COMMONWEALTH OF AUSTRALIA

DEPARTMENT OF NATIONAL DEVELOPMENT

BUREAU OF MINERAL RESOURCES, GEOLOGY AND GEOPHYSICS

Record 1971/112

SUMMARY OF OFFSHORE PETROLEUM LEGISLATION

by

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AUSTRALIA - OFFSHORE PETROLEUM LEGISLATION

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Australia, like North America, has a twin system of Government, Federal (Commonwealth) and State. The Commonwealth Government bears the responsibility for such matters as foreign affairs, defence, posts and telegraphs, and navigation while the States are responsible for internal affairs.

Petroleum exploration and development in the Commonwealth of Australia, both onshore and offshore, was controlled, until November, 1968, by the Petroleum Acts or Ordinances of the six States and two Territories.

The first petroleum exploration titles to be issued over offshore areas were granted by the State of Queensland in 1954 over parts of the Gulf of Carpentaria; these were granted under the terms and conditions of the Petroleum Act 1923-50 of that State. By the end of 1959, titles had been granted covering areas offshore of Queensland, Victoria, Western Australia, South Australia, Northern Territory, and the Territory of Papua New Guinea. All of these areas extended beyond the 3-mile territorial sea limit; the majority lay within the 200-metre bathymetric contour but some extended beyond this line into deeper waters.

There was no consistency in the provisions of the petroleum legislation of the States and Territories as to size of area or maximum term of a title. The legislation of some States limited

the size of the individual exploration titles, but placed no limitation on the number of titles that could be held. In other States, there was no limit on the size of any exploration title that could be granted. For example, one exploration title that was granted in 1963 covered an area of 270,000 sq. km, but it was soon realized that such areas were too large for one party to explore at an acceptable rate. It had been recognized that many of the prospective sedimentary areas in which exploration had been carried out on land extend into the offshore areas, and companies were directing their exploration programmes accordingly. There was doubt in the minds of some as to the validity of titles issued by States and Territories beyond the three mile territorial limit.

Early in 1964, the Commonwealth Government, through the Department of National Development, met with the States and Territories and it was agreed that a national solution for controlling their activities was necessary. The Governments concerned, i.e. the Commonwealth and State Governments, recognized that there was a conflict of constitutional claims in relation to the sea bed and were anxious to avoid any action which would induce litigation such as had occurred in other countries.

The drafting of legislation, based on the following concepts, then began:-

(a) that a national solution to the problem of offshore exploration for petroleum was necessary,
(b) that litigation concerning constitutional rights should be avoided,

(c) that the legislation would relate to petroleum exploration and development only and would not be taken as a precendent for solving problems relating to other resources of the continental shelf,

(d) that the scheme would be applicable to both the territorial sea and to the outer continental shelf,

(e) that operations would, as far as possible, be subject to a common code,

(f) that initially royalty would be at a rate of 10 per cent,

(g) that royalty would be shared between the Commonwealth and the States on a proportion to be agreed on,

(h) that the administration of the scheme would be in the hands of the States - applications for titles would be made to and granted by the States, subject to approval by the Commonwealth in the exercise of its responsibilities for foreign affairs, defence, customs and navigation,

(i) that there should be agreement between the States and the Commonwealth on joint legislation arrangements over the whole offshore sea bed in relation to petroleum exploration and development.

The scheme involved the Commonwealth and the States legislating in virtually common form - mirror-image legislation - with a law of the Commonwealth Parliament and a law of the particular State applying to the same subject matter, operating over a particular geographical area and establishing the same legal system relating to the exploration for and the development

of offshore petroleum resources.

