clause 52 – Section 109 amended

This amendment more clearly explains the protection against self incrimination where a person is required by the Minister to provide information in respect to the recovery and operations for the recovery of petroleum or geothermal energy resources. Aligns with the common mining code.

Clause 53 – Section 112 repealed

This clause, which deals with the release of geotechnical data, is repealed as these requirements are to be now included as Part IVA specifically dealing with “Release of Information” (refer to clause 59). Aligns with the common mining code.

Clause 54 – Section 114 repealed

This clause, dealing with a direction by the Minister for a title holder to undertake a survey of wells, is repealed as this is provided for under the Minister’s general direction making powers of section 95. Aligns with the common mining code.

Clause 55 – Section 116A inserted

This clause enables regulations to be made for data collection, including requirements for a titleholder to submit a data management plan. This is consistent with the move to objective-based regulations. Much of the information and material collected through the operation of these Regulations will eventually become publicly available and useful to petroleum and geothermal exploration companies with a future interest in the same area. If such a company began to operate in the area, it would be required to contribute to the database in its turn. Aligns with the common mining code.

Clause 56 – Section 117 amended

The clause extends the provisions relating to interference with other rights to include navigation, fishing, and conservation of the resources of the sea and sea bed. The *Petroleum and Geothermal Energy Resources Act 1967* now encompasses significant areas of submerged lands, mainly the waters land-ward of Barrow Island and adjoining islands, and it is appropriate that other maritime activities be protected from undue interference by petroleum operations. Aligns with the common mining code.

Clause 57 – Section 128 amended

This clause deletes the definition of the Barrow Marine lease as this lease, which was granted under the repealed *Petroleum Act 1936*, has been replaced by three separate production licences under the current legislation. This is a matter unique to W.A. and does not reflect the common mining code.

Clause 58 – Section 134A amended

This clause corrects a drafting error where a reference to the *Petroleum Act 1967* in this section is updated to its current title – *Petroleum and Geothermal Energy Resources Act 1967*. It also enables regulations to be made in respect to environment plans and the release of data for the Barrow Island lease. Aligns with the common mining code.

Clause 59 – Part IVA inserted

Part IVA provides for the public release of exploration and production data supplied to Government and enables that data to be used by other explorers. Provisions for the release of information were previously contained in section 112 (now repealed by this Act at clause 53) but have been simplified here by enabling requirements for the protection of confidentiality for information and samples to be set by regulation. Aligns with the common mining code.

Clause 60 – Section 153 amended

This clause broadens the regulation making capacity to also cover gas storage approvals and agreements, the inclusion of facilities, and to enable a requirement for petroleum and geothermal activities to be undertaken in accordance with an approved environment plan and regulations covering the release of data. Aligns in part with the common mining code.

Clause 61 – Section 154 inserted

This clause provides for transitional provisions relating to the amendments contained in part 2 of this Act. These provisions allow for regulations to be made if there is insufficient capacity in this Act to deal with a transitional matter. Such transitional regulations can only be made within 12 months of Schedule 2 coming into effect. Any transitional regulation that is made retrospective cannot operate so as to be prejudicial to the rights of any person which pre-exist the publication of the regulations. Consequential drafting amendment.

Clause 62 – Schedule 1 amended

This clause amends the Occupational Safety & Health Schedule to bring penalty provisions in line with current drafting styles and to correct a drafting error where an incorrect clause reference was included in clause 71 (1).

Clause 63 – Schedule 2 inserted

Schedule 2 provides for the transition of this part and:

- allows that the former provisions for mandatory relinquishment of blocks upon the renewal of a permit be maintained at sixteen. This is to continue only for the next renewal of permits which pre-existed the new requirement;
- provides that where the holder of a retention lease is liable under the former provisions, to undertake a second review of the economic viability of a lease, during its present term, and has yet to comply with that request, is no longer required to do so,

- enables the release of information requirements contained in former section 112, to prevail in respect to information given prior to the new provisions coming into effect and includes the fees for accessing that information.

Aligns with the common mining code.

Clause 64 – Various penalties amended

This clause amends various penalty provisions to bring them into line with current drafting styles.

PART 3 – PETROLEUM (SUBMERGED LANDS) ACT 1982

Clause 65 – Act amended in this Part

This clause provides that the amendments in this part are to the *Petroleum (Submerged Lands) Act 1982*.

Clause 66 – Section 3 amended

Section 3 details the provisions by which titles under the earlier legislation, Western Australia's *Petroleum (Submerged Lands) Act 1967*, transitioned to titles under the *Petroleum (Submerged Land) Act 1982*. These provisions are no longer needed and are repealed at clause 64.

Schedule 3, which is referred to in sub-sections 3(2) to (4), details that the “Scheme for transitional arrangements” is also no longer required and Schedule 4 referred to in sub-section 3(5), which dealt with the transition of the Barrow Marine Lease from the *Petroleum Act 1936* to be *Petroleum (Submerged Lands) Acts* of the State and Commonwealth has long been completed. These Schedules are repealed at clause 172.

Clause 67 – Section 4 amended

Clause 67(1) deletes definitions for “adjacent area, Commonwealth Act, Convention, Division and natural resources”. The definition of “Convention” which referred to the *Convention on the Continental Shelf 1958* was contained as Schedule 1 to the *Petroleum (Submerged Lands) Act 1982* but is now repealed at clause 170. The Convention is no longer referred to in the body of the Act. The definition of “Division” is deleted as it is superfluous.

