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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**GREATER SUNRISE UNITISATION AGREEMENT IMPLEMENTATION BILL 2004**

EXPLANATORY MEMORANDUM

(Circulated by the authority of  
the Minister for Industry, Tourism and Resources,  
the Hon Ian Macfarlane, MP)

## **GREATER SUNRISE UNITISATION AGREEMENT IMPLEMENTATION BILL 2004**

### **GENERAL OUTLINE**

#### **Resource management aspects**

This Bill, together with the Customs Tariff Amendment (Greater Sunrise) Bill 2004, puts in place the framework necessary for Australia to meet its obligations arising under the Agreement between Australia and the Democratic Republic of Timor-Leste relating to the unitisation of the Greater Sunrise petroleum resource. The Agreement, known as the Greater Sunrise unitisation agreement, was signed by Australia and East Timor in Dili on 6 March 2003.

Where a petroleum resource, whether comprised of one or more pools, straddles a boundary between administrative systems or straddles a border or straddles production rights, sound resource management often requires the resource to be developed as a single unit. This is known as the unitisation of a petroleum resource. In the absence of unitisation, production from one part of a resource could be to the detriment of the resource as a whole or could be to the detriment of those with an interest in the resource on the other side of the boundary.

In 2003, Australia and East Timor agreed to the arrangements to govern the unitisation of the Greater Sunrise petroleum resource. This resource straddles the border of the Joint Petroleum Development Area, which is the area of shared jurisdiction between Australia and East Timor established by the Timor Sea Treaty, and an area of sole Australian jurisdiction located within the Northern Territory adjacent area.

The Greater Sunrise unitisation agreement will be ratified by Australia and East Timor once both countries have put in place the required domestic arrangements to enable them to fulfil their obligations under the Agreement. This Bill and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 do this for Australia.

Two general principles underlie the framework of this Bill.

First, Australia and East Timor have agreed, in effect, that development of the Greater Sunrise resource should, to the extent necessary, be subject to consistent administrative requirements. As a result, there will be a consistent legislative regime for petroleum operations throughout the unit area in relation to safety, occupational health and environmental protection. Annex II of the Greater Sunrise unitisation agreement specifies the Australian legislation that is to apply throughout the unit area. In some cases, such as for the purposes of the *Navigation Act 1912*, no amendment of that Act is required to give effect to Australia's commitment. In other cases, such as for the purposes of the *Radiocommunications Act 1992*, amendment of the Act is required to apply the law to the part of the unit area contained within the Joint Petroleum Development Area. This Bill, and the associated Customs Tariff Amendment (Greater Sunrise) Bill amend Acts to enable Australia to meet the obligations that will be imposed by the Greater Sunrise unitisation agreement, once ratified.

Second, Australia and East Timor have agreed, in effect, that the essential elements of the petroleum licensing regime on each side of the boundary will be maintained. Quite different regimes are in place in the Joint Petroleum Development Area and the area of sole Australian jurisdiction. In the former, a contractual licensing regime is in place, while, in the latter, a legislated licensing regime is in place. As neither system is to prevail in relation to essential licensing issues, persons conducting petroleum activities in the unit area will have to meet the

requirements of both regimes. Those persons will need to hold rights, deriving from contract, to undertake activities in the part of the unit area which is within the Joint Petroleum Development Area (labelled, in this Bill, as the Western Greater Sunrise area) and to hold licensed rights, deriving from a legislated regime, to undertake activities in the part of the unit area within sole Australian jurisdiction (labelled, in this Bill, as the Eastern Greater Sunrise area).

Such a parallel system can work only if the administrators of the two regimes act in concert. The Greater Sunrise unitisation agreement provides for this to occur through consultation and information sharing.

Petroleum activity in the Eastern Greater Sunrise area is currently administered by the Australian and Northern Territory Governments. Petroleum activity in the Western Greater Sunrise area is administered by the Timor Sea Treaty Designated Authority which operates with the oversight of the Timor Sea Joint Commission. The Joint Commission, in turn, reports to the Ministerial Council established by the Timor Sea Treaty.