The basic instrument underlying the whole of the joint legislation is an Agreement between the Commonwealth Government and the Governments of the six States which sets down details of the agreed arrangements and the basis of, and the understanding behind, such arrangements. The Agreement includes a series of maps which illustrate the areas over which the respective States and Territories have administrative jurisdiction. (It should be noted here that while the maps show the areas over which the States and Territories have administrative jurisdiction, the Petroleum (Submerged Lands) Acts themselves extend only to as much of the area as is territorial sea bed or continental shelf within the meaning of the Geneva Convention on the Continental Shelf of 1958). The Petroleum (Submerged Lands) Acts of the Commonwealth and States were all promulgated on 22 November 1967 and came into force on 1 April 1968.

The Acts do not apply to submerged land beneath internal waters; these are waters inside base lines from which territorial seas are measured and in such areas State or Territory land petroleum legislation applies.

The administration of the legislation is in the hands of the Designated Authority, who is, in the case of the States, a person appointed by the Governor of the State; this person is the Minister for Mines of the State concerned. In the case of the Territories of the Commonwealth, in respect of the Northern Territory it is the

Minister of the Interior and in respect of Territory of Papua New Guinea it is the Minister for External Territories.

The legislation is based on a two stage system, a permit covering all stages of exploration, including drilling, and a licence covering development and production. These are the Exploration Permit for Petroleum, known as a Permit, and the Production Licence for Petroleum, known as a Licence; they are exclusive titles and no one else may carry out exploration within them. There are, in addition, three other titles which may be granted to allow for different kinds of exploration or operation over areas which may be outside approved titles. In Australia, all petroleum is the property of the Crown, that is the Government, and no one may carry out exploration for that commodity without an approval from the Government concerned. These additional titles are the non-exclusive special prospecting authority, the access authority, and the pipeline licence. These are explained in more detail on page 10.

EXPLORATION

For convenience in administration, the areas of permits or licences are determined by a graticular system of blocks, the size of each graticular block being 5 minutes of arc of latitude by 5 minutes of arc of longitude. Because of the size of Australia and the convergence of the meridians of longitude between the Equator and the South Pole, the area of each graticular block decreases from about 78 square kilometres in the north of Australia to about 65 square kilometres in the area south of Tasmania.

The maximum number of blocks which may be held under any permit is 400 (approximately 25,900 square kilometres) which is regarded as the reasonable maximum size and one which gives a company ample opportunity to explore efficiently. There is, however, no statutory limit on the number of permits which may be granted to an individual company.

In the first instance, permits are issued for a period of 6 years, with rights of renewal for successive periods of 5 years. The right of renewal is subject to compliance by the permittee of the work conditions of the permit and to the surrender of half of the permit area at the end of each period. The purpose of this requirement is to encourage permittees to concentrate their efforts in the most prospective areas which they discover, but not at the same time to hold large areas which are not being effectively explored. Under the relinquishment provisions a title holder has a firm assurance of being able to retain the most promising areas for many years. However, provision is made in the legislation that the final area unless otherwise approved is not less than 16 blocks; this results in the smallest permit having an area of about 1036 square kilometres.

The legislation also requires the reduction in area to be made in such a manner that it conforms to the graticular system and that when reductions are made, the area retained by the permittee shall comprise groups of at least 16 blocks so that each block has at least one side in common with another block within the group. This is to prevent undue fragmentation of the area.

It was decided that the legislation would not contain specific annual work obligations because the long terms of the permit would make it impossible to foresee what developments would be likely to occur during the periods involved. However, the work obligations are covered by specific expenditure requirements during the period concerned but the Designated Authority has power to suspend or modify a programme in special circumstances e.g. through the unavailability of a suitable drilling rig or other essential equipment.

All operations must be carried out in accordance with good oilfield practice and in such a manner as will not unjustifiably interfere with navigation or fishing, with the living resources of the sea and the sea bed, with underwater cables or pipelines, or with mining operations for minerals other than petroleum. There is also provision for the submission of regular progress and other reports and the requirement that proper safety practices shall be observed.

Applications for permits over vacant parts of the adjacent area cannot be lodged indiscriminately but only in response to an advertisement placed by the Designated Authority in the Government Gazette. The purpose of this is to ensure that all interested parties have an equal opportunity of having their applications considered. If there is no application which is acceptable then the Designated Authority is free to deal with or negotiate in respect of any application over the counter.