Clause 67(2) re-describes “adjacent area”, differentiating between the adjacent area for pipeline licences and the adjacent area for other petroleum titles. It also details “Commonwealth Act” as being the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth which is the plain English rewrite of the *Commonwealth's Petroleum (Submerged Lands) Act 1967* and “natural resources” as having the same meaning as that in the U.N. *Convention on the Law of the Sea 1982* which replaces the *Convention on the Continental Shelf*.

Clause 67(2) also introduces new definitions for “good processing and transport practice”, “infrastructure facilities”, “infrastructure licenses”, “infrastructure license area”, and “infrastructure licensee”.

Clause 67(3) also redefines petroleum to include carbon dioxide as a separate element and not merely as a mixture with other elements similar to the corresponding amendments to the *Petroleum & Geothermal Energy Resources Act 1967* and *Petroleum Pipelines Act 1969* at clauses 4 & 176 respectively. This is required to enable the disposal of carbon dioxide underground.

Clause 67(4) makes a drafting improvement to the definition of pipeline.

Clause 67(5) now provides for registered holder to also relate to an infrastructure licence.

Clause 67(6) makes reference to infrastructure licences in the definition of relinquished area.

Aligns with the common mining code.

Clause 68 – Section 5 amended

This clause re-describes “adjacent area” in accordance with terminology used nationally. Aligns with common mining code.

Clause 69 – Sections 6A & 6B inserted

New section 6A accommodates any shift in the boundary between the *State’s Petroleum (Submerged Lands) Act 1982* titles and *Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006* titles, occasioned by changes to the baseline. The new section provides that where there is a change in the boundary the status quo of each title is maintained. There is a similar provision in the Commonwealth Act.

Section 6B defines infrastructure facilities in such a way that makes it clear that these are not drilling or production platforms being used for that purpose by petroleum explorers and producers. They could, however, be former drilling or production platforms that have been converted for a new use.

The reference in section 6B to the remote control of facilities, structures, or installations used to recover petroleum in the licence area of a production licence could be a reference to a monopod positioned outside the licensed area which serves as a control centre for a number of submerged production plants in the licence area. Such a facility might accommodate personnel or might merely house computer and other hardware to control pumping activity at the production facilities.

Aligns with common mining code.

Clause 70 – Section 6 amended

This clause removes references for the renewal of pipeline licences as these are now granted for an indefinite term and also provides for appropriate references for infrastructure licences in the section. Aligns with the common mining code.

Clause 71 – Part II heading amended

This clause amends the title of this part by changing “Administration of the Commonwealth adjacent area” to Administration of the Commonwealth offshore area” which reflects the changes in nomenclature in the *Commonwealth’s Offshore Petroleum and Greenhouse Gas Storage Act 2006*. (Consequential drafting amendment.)

Clause 72 – Section 11 replaced

This clause replaces the section describing terms used in Part II to reflect changes made in Commonwealth legislation, primarily the plain English re-write of the *Petroleum (Submerged Lands) Act 1967* which was renamed as the *Offshore Petroleum Act 2006* and following amendments in 2008 is now titled the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. (Consequential drafting amendment.)

Clause 73 – Section 12 amended

This clause makes a minor drafting improvement to this section dealing with the Minister exercising powers as a member of the Joint Authority.

Clause 74 – Section 13 amended

This clause renames the “Commonwealth adjacent area” to the “offshore area” and also makes a minor drafting improvement to this section dealing with the Minister’s role as Designated Authority.

Clause 75 – Section 14 amended

This clause renames the “Commonwealth adjacent area” to the “offshore area” and also makes a minor drafting improvement to this section dealing with the Minister’s role as Designated Authority.

Clause 76 – Section 15 amended

As with Clause 74 and 75, this clause renames the “Commonwealth adjacent area” to the “offshore area” and also makes a minor drafting improvement to this section dealing with the Minister’s role as Designated Authority.

Clause 77 – Section 18 amended

This clause amends the section to more clearly detail the provisions for dealing with reserving blocks from the grant of petroleum titles and now includes infrastructure licences. Aligns with the common mining code.

Clause 78 – Section 21 amended

This clause removes the requirement for an application for an exploration permit to be made in accordance with an approved form. Aligns with the common mining code.

Clause 79 – Section 21A inserted

This clause provides for the Minister to grant a permit to the most deserving application where two or more applications are received for the same block or blocks. It also allows for the Minister to rank competing bids, invite additional work bids for equally deserving applications and to exclude any undeserving applications. These provisions ensure that in these situations the Minister does not need to recommence the entire process by issuing a new public invitation for permit applications. Aligns with the common mining code.

Clause 80 – Sections 23A, 23B & 23C inserted

This clause provides for permit applicants to withdraw their applications before the granting of the permit. In the case of a joint application, the application remains in effect for the remaining party or parties but only if all parties to the application agree that those parties may withdraw. Where two or more applications are received for an advertised block or blocks and provided not all applications are withdrawn or lapse (an offer not being taken up within the specified period), the Minister is able to offer a permit to the next highest ranked applicant. Aligns with the common mining code.

Clause 81 – Section 23 amended

This clause removes the requirement for an application for a permit in respect to surrendered blocks, to be made in accordance with an approved form. Aligns with the common mining code.