For Australia, to ensure that administrative arrangements for the Eastern Greater Sunrise area will be in concert with arrangements for the Western Greater Sunrise area, some modifications are required to the framework applying to petroleum administration in the Eastern Greater Sunrise area. This area forms a small part of the Northern Territory adjacent area. Petroleum operations in this adjacent area are administered under the *Petroleum (Submerged Lands) Act 1967*. The administration is effected through a Joint Authority (composed of the responsible Commonwealth Minister and a counterpart Northern Territory Minister) and a Designated Authority (composed of the counterpart Northern Territory Minister). As the Commonwealth Minister is the Australian member of the Timor Sea Ministerial Council which has ultimate oversight for operations in the Joint Petroleum Development Area, including the Western Greater Sunrise area, this Bill provides that the responsible Commonwealth Minister, alone, will discharge the duties of the Joint Authority and the Designated Authority in the Eastern Greater Sunrise area. As a related measure, the Bill makes provision for administrative arrangements in relation to an adjacent area to be capable of being applied to a part of an adjacent area.

The Bill makes one change that applies throughout all the adjacent areas: it restricts, to employees of the Australian, State and Northern Territory Governments, the class of persons to whom a Joint Authority or Designated Authority can delegate powers. This change is made to ensure that appropriate accountability mechanisms are in place for the exercise of these powers. This legislative action accords with current practice and will not affect the usual administration of offshore petroleum activity.

The Bill also makes a small number of technical corrections to rectify editorial defects arising from amendments to the Act made in 2000.

### **Petroleum resource rent tax aspects**

The following is an explanation of how the Commonwealth petroleum resource rent tax (PRRT) applies to the Australian apportionment of Greater Sunrise projects, as a result of the implementation of the Greater Sunrise unitisation agreement. Specifically, this explains the adjustments to the PRRT which ensure that it extends to all Greater Sunrise projects and how the PRRT is adjusted according to the apportionment ratio. Also explained is how the relationship between petroleum projects that are, and those that are not, Greater Sunrise projects, is maintained so that provisions relating to the transfer of expenditure between projects and between taxpayers

operate consistently with that apportionment. It further identifies some potential matters that are not adjusted by this Bill, on the basis that they need be dealt with only should they actually arise.

The *Petroleum Resource Rent Tax Assessment Act 1987* levies tax on a taxpayer for the recovery of petroleum from a petroleum project in offshore areas subject to the tax. The tax is payable once deductible expenditures for the project, carried forward in real terms, and a notional return for most expenditures have been fully offset by assessable receipts. Unlike royalty and excise arrangements that are based on production, PRRT is profit-based. Only genuinely profitable projects pay PRRT. Each taxpayer's interest in assessable receipts from a petroleum project will be subject to the provisions of the Act. In essence, each taxpayer's interest in a project becomes a "taxing entity".

PRRT is only applied to the part of a project which recovers petroleum (including gas) and produces a particular product from petroleum, referred to as a *marketable petroleum commodity* (MPC), which includes:

- stabilised crude oil;
- sales gas;
- condensate;
- liquefied petroleum gas (LPG); or
- ethane.

A petroleum project will include the functions normally associated with initial extraction and production of petroleum, so as to include the treatment processes, transport, storage and other facilities and operations that are integral to production of petroleum up to an MPC or any earlier sale. The PRRT assessment does not extend beyond the MPC production and on-site storage stage to downstream activities such as further refinery processes and further transport, storage or facilities.

PRRT is levied on the PRRT profits of a petroleum project at a rate of 40 per cent. The taxable profit of a project is the excess of assessable receipts over the sum of the deductible expenditure of a project (maintained in real terms, and including a compounding minimum return) in a financial year and any exploration expenditure (similarly compounded) permitted to be transferred to the project from other projects held by a taxpayer (if a company, from wholly-owned companies of the same group).