DEVELOPMENT

If a permittee discovers petroleum in commercial quantities he has a preferential right to a production licence which grants him the right to produce petroleum for commercial gain. An exploration permit only allows production of petroleum for testing purposes. In the first instance, a production licence is issued for a period of 21 years; if during that period, the licencee has satisfactorily carried out the conditions of the licence, a further extension for another 21 years may be granted. A successful operator is therefore assured of holding his licence area for at least 42 years.

There are two stages in the grant of a production licence. When a permittee has made a discovery of petroleum within his permit area, he may elect or be directed by the administering authority to nominate a graticular block which will then become the centre block of a group of 9 graticular blocks which are known as a location; each side of a location is therefore 3 blocks long.

To take out his production licence from a location of 9 blocks a permittee has two alternatives:-

(i) He may take out a "primary" production licence over any 5 blocks and pay the standard royalty of 10 percent on the value of production therefrom; the remaining 4 blocks would revert to the Crown for the Designated Authority to dispose of as he wishes.

(ii) he may take up his "primary" entitlement of 5 blocks and any additional remaining blocks from the location as a "secondary" licence. Should he do this, he will pay an additional overriding royalty, which will be decided by the Designated Authority, of between 1 percent and 2½ percent on any production from those blocks, bringing the total royalty he will pay to between 11 percent and 12½ percent on production from those blocks.

After the permittee has declared his location of 9 blocks, he has two years in which to decide which blocks he will select for his licence; this period may be extended a further 2 years at the discretion of the Designated Authority. Those blocks in a location which a permittee does not elect to take up either as a primary or secondary licence, and which revert to the Crown, may be disposed of by the Designated Authority in a number of ways. They may be advertised as being available, bids on a cash basis may be called for, or for an additional overriding royalty, or they may be offered on a cash basis plus an additional royalty. The licencee may bid for these if he wishes. Like the permit, there is no limitation to the number of licences which may be held but conditions are laid down concerning the selection of other locations within a permit. If a well results in the discovery of petroleum and is used as the basis for declaring a location then no other well in the same block as the discovery well or in any of the 8 surrounding blocks will qualify for a separate location, unless the Designated Authority approves. By this means

assessment or step-out wells cannot be used for the establishment of additional locations. At the same time, should two separate structures be found close together in adjoining blocks, a permittee could have adjoining locations; in this case the Designated Authority would exercise his discretion in allowing the permittee to take up two locations leading to two production licences.

As stated before, any graticular blocks not taken up by a permittee either as a primary or secondary licence are excised from the permit area, and revert to the Crown to be disposed of as the Designated Authority sees fit. So that applicants may be able to bid realistically for these vacant areas and as all information already obtained relating thereto is confidential, a short term non-exclusive title known as a special prospecting authority can be granted. These titles allow the conduct of all operations short of drilling to be carried out over the vacant blocks.

A condition of all licences is that the holder shall carry out approved work within the licence area of not less than $100,000 per block per annum but provision is made for the value of petroleum produced in any one year to be offset against the work obligation of the following year (Sec. 57). This would have effect after development has taken place and works programmes, apart from maintenance, drop off considerably.

The legislation also provides for the grant of access authorities. Both the permit and the licence are exclusive titles and give the holder sole rights within them, but circumstances

could arise when another operator might require, for example, to tie-in a geophysical line with a known control in or across a permit or licence held by another operator or across a vacant area. An access authority may be granted for this specific purpose; like the special prospecting authority, an access authority does not permit drilling to be done.

The legislation states that royalty shall be paid on production at a standard rate of 10 percent of the well head value plus an overriding royalty of between 1 percent and 2½ percent where this is applicable. The standard royalty is divided between the Commonwealth and the States in the ratio of 40-60, but where an overriding royalty is paid, the additional royalty is paid to the State. An uncommon feature of this legislation is that provision is made for the royalty rate to be reduced in certain cases when for instance the rate of recovery of petroleum has become so reduced that further recovery might be uneconomic in the absence of some relief.