Clause 82 – Section 24 amended

This clause removes the discretionary authority of the Minister to refund the 10% deposit paid against a premium bid in circumstances where a successful applicant has rejected the offer of the permit. Aligns with the common mining code.

Clause 83 – Section 25 amended

This clause deletes the option of paying for premium bids for blocks by an installment payment facility. This will be removed when section 109 is deleted in clause 147. Aligns with common mining code.

Clause 84 – Section 26 amended

Like clause 83, this clause deletes to the option of paying for the grant of a permit in respect of an advertised block by an installment payment facility. Previously provided in section 109 but this is to be deleted in clause 147. Aligns with common mining code.

Clause 85 – Section 27 amended

Again, like clause 83, the clause deletes the option of paying for a permit by an installment payment facility previously provided in section 109.

Clause 86 - Section 29 amended

Provides for a new subsection which in sub-clause (2) sets out the provisions that will apply if a permittee, whose permit cannot be renewed, applies for a production licence or retention lease and the title has not been granted at the time when the permit would expire. It provides that the term of the permit continues in force over the block or blocks covered by the application in the following circumstances:

- a) until the production licence or retention lease is granted, the permittee withdraws the application or the application lapses, or
- b) in the event of a retention lease not being granted, until the end of a period of one year after the day on which the notice of the refusal was given to the permittee; or
- c) where a production licence is not granted, until the notice of the decision is given to the permittee.

Clause 87 – Section 30 amended

This clause removes the requirement for an application for the renewal of a permit to be by way of an approved form. The clause also amends the provisions for renewal of a permit to include that certain permits cannot be renewed more than twice. The conditions for this are covered in clause 89. Aligns with common mining code.

Clause 88 – Section 31 amended

This clause amends the formula for the mandatory relinquishment of blocks upon the renewal of a permit by:

- a) including a formula for renewal of permits over blocks which total less than six,
- b) removing the requirement for renewal of discrete areas of blocks to comprise more than one adjoining block,
- c) removing the discretion for the Minister to allow the renewal of up to 16 blocks in circumstances where the relinquishment formula calculates to less than 16 blocks.

These amendments together with that of clause 87 are for the purpose of intensifying the exploration effort. While this amendment generally aligns with the common mining code it differs in that it enables the renewal of a one block permit. This was deemed necessary given the limited area of blocks available in W.A.'s coastal water areas.

Clause 89 – Section 32A inserted

This clause provides that certain permits cannot be renewed more than twice. This together with the removal of the Minister's discretion to maintain the renewal of 16 blocks (see clause 88) removes the possibility of a permit being retained indefinitely. Aligns with the common mining code.

Clause 90 – Section 34 replaced

Clause 90 requires the immediate reporting of petroleum discoveries in exploration permit areas. This is to ensure that the Minister has the full range of options open to him/her such as instructing the permittee to collect a specific type of core, cutting or sample when the drilling operations are still on-going.

This clause also introduces a penalty of a fine of \$10,000 for not notifying the Minister of the discovery of petroleum while removing the requirement for the holder of a permit to provide immediate technical information about petroleum discovered. These matters are more appropriately covered in regulations. However, it retains the requirement for the discovery of petroleum to be made known to the Minister and provides a penalty for not doing so. Aligns with the common mining code.

Clause 91– Section 35 repealed

This amendment repeals the provision which enables the Minister to direct the holder of a petroleum title to do such things necessary to determine the properties and quantity of the discovered resource. As the required information is technical in nature it is better dealt with under Regulations to the Act. Aligns with the common mining code.

Clause 92 – Section 37 amended

This clause includes a new sub-section in the declaration of location provisions and clarifies that the Minister's power to form an opinion as to the existence of petroleum in the location area can be based on information gained from any source. Aligns with the common mining code.

Clause 93 – Section 38A amended

This clause removes the requirement for an application for a retention lease to be made in accordance with an approved form. Aligns with the common mining code.

Clause 94 – Section 38B amended

This clause expands on the two requirements that must be satisfied before the Minister will grant a retention lease. That is, the block, or any one or more of the blocks, specified in the application contains petroleum resources and that the recovery of this is not presently commercially viable but is likely to become so within 15 years. The clause also enables the Minister to refuse a Retention Lease being granted over blocks specified in the application where the Minister is not satisfied that petroleum resources exist. Aligns with common mining code.

Clause 95 – Sections 38CA, 38CB, & 38CC inserted

This clause provides for the Minister to grant or refuse an application from the holder of a production licence for a retention lease in the circumstance where petroleum recovery operations are not being undertaken over all or part of the licence area. In granting the lease, the Minister would need to be satisfied that the resource is not presently commercially viable but likely to become so within 15 years. This section is necessitated by new provisions (section 54A) which enable termination of a licence if no operations for the recovery of petroleum resources have been carried out for a continuous period of at least five years. The application period for a retention lease, in this circumstance, is five years commencing from the date the production licence was granted or from the date recovery operations ceased. A further provision in section 38CC, enables, in circumstances where a licence has been transferred, for the Minister to recognise the transferee party as being the applicant for the retention lease. Aligns with the common mining code.

Clause 96 – Section 38F amended

This clause removes the requirement for an application for the renewal of a lease to be made in accordance with an approved form. Aligns with the common mining code.