All eligible project expenditures are tax deductible for PRRT purposes in the year incurred. There is no distinction between 'capital' and 'revenue' expenditures for this purpose. Eligible expenditures include exploration and project development and operating expenditures, subject to the specific exclusions contained in section 44 of the *Petroleum Resource Rent Tax Assessment Act 1987*. Expenditure in closing down a project, including offshore platform removal and environmental restoration, is deductible in the year it is incurred, with a refund of any previous PRRT payments where receipts in that year are inadequate to cover the expenditure.

Undeducted exploration expenditure incurred after 1 July 1990 is transferable to other projects with a notional taxable profit held by the same entity. In the case of a company in a company group, the expenditure is also transferable to other PRRT liable projects held in the group.

All undeducted expenditures are carried forward and eligible for compounding. The expenditures can be compounded annually at set rates, and the compounded amount is deducted against assessable receipts in future years. Because the compounding maintains the real value of the expenditure and includes a compounding real return on that expenditure, actual financing costs are

not included in eligible expenditure; they are effectively imputed by way of the compounding real return on the expenditure.

The PRRT is extended by this Bill to all Greater Sunrise projects. The tax applies to each taxpayer's interest in a project, on the same basis as for any other application of the PRRT, but is adjusted according to the apportionment ratio as determined in accordance with the Greater Sunrise unitisation agreement. Therefore Australia's secondary tax share of Greater Sunrise projects is the portion set by the Greater Sunrise unitisation agreement, and is collected as PPRT.

The Greater Sunrise unitisation agreement treats all projects recovering petroleum (including gas) from a Greater Sunrise unit reservoir alike. Otherwise some Greater Sunrise projects could have been governed only by the *Petroleum (Submerged Lands) Act 1967*, and only Australian law including the PRRT would apply; other Greater Sunrise projects could have been governed only by the Timor Sea Treaty and secondary taxation in accordance with that Treaty; and yet all Greater Sunrise projects would be recovering petroleum from the same unit reservoirs. This could have created different secondary taxation for Greater Sunrise projects depending on where recovery took place.

The provisions of this Bill extend the PRRT to all Greater Sunrise projects, whether they are covered by a production licence under the *Petroleum (Submerged Lands) Act* or not, by extending the meaning of *production licence* to include rights to recover petroleum in the Western Greater Sunrise area from a Greater Sunrise unit reservoir. Much of the area in which Greater Sunrise projects can recover petroleum is covered by the *Petroleum (Submerged Lands) Act* and the PRRT. But some of the area in which Greater Sunrise projects can recover petroleum is not covered by the *Petroleum (Submerged Lands) Act*; that area is covered by the Timor Sea Treaty. So rights to recover in the Western Greater Sunrise area are treated as production licences in relation to which there is a petroleum project for PRRT purposes, provided they are rights to recover from a Greater Sunrise unit reservoir.

Because of the way secondary taxing methods differ between the Australian and Joint Petroleum Development Areas, the PRRT would take account of all the deductible expenditure of a taxpayer in relation to a Greater Sunrise project but, without new law, not all of the assessable receipts. That would collect the wrong PRRT and at the wrong point, compared to the point when the taxpayers with an interest in the project have actually fully recovered their real costs and their minimum return. Hence the Bill extends the assessable receipts of a taxpayer by treating the recoverer of petroleum from a Greater Sunrise project as the owner of all the petroleum. This does not mean that such projects pay too much PRRT – the PRRT liability is based on the taxable profit of the taxpayer for the project, adjusted as below.

The PRRT is calculated on the basis of the *taxable profit* of the year. For Greater Sunrise projects, that taxable profit is reduced according to the apportionment ratio provisions under the Greater Sunrise unitisation agreement. The provisions take into account any change in the ratio during the year, in effect averaging changed rates for the year. However, the taxable profit is not adjusted retrospectively, so the provisions of this Bill leave any retrospective adjustment that may be made under the unitisation agreement as a matter between the Governments and not a matter affecting the PRRT liability of taxpayers. Any PRRT closing-down credit is correspondingly adjusted according to the current apportionment ratio.