An important section in the legislation deals with the production from a licence. If the Designated Authority is of the opinion that a licencee has recoverable petroleum in his licence area and that the petroleum is not being recovered from that area, he (the Designated Authority) may issue directions to the licencee to take all necessary and practical steps to recover that petroleum. In the same way, where petroleum is being produced, directions can be issued to the licencee to increase or decrease the production rate to a required level. The latter occasion may arise in the event of market saturation and over-production has resulted.

The Designated Authority thus has the power to introduce prorationing if necessary.

Geological structures do not respect state or title boundaries and therefore provision is made for the unit development of a pool should one be found to extend across a State or licence boundary.

The Designated Authority may, if he so desires, insert in the conditions under which he grants a licence a requirement that petroleum produced in liquid form be refined within the adjacent State or, in the case of natural gas, be disposed of within that State.

A production licencee has a preferential right to a pipeline licence to bring his petroleum ashore. A pipeline is defined in the Act as a pipe or system of pipes for conveying petroleum within the adjacent area, that is to say, a main trunk line, but does not include flow lines from wells to gathering stations, or lines used for conveying petroleum that is being flared, vented, or returned to reservoir or for any other purpose in the field. A pipeline licence specifies the route which the pipeline shall follow, its design and capacity, and the purposes for which it is to be used. It requires the holder, if directed by the Designated Authority, to act as a common carrier for the conveying of petroleum belonging to other parties. A licence is granted in the first instance for a term of 21 years, and it can be extended for as long as the pipeline is required to convey petroleum.

It was stated at the start of this paper that many titles had been granted under the relevant land legislation. In the preparation of this legislation particular attention was paid to the position of companies already holding titles to ensure that such titles would be honoured under the new legislation. Transition provisions were introduced by which a title holder had two choices. He could in the first instance continue to hold the existing title area under its existing conditions for the unexpired portion of its life. If during this period a discovery of petroleum was made, the title holder was entitled to apply for and be granted a production licence under the joint offshore legislation. In the second case, he could immediately come within the provisions of the new legislation.

Most title holders availed themselves of the second approach and were required to lodge their applications within 6 months of the proclamation of the legislation.

Title holders are required to pay fees and rentals which are retained in full by the States. These include -

(1) Permits - an annual fee of $5 per block with a minimum fee of $100.

(2) Licences - an annual fee of $3,000 per block in the licence area.

(3) Pipeline Licence - an annual fee of $20 per mile.

(4) Registration Fee - at an advalorem rate of 1½ percent on the value of the consideration of

the transfer for title or on the value of the interest transferred whichever is the greater. Minimum fee $100.

Registration fees are not payable in certain circumstances, or some relief may be granted. No registration fees are payable

(1) where the consideration for a transfer is represented by a promise to undertake or be responsible for the cost of approved exploration works, or

(2) when a transfer is between related companies when the Designated Authority is satisfied that this is made solely for the purpose of the re-organization or for the better administration of the companies concerned;

(It was the view of the Commonwealth and State Governments that the aim of the legislation should be to encourage administrative and organizational efficiency by companies operating in the offshore area and to avoid a multiplicity of unreal legal arrangements through schemes designed to avoid payment of registration fees.)

(3) where a transfer results from the operation of a prior dealing such as a farmout agreement between two companies, exemption from the advalorem fees may be granted and in lieu a flat rate fee of $1,000 may be charged.

The following fees are payable:-

(1) a fee of $1,000 with an Application for a Exploration Permit for Petroleum; if the permit is not granted, $900 is refunded (Sec. 21).

(2) a fee of $1,000 with an Application for an Exploration Permit for Petroleum in respect of invitations for bids for surrendered or cancelled blocks plus a deposit of 10 percent of the bid; if the permit is not granted, $900 of the fee is refunded, plus, under certain circumstances, the whole of the deposit (Sec. 24).