Clause 97 – Section 38H amended

This clause provides that during the five year term of a retention lease, the Minister can only give one notice requiring a re-evaluation of the commercial viability of the recovery of petroleum from the petroleum lease area. This amendment is based on national competition policy reviews of the petroleum legislation that concluded that two re-evaluation notices were likely to impose additional costs to the titleholder. Aligns with the common mining code.

Clause 98 – Section 38J replaced

This clause removes the requirement for the holder of a retention lease to provide technical information about a petroleum resources so discovered. These matters will be more appropriately covered by regulations, however, it retains the requirement for the discovery of petroleum to be made known to the Minister and provides a penalty for not doing so. Aligns with the common mining code.

Clause 99 – Section 38K repealed

This amendment repeals the provision which enables the Minister to direct the holder of a petroleum title to do such things necessary to determine the properties and quantity of the discovered resource. As the required information is technical in nature it is better dealt with under Regulations to the Act. Aligns with the common mining code.

Clause 100 – Section 41 amended

This clause removes the requirement for an application for a production licence to be made in accordance with an approved form. Aligns with the common mining code.

Clause 101 – Section 43 amended

This clause enables the Minister to restrict the grant of a production licence to a block or blocks which the Minister is satisfied contains petroleum resources. Where the Minister is not satisfied that petroleum resources exist or an applicant has failed to supply information requested by the Minister, the Minister may decline to grant the licence. Aligns with the common mining code.

Clause 102 – Section 44 amended

This clause make some minor amendments to a clause cross referenced in this Section as a result of the amendment to section 43 from clause 101. The clause also enables the grant of a production licence only over a block or blocks which the Minister is satisfied contains petroleum. It replaces the previous provision which compelled the Minister to grant a production licence over all of the blocks applied for. Aligns with the common mining code.

Clause 103 – Section 44A amended

This clause makes a minor amendment to a clause cross referenced in this Section as a result of the amendment to section 43 from clause 101. Aligns with the common mining code.

Clause 104 – Section 45 amended

Following the amendments from clause 101, this Section is amended by this clause so that the grant of a production licence is only over a block or blocks which the Minister is satisfied contains petroleum. It replaces the previous provision which compelled the Minister to grant a production licence over all of the blocks applied for. Aligns with the common mining code.

Clause 105 – Section 47 amended

This clause removes the requirement for an application for a production licence over surrendered blocks to be made in accordance with an approved form. Aligns with the common mining code.

Clause 106 – Section 48 amended

This clause removes the discretionary authority of the Minister to refund the 10% deposit paid against a premium bid in circumstances where a successful applicant has rejected the offer of a production licence over surrendered blocks. A premium production licence application is made over blocks in which petroleum resources have previously been identified and in respect of which the applicant is required to submit a cash premium. Aligns with the common mining code.

Clause 107 – Section 49 amended

This clause deletes the option of paying for premium production licences for blocks by an installment payment facility. This will be removed when section 109 is deleted in clause 147. Aligns with common mining code.

Clause 108 – Section 50 amended

Like clause 107, this clause deletes the option of paying for the grant of a production licence in respect of an advertised block by an installment payment facility. Previously provided in section 109 but this is to be deleted in Clause 147. Aligns with common mining code.

Clause 109 – Section 51 amended

This clause removes the requirement for an application for the splitting of a production licence to be made in accordance with an approved form. Aligns with the common mining code.

Clause 110 – Section 53 amended

This clause amends the term for a new production licence and the second renewal of an existing production licence from 21 years to indefinitely commensurate with the productive life of the resource field. Aligns with the common mining code.

Clause 111 – Section 54A inserted

This is a new clause to enable indefinite term production licences to be terminated if the licensee has not carried on any operations for the recovery of petroleum under the licence at any time during a continuous period of at least five years. Dispensation is given for any period where no such operations were carried out due to circumstances beyond the licensee's control (ie: force-majeure).

Clause 112 – Section 54 amended

This clause, along with the changes to the terms for production licences in clause 110, confirms that the provisions for the renewal of production licences apply only to those licences which do not have an indefinite term. It also removes the requirement for a production licence renewal application to be in accordance with an approved form. Aligns with the common mining code.

Clause 113 – Section 55 amended

This amendment provides that the second renewal of a production licence will be granted for an indefinite term as a matter of right provided that operations for the recovery of petroleum have been carried on in the licence area within the period of five years before the application for renewal was made. Aligns with the common mining code.

Clause 114 – Section 59 amended

Makes consequential drafting amendments concerning the renaming of the Commonwealth’s “adjacent area” to “offshore area”.

Clause 115 – Part III Division 4A inserted

A new Division, 4A Infrastructure licences, has been added and provides for a licence which will accommodate the remote control of production facilities in a production licence area or activities associated with the processing, storage or preparation for transport of petroleum recovered in any place. Aligns with the common mining code.

Section 60A provides that a person shall not construct or operate infrastructure facilities without a licence. An unlicensed or un-permitted activity can invoke a five year imprisonment penalty.

Section 60B makes provision for applying for an infrastructure licence.

Section 60C enables the Minister to offer a licence in respect to an application by providing written notice to the applicant. Such notice shall provide a summary of the conditions subject to which the licence is granted and a warning that the application will lapse if the applicant does not accept the offer within three months.