This mechanism has been preferred to separate adjustments to deductible expenditure and to assessable receipts because it provides for both a correct application of the PRRT, while allowing

for simplicity in the case of reapportionments. The PRRT is designed to apply neutrally between projects on the basis of the threshold at which effective recovery of costs and imputed returns has occurred. If separate adjustments of expenditure and of receipts change that threshold point for PRRT purposes, this would distort the economic effect of the PRRT. Separate adjustments will change the threshold point unless they are retrospectively readjusted to reflect any changes to the apportionment ratio, and will thus produce a different (and therefore incorrect) incidence of PRRT.

Under the PRRT, certain exploration expenditure is transferable between projects (and, for group companies, between companies). Transferable expenditure must only be transferred to the extent that it can be used in relation to the current PRRT year. The provisions of this Bill ensure that where expenditure is transferred by a Greater Sunrise project the amount received by a petroleum project that is not a Greater Sunrise project is adjusted down according to the current apportionment ratio. Correspondingly, where expenditure is transferred by a petroleum project that is not a Greater Sunrise project, the amount received by a Greater Sunrise project is adjusted up according to the current apportionment ratio. These rules ensure that transferable expenditure does not become more or less valuable as it is transferred.

The provisions of this Bill do not deal with the consequences of petroleum projects sharing the processing, treatment, storage or transport of their petroleum. Under Article 17 of the Greater Sunrise unitisation agreement, the economic use by a project of petroleum from another project is not to be impeded, but this will only happen in relation to Greater Sunrise projects when Australia and East Timor have agreed on applicable taxing arrangements.

## **FINANCIAL IMPACT STATEMENT**

The development of the Greater Sunrise petroleum resource is expected to yield Australia \$8.5 billion in revenue over the life of the project.

## NOTES ON INDIVIDUAL CLAUSES

### Clause 1 - Short title

The short title of this Act is the *Greater Sunrise Unitisation Agreement Implementation Act 2004*.

### Clause 2 - Commencement

This clause prescribes the commencement provisions of this Act. There are noteworthy provisions. First, the vast bulk of the Act will commence on a single day to be fixed by Proclamation. This is to enable commencement to coincide with the day on which the Greater Sunrise unitisation agreement is ratified by Australia and East Timor. Second, items 87 and 88 of the Bill will amend provisions made in the *Petroleum (Submerged Lands) Amendment Act 2003* which have not yet commenced. The commencement date for items 87 and 88 of this Bill will be the later of Proclamation of this Bill or the commencement of item 1 of Schedule 3 to the *Petroleum (Submerged Lands) Amendment Act 2003*. Third, the Bill provides for retrospective commencement of the technical corrections being made by Part 2 of Schedule 1. These corrections are editorial in nature and do not have the potential to act to the detriment of any person.

### Clause 3 - Schedules

This clause gives effect to the provisions in the Schedules to this Act.

### Clause 4 - Regulations

This clause empowers the Governor-General to make transitional or consequential regulations, or regulations to give effect to the Greater Sunrise unitisation agreement.

#### *Transitional matters*

Subsection 4(1) allows regulations in relation to transitional matters arising out of the amendments made by this Act.

This allows, for example, regulations ensuring that things done by the present Joint Authority for the Northern Territory adjacent area before the commencement of the amendments continue to have effect in relation to the Joint Authorities for the Principal Northern Territory PSL area (see item 7) and the Eastern Greater Sunrise area, after the commencement of the amendments.

#### *Consequential provisions (including amending Acts)*

Subsection 4(2) allows regulations making provision (including provision by way of modification or adaptation of any Act) for or in relation to matters consequential on amendments made by this Act.

This provision allows regulations to deal with consequential matters, such as the way other laws apply now that the PPRT applies to petroleum apportioned to Australia recovered anywhere in the Greater Sunrise unit area. Regulations under this provision may modify or adapt the provisions of an Act. This facility is necessary to deal with any unforeseen consequences of the amendments made by this Act.