(3) a fee of $1,000 with an Application for a Production Licence for Petroleum (Sec. 41).

(4) a fee of $1,000 with an application for a Production Licence for Petroleum in respect of invitations for bids for surrendered or cancelled blocks plus a deposit of 10 percent of the bid; if the licence is not granted, $900 is refunded, plus under certain circumstances the whole of the deposit (Sec. 48).

(5) a fee of $1,000 with an application for a Pipeline Licence; if the licence is not granted, $900 is refunded (Sec. 65).

(6) a fee of $100 with an application for a renewal of an Exploration Permit for Petroleum (Sec. 30).

(7) a fee of $200 with an application for a renewal of a Production Licence for Petroleum (Sec. 54).

(8) a fee of $200 with an application for a renewal of a Pipeline Licence (Sec. 68).

(9) a fee of $100 for an Application for a Production Licence for Petroleum over individual blocks (Sec. 51).

(10) a fee of $100 for an application for a Variation of a Pipeline Licence (Sec. 71).

Penalties of up to $2,000 per day for each day on which certain offences against the conditions of the legislation are committed can be imposed.

As Australia is a signatory to the Geneva Convention on the Continental Shelf, it is necessary to ensure that all operations are conducted within the terms of that Convention. For instance, Article 5 of the Convention requires the removal of all abandoned or disused marine installations. These requirements are included in the legislation and penalties are provided for failure to comply with them.

In order that Governments may have control over operations, provision is made for the appointment of inspectors to ensure that title holders are carrying out their obligations under the legislation. Visits may be made to any type of operation, including geophysical and drilling, to ensure that health, safety, pollution, and other requirements are being strictly followed. Penalties may be imposed if considered necessary.

REGULATIONS

Section 157 of the Petroleum (Submerged Lands) Act provides for the making of Regulations, not inconsistent with the Act, and sets out the matters which may be dealt with by regulation.

A set of Regulations has been drafted but has not, as yet, been promulgated. The regulations were prepared over a long period of time and incorporate the appropriate conditions of the many countries with offshore operations and include some of the orders which hasve been issued by the Department of the Interior of the United States of America for operations on the Outer Continental Shelfs of California and Louisiana, modified when necessary in their application to Australian conditions and the large area to which they apply. The draft was discussed at length with industry.

The draft regulations are divided into 9 Parts as follows:-

Part I	Preliminary	
Part II	General:	Division 1 - Administration
		Division 2 - Safety
Part III	Exploration:	Geophysical and Geological
Part IV	Explosives:	Division 1 - General
		Division 2 - Packaged Explosives
		Division 3 - Ammonium Nitrate
		Division 4 - Use of Explosives in Wells
Part V	Drilling and Related Operations:	Division 1 - General
		Division 2 - Drilling, Production and Abandonment.

		Division 3 - Safety in Drilling Operations
		Division 4 - Safety in Drilling Rigs and Equipment
Part VI	Production and Conservation:	Division 1 - Equipment and Facilities
		Division 2 - Measurement
		Division 3 - Procedures
Part VII	Electrical	
Part VIII	Pipelines	
Part IX	Marine	
Part X	Penalties	

The legislation emphasizes that all information supplied to the Governments is confidential and cannot be released to anyone as long as the title to which it relates is in force. When a title has expired or any part of it is surrendered or cancelled, the legislation sets down when the information relating to that part can be made public. The regulations specify what information can be released and divide this information into "Basic" and "Interpretative". "Basic" information includes seismic magnetic tapes, ditch cuttings, cores, fluid samples, bathymetric records, electric and other bore hole surveys, palaeontologic and petrologic studies, analyses of fluid samples etc. "Interpretative" data includes all well completion reports, special studies, log interpretations,

seismic contour maps, in fact anything which requires the drawing of a conclusion by the author.

Basic information can be made available after the "relevant day" (which is defined in the Act) but interpretative data are not available without the specific consent of the company.