Section 60D provides that where the infrastructure licence is to be located in the area of an exploration permit, retention lease, production licence, infrastructure licence, special prospecting authority, access authority or pipeline licence held by another party, that other party will be given the opportunity to comment. The opportunity to comment procedure doesn’t apply where the other party has consented in writing to the grant of the infrastructure licence.

Section 60E provides the mechanics for the grant of an infrastructure licence and which reflects the offer and acceptance system held for all petroleum titles.

Section 60F states that the rights conferred by an infrastructure licence are to construct and operate infrastructure facilities within its area. It further clarifies that the grant of an infrastructure licence is not a prerequisite to do anything that could be authorized to be done by a permit, lease, licence or pipeline licence. For example if petroleum was being stored in a production licence area then the holder of that licence wouldn’t also require an infrastructure licence.

Section 60G allows in a similar fashion to production licences for an infrastructure licence to be for an indefinite term.

As a consequence of infrastructure licences remaining in force indefinitely, section 60H provides for the termination of an infrastructure licence if the licensee has either not carried out any construction work under the infrastructure licence or used the infrastructure facilities constructed at any time during a continuous period of five years. Aligns with the common mining code.

Section 60I provides for an infrastructure licence to be granted subject to conditions. The power to insert conditions in infrastructure licences exists to ensure that the individual characteristics of each infrastructure facility are able to be dealt with in a way that satisfies the regulator and is accepted by the licensee. While the Joint Authority (JA) may grant a licence subject to whatever conditions the JA thinks appropriate, the conditions must conform to the general scope and purposes of the Act.

Section 60J sets out the procedure by which an infrastructure licensee may seek a variation of the licence and that the variation of an infrastructure licence is at the discretion of the JA. Consultation may be required if any other party has rights in the area in which the infrastructure facility is situated. No consultation is required if the other party has already given written consent for the grant of the proposed infrastructure licence or if the other party is the holder of a special prospecting authority or an access authority that will have expired before any consultation or operations under the infrastructure licence could occur. Aligns with the mining code.

Clause 116 – Section 59A and 59B repealed and section 60K inserted

This clause repeals the definitions of the “adjacent area” in Section 59A and inserts a new definition in Section 60K. This clause also repeals Section 59B which deals with the transition of that part of the North Rankin pipeline in Western Australian waters. This provision is no longer necessary as that part of the pipeline has since been licensed in its own right.

Clause 117 – Section 60 amended

This clause provides for the removal of subsections that relate to the regulation of water lines, secondary lines, pumping stations, tank and valve stations. As the requirements for regulating these facilities are technical in nature they are better administered by regulations. Aligns with the common mining code.

Clause 118 – Section 61 amended

Following the change at clause 117 to section 60, this clause deletes references to water line, pumping station, tank station, valve station and secondary line. Aligns with the common mining code.

Clause 119 – Section 62 amended

Similar to clause 117, this clause deletes references to water line, pumping station, tank station, valve station and secondary line. Aligns with the common mining code.

Clause 120 – Section 64 amended

This clause clarifies that an application for a pipeline licence can also be for the conveyance of petroleum recovered from outside of Western Australia’s adjacent area. This is the case with the North Rankin pipeline which is licensed under both the Commonwealth petroleum legislation and WA’s *Petroleum (Submerged Lands) Act 1982*. This clause also removes the requirement for pipeline applications to be made in accordance with an approved form and makes a drafting improvement to clarify that the licence referred to under the Commonwealth Act is a production licence. Aligns with the common mining code.

Clause 121 – Section 65 amended

As with clause 120, this clause makes a drafting improvement to clarify that the licence referred to under the Commonwealth Act is a production licence.

Clause 122 – Section 67 amended

This clause amends section 67 so that all pipelines will remain in force indefinitely rather than for 21 year terms. Aligns with the common mining code.

Clause 123 – Section 68 replaced

In keeping with the amendment at clause 122 for pipeline licences to be for an indefinite term, this section which dealt with the process for the renewal of a pipeline licence is no longer required. This clause deletes all of section 68 and replaces it with a new section that provides for the termination of a pipeline licence if the licensee has not carried out any construction work under the licence and used the pipeline or a particular part of it at any time during a continuous period of five years.

Clause 124 – Sections 69 repealed

In keeping with the amendment at clause 122 for pipeline licences to be for an indefinite term, this section which dealt with the process for the renewal of a pipeline licence is no longer required.

Clause 125 – Section 70 amended

In keeping with the amendment at clause 122 for pipeline licences to be for an indefinite term, sub-section 70 (3) which relates to the renewal of a pipeline licence is deleted. Aligns with common mining code.

Clause 126 – Section 71 amended

This clause removes the requirement to make an application for the variation of a pipeline, in accordance with an approved form. Aligns with the common mining code.

Clause 127 – Section 72 amended

This clause removes reference to a waterline, pumping station, tank station, valve station or secondary line from the variation of pipeline provisions; as those facilities are to be taken up in regulation. Aligns with the common mining code.

Clause 128 – Section 74J amended

This clause includes reference to an infrastructure licence in the definition of titles in the Division that accommodates dealings and transfers of titles. Aligns with the common mining code.

Clause 129 – Section 76 amended

This clause makes some drafting improvements to this section and provides for infrastructure licence to be included in the register. This clause also deletes the requirement that installment payments be recorded in the register as this option will be removed when section 109 is deleted in clause 147. Aligns with common mining code.