In particular, many other Acts refer to an ‘adjacent area’ under the *Petroleum (Submerged Lands) Act 1967*. Prior to this amending Act, there was only ever one Joint Authority and one Designated Authority in respect of each adjacent area. The amendments made by this Act alter that approach by providing that there are two of each type of Authority that together cover the whole of the Northern Territory adjacent area (that is, the Authorities for the Principal Northern Territory PSL area and the Eastern Greater Sunrise area). No changes to other Acts have been identified as necessary as a consequence of this change. But if it is later discovered that modifications, or adaptations, of an Act are required consequential on this change (or any other change made by this Act), this regulation-making power will allow those modifications or adaptations to be made. As usual, such regulations will be able to be disallowed by either House of the Parliament, under the *Acts Interpretation Act 1901*.

#### *Giving effect to the Greater Sunrise unitisation agreement*

Subsection 4(3) allows regulations that, in the Minister’s opinion, are necessary or convenient for giving effect to any provision of the Greater Sunrise unitisation agreement that is not inconsistent with any amendment made by this Act.

The main provisions of the Greater Sunrise unitisation agreement are implemented by the amendments of Acts made by this Act. Some other implementing measures will be done by amending regulations (for example, those mentioned in Annex II of the agreement, that need to be extended into the Western Greater Sunrise area). Other provisions still may be implemented by the exercise of existing powers under legislation (in particular, the *Petroleum (Submerged Lands) Act 1967*).

This approach to implementation, in contrast to wholesale application of the agreement as Australian law, ensures that the implementation is integrated with existing statutory provisions. However, this approach does lead to a risk that further provisions may be needed to implement the agreement. Should there be a need for such further provisions, this regulation making-power will allow regulations to be made. Any such regulations must not be inconsistent with amendments made by this proposed amending Act.

#### *Definition of Greater Sunrise unitisation agreement*

The term ‘Greater Sunrise unitisation agreement’ is defined in subsection 4(4) to mean the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields done at Dili on 6 March 2003. The same definition is used in provisions inserted in the *Petroleum (Submerged Lands) Act 1967* (see Schedule 1, item 3 of the amending Act).

### **Schedule 1 – Petroleum (Submerged Lands) Act 1967**

#### Item 1 - Subsection 5(1)

This item defines the part of the Greater Sunrise unit area which lies within Australian jurisdiction. That part is given the label “Eastern Greater Sunrise area” and is delineated by coordinates of latitude and longitude set out under the relevant heading in the proposed Schedule 8 to the Act (item 110 refers). The coordinates refer to the Australian Geodetic Datum 1966 data set.



Item 2 - Subsection 5(1)

This item defines the entire Greater Sunrise unit area which is comprised of the Eastern Greater Sunrise area and the Western Greater Sunrise area. The unit area is delineated by coordinates of latitude and longitude set out under the relevant heading in the proposed Schedule 8 to the Act (item 110 refers). The coordinates refer to the Australian Geodetic Datum 1966 data set and conform to those specified for the unit area in Annex I of the Greater Sunrise unitisation agreement, although there are presentational differences.

Item 3 - Subsection 5(1)

This item defines the Greater Sunrise unitisation agreement, in the same terms as for clause 4 (above).

Item 4 - Subsection 5(1)

This item defines a Greater Sunrise unit reservoir licence.

Item 5 - Subsection 5(1)

This item defines the Greater Sunrise unit reservoirs.

Item 6 - Subsection 5(1)

This item defines a Greater Sunrise visiting inspector.

Item 7 - Subsection 5(1)

For ease of reference, this item gives the name of “Principal Northern Territory PSL area” to the part of the Northern Territory adjacent area that does not encompass the Eastern Greater Sunrise area.

Item 8 - Subsection 5(1) (definition of *Register*)

This item refers to the definition that reads:

“*Register* means a Register kept in pursuance of Division 5 of Part III and *the Register*, in relation to the Designated Authority in respect of an adjacent area, means the Register so kept by that Designated Authority.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, this item