Clause 130 – Section 81A amended

This clause also includes reference to infrastructure licences in the provisions defining the prescribed period for petroleum titles between the time of the offer of the licence until the grant occurs. Aligns with the common mining code.

Clause 131 – Section 93 amended

As with clause 130, this clause includes reference to infrastructure licences as being titles which are exempt from stamp duty and, in lieu of which, the *Petroleum (Submerged Lands) Registration Fees Act 1982* applies.

Clause 132 – Section 94 replaced

As a result of a number of amendments, this clause replaces the existing section 94 “Notice of grants of permits, etc., to be published” with a new section. The amendments relate to the inclusion of infrastructure licences in the provisions dealing with the publishing of the grant of titles in the Government Gazette, deleting reference to the renewal of a pipeline licence as these are now for indefinite terms, and provision for the termination of a licence, infrastructure licence or pipeline licence. Aligns with the common mining code.

Clause 133 – Section 95 amended

This clause now includes provision that the surrender or cancellation or variation of an infrastructure licence, has effect from the date on which the notice is published in the Government Gazette. Aligns with the common mining code.

Clause 134 – Section 96 amended

This clause amends section 96 to include infrastructure licences in the provisions dealing with the commencement of works. Aligns with the common mining code.

Clause 135 – Section 97 amended

This clause amends section 97 to include infrastructure licences in the provisions dealing with recommended work practices. Aligns with the common mining code.

Clause 136 – Section 97A amended

This clause amends section 97A to include infrastructure licences in the provisions dealing with the need for a title holder to hold adequate insurance against mishaps. Aligns with the common mining code.

Clause 137 – Section 98 amended

This clause amends section 98 to include infrastructure licences in the provisions dealing with the requirement for title holders to maintain facilities in good condition and the removal of all structures and equipment which is no longer in use. Aligns with the common mining code.

Clause 138 – Section 100 repealed

This clause removes the requirement for the Minister’s approval to drill a well within 300 metres of a title boundary. This provision was made to avoid any uncontrolled deviation of a well into an adjoining property. With the advances made in drilling technology since 1967 this requirement is no longer necessary. In any event, the drilling of any well, including its location, needs to be approved by the Minister. Aligns with the common mining code.

Clause 139– Section 101 amended

This clause amends the direction making provisions to include infrastructure licences. The Minister may give directions as to any matter with respect to which regulations may be made. Aligns with the common mining code.

Clause 140 – Section 102 amended

This clause amends the provisions to include an infrastructure licensee in the list of title holders held responsible for compliance with the directions given under section 101. Aligns with the common mining code.

Clause 141 – Section 103 amended

This clause amends section 103 to include infrastructure licences in the provisions which enable title holders to seek variations, suspensions or exemptions from the conditions attaching to the grant of titles. Aligns with the common mining code.

Clause 142 – Section 104 amended

This clause amends section 104 to include infrastructure licences into the provisions dealing with the surrender of titles. Aligns with the common mining code.

Clause 143 – Section 105 amended

Like the previous clause, this clause amends the section to include infrastructure licences into the provisions by which titles may be cancelled. Aligns with the common mining code.

Clause 144 – Section 106 replaced

As a result of a number of amendments, this clause replaces the existing section 106 “Cancellation of permits, etc., not affected by other provisions” with a new section. The amendments relate to the inclusion of infrastructure licences in the provisions which deal with cancellation of titles regardless of whether the title holder has been convicted of an offence which prompted the cancellation. The clause also further defines terms used in this section. Aligns with the common mining code.

Clause 145 – Section 107 amended

This clause amends section 107 to include infrastructure licences in the provisions whereby a cancelled title holder is still subject to the Minister’s direction to remove property from or make good any damage to, the cancelled area. Aligns with the common mining code.

Clause 146 – Section 108 replaced

As a result of a number of amendments, this clause replaces the existing section 108 “Removal of property, etc., by Minister” with a new section. The amendments relate to the inclusion of infrastructure licences in the provisions which deal with the Minister’s ability to remove property from a cancelled, etc. title. Aligns with the common mining code.

Clause 147 – Sections 109 & 110 repealed

This clause removes the provision in section 109 to pay for premium exploration permits and premium production licences by instalments. The financing of such payments is a matter which should be dealt with commercially and need not involve Government. The repeal of section 109 also obviates the need for a penalty for late payment of instalments provided by section 110.

Clause 148 – Sections 111 amended

This clause removes the requirement for special prospecting authority applications to be made by way of an approved form. Aligns with the common mining code.

Clause 149 – Section 112 amended

This clause removes the requirement for an access authority application to be made in accordance with an approved form. The clause now further provides that the provisions of section 112 (4), relating to the conditions that must be met before the Minister will grant an access authority, do not apply if the holder of the title to be accessed has given written consent.

Clause 150 – Section 113 amended

This clause amends section 113 to include infrastructure licences in the provisions which deal with sale of property removed by the Minister from a title area. Aligns with the common mining code.

Clause 151 – Section 115 amended

This amendment more clearly explains the protection against self incrimination where a person is required by the Minister to provide information in respect to the recovery and operations for the recovery of petroleum. Aligns with the common mining code.

Clause 152 – Section 118 repealed

This clause, which deals with the release of geotechnical data, is repealed as these requirements are to be now included as Part IVA specifically dealing with “Release of Information”. Aligns with the common mining code.

Clause 153 – Section 121 repealed

This clause dealing with a direction by the Minister for a title holder to undertake a survey of wells is repealed as this is provided for under the Minister’s general direction making powers of section 101. Aligns with the common mining code.

Clause 154 – Section 122 amended

This clause amends section 122 to include infrastructure licences into the provision requiring that title holders keep records, core cuttings and samples in connection with those operations. Aligns with the common mining code.

Clause 155 – Section 123A inserted

This clause enables regulations to be made for data collection, including requirements for a titleholder to submit a data management plan. This is consistent with the move to objective-based regulations. Much of the information and material collected through the operation of these Regulations will eventually become publicly available and useful to petroleum exploration companies with a future interest in the same area. If such a company began to operate in the area, it would be required to contribute to the database in its turn.

Clause 156 – Section 124 amended

This clause amends section 124 to include infrastructure licences in the list of petroleum titles where operations cannot unduly interfere with other sea bound activities such as navigation and fishing. This amendment also deletes reference to section 60(2) and (3), which was repealed in clause 117, as the regulation of secondary lines, water lines, pumping stations, tank and valve stations from the list of facilities under the provisions of this clause as these are no longer directly referred to in the Act and considered to be better administered by regulations. Aligns with the common mining code.

Clause 157 – Section 124A amended

This clause is a consequential amendment to section 124A to include infrastructure licences in the list of titles, the holders of which are responsible for the payment of any compensation to native title holders.

Clause 158 – Various penalties amended

This clause amends the penalty provision in Section 125 to bring it into line with current drafting styles.

Clause 159 – Section 126 amended

This clause amends section 126 to include operations relating to the processing or storage of petroleum, and operations relating to the preparation of petroleum for transport. These are operations possible under infrastructure licences and are included to add to the powers and rights of access for an inspector. Aligns with the common mining code.

Clause 160 – Section 134 amended

This clause amends the section to include the offence of constructing or operating infrastructure facilities without a licence into the list of offences that a person may be convicted with by the Supreme Court and be subject to orders for forfeiture.

Clause 161 – Section 138A amended

This clause includes infrastructure licences and pipeline licences into the provisions dealing with the requirement for having a single party nominated for the service of notices in circumstance where there is more than one title holder. The previous exclusion of pipeline licences from these provisions was an oversight. Aligns with the common mining code.

Clause 162 – Section 141A inserted

This clause now includes provision for an annual fee for infrastructure licences to be prescribed by regulation. Aligns with the common mining code.

Clause 163 – Section 142 amended

This clause amends section 142 to include infrastructure licences into the provision dealing with the time in which fees are to be paid. Aligns with the common mining code.

Clause 164 – Section 150 amended

This clause amends section 150 to include infrastructure licences into the provision dealing with the penalty for late payment of fees. Aligns with the common mining code.

Clause 165 – Section 151 amended

This clause amends section 151 to include infrastructure licences in the section which provides that fees, royalties and penalties are debts due to the State. Aligns with the common mining code.

Clause 166 – Part IVA inserted

This clause inserts Part IVA Release of information to provide for the public release of exploration and production data supplied to Government and enables that data to be used for other explorers. Provisions for the release of information were previously contained in section 118 but this has been repealed by this Act (refer clause 152). These provisions have been simplified by enabling requirements for the protection of confidentiality for information and samples to be set by regulations. Aligns with the common mining code.

Clause 167 – Part IV heading amended

This clause amends the heading of Part IV from “Regulation” to “General” as it now also embraces transitional provisions.

Clause 168 – Section 152 amended

This clause broadens the regulation making capacity to also cover construction, erection, maintenance, operation or use of equipment and facilities and requires petroleum operations to be undertaken in accordance with an approved environmental plan and includes the release of information requirements.

This clause also removes reference to a regulation making ability in respect to the *Convention of the Continental Shelf 1958* which is to be removed from the Act (refer clause 170). Aligns with the common mining code.

Clause 169 – Section 153 inserted

This clause provides for transitional provisions relating to the amendments contained in Part 2 of this Act. These provisions allow for regulations to be made if there is insufficient capacity in this Act to deal with a transitional matter. Such transitional regulations can only be made within 12 months of Schedule 2 coming into effect. Any transitional regulation that is made retrospectively cannot operate so as to be prejudicial to the rights of any person which pre-exist the publication of the regulations. Consequential drafting amendment.

Clause 170 – Schedule 1 repealed

This clause repeals the schedule which deals with the *Convention on the Continental Shelf 1958* which is no longer referred to in the Act.

Clause 171– Schedule 2 replaced

This clause amends the description of Western Australia’s scheduled offshore area from which the adjacent area for the purposes of this Act is drawn. This has been re-written so that the coordinates agree to the Australian Geodetic Datum of 1966.

Clause 172 – Schedules 3 & 4 replaced by Schedule 3

This clause deletes existing Schedules 3 and 4 as the prior transitional arrangements are no longer required and are replaced by new Schedule 3 which deals with transitional provisions relating to these amendments. The transitional provisions are to:

- enable the former provisions of section 31 which allowed the number of renewal blocks to be maintained at sixteen to continue for only the next renewal of a permit which pre-existed the new requirement;
- make it unnecessary for the holder of retention lease to complete a second review of the economic viability of the lease as per section 38H;

- allow that the existing conditions to a pipeline licence in section 70 will still apply,
- enable the release of information requirements including the calculation of fees as contained in former section 118, to prevail in respect to information given prior to the new provisions coming into effect;
- confirming that the *Interpretation Act 1984* preserves any transitional rights in respect to subsisting titles referred to in the now repealed Schedules 3 & 4.

Aligns with the common mining code.

Clause 173 – Schedule 5 amended

This clause amends the Occupational Safety & Health Schedule to bring penalty provisions in line with current drafting styles and to correct a drafting error where an incorrect clause reference was included in clause 72 (1).

Clause 174 – Various penalties amended

This clause amends the penalty provisions to bring them into line with current drafting styles.

PART 4 – PETROLEUM PIPELINES ACT 1969

Clause 175 – Act amended in this Part

This clause provides that the amendments in this part are to the *Petroleum Pipelines Act 1969*.

Clause 176 – Section 4 amended

- Sub-clause (1) redefines petroleum so that it also means carbon dioxide. It is an identical amendment to that for the *Petroleum & Geothermal Resources Energy Act 1967* (refer clause 4) and the *Petroleum (Submerged Lands) Act 1982* (clause 4), and redefines petroleum to include carbon dioxide as a separate element and not merely as a mixture with other elements. This enables carbon dioxide to be transported in pipelines licensed under the *Petroleum Pipelines Act 1969* for disposal underground.
- Sub-Clause (2) amends the definition of pipeline by removing the previous exclusion from the *Petroleum Pipelines Act 1969* of pipelines constructed by Public Authorities. This will enable Public Authority petroleum pipelines to be constructed and licensed in a consistent manner.
- Sub-clause (3) amends to correct a previous drafting error.

Clause 177 – Section 8 amended

This clause removes the requirement for a pipeline licence application to be made in accordance with an approved form. Aligns with the common mining code.

Clause 178 – Section 11 repealed

This clause deletes provisions dealing with the renewal of pipelines as clause 179 amends section 14 so that all pipelines will remain in force indefinitely rather than for 21 year terms subject to their continued construction and use. Aligns with the common mining code.

Clause 179 – Section 14 replaced and Section 15A inserted

Following on from clause 178, this clause replaces the existing Section 14 to provide that both existing and future pipeline licences remain in force indefinitely. In addition Section 15A has been added to provide for the termination of a pipeline licence if the licensee has not carried out any construction work under the licence or used the pipeline or a particular part of it at any time during a continuous period of five years. Both align with the common mining code.

Clause 180 – Section 15 amended

This clause removes the requirement for an application to vary a pipeline licence to be in accordance with an approved form. Aligns with the common mining code.

Clause 181 – Section 47A repealed

This clause corrects a previous anomaly and removes a section that enabled assignments of interests in a future licence to be registered on a provisional basis. This requirement was erroneously inserted in 1990 but is not necessary as onshore pipeline licences aren't subject to the same competitive bid, offer and acceptance provisions that apply to petroleum exploration permits and production licences.

Clause 182 – Section 61 replaced

This clause replaces the previous wording for this Section and enables the Minister to delegate any of the Minister's powers and duties under this Act to any person. Previously a delegation of powers could only be made to officers of the Department of Mines. This has been too restrictive and does not align with modern delegation provisions. Aligns with the common mining code.

Clause 183 – Section 67 amended

This clause provides that regulations may be made in respect to the preparation, submission and approval of environment plans and prohibits the undertaking of any pipeline activities otherwise than in accordance with an approved plan. Aligns with the common mining code.

Clause 184 – Schedule 1 amended

This clause amends the Occupational Safety & Health Schedule to bring penalty provisions in line with current drafting styles and to correct a drafting error where an incorrect clause reference was included in clause 71 (1).

Clause 185 – Various penalties amended

This clause amends the penalty provisions to bring them into line with current drafting styles.

PART 5 – AMENDMENTS TO OTHER ACTS

Clause 186 – *Barrow Island Act 2003* amended

This clause deletes section 11 in the *Barrow Island Act 2003* which deems (for its own purpose) that petroleum as defined under the *Petroleum Pipelines Act 1969* also including carbon dioxide. This is no longer necessary as the definition of petroleum under the latter Act has been amended to include carbon dioxide.

Clause 187 – *Crimes at Sea Act 2000* amended

This clause consequentially replaces the definition “Area A of the Zone of Co-operation” with the “Joint Petroleum Development Area” and replaces references to the repealed Commonwealth’s *Petroleum (Submerged Lands) Act 1967* with the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Clause 188 – *National Gas Access (WA) Act 2009* amended

This clause consequentially replaces reference to “adjacent area” with “offshore area” and the repealed Commonwealth *Petroleum (Submerged Lands) Act 1967* with the Commonwealth’s *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Clause 189– *Petroleum (Submerged Lands) Registration Fees Act 1982* amended

This clause amends section (4) 1 of the Registration Fees Act so that registration fees, in lieu of stamp duty, can be levied against transactions and dealings in Infrastructure Licences.

Clause 190 – *Workers’ Compensation & Injury Management Act 1981* amended

This clause consequentially replaces the definition of “adjacent area” with “offshore area”, the Area A of the Zone of Cooperation with the Joint Petroleum Development Area; and reference to the repealed Commonwealth’s *Petroleum (Submerged Lands) Act 1967* with the new Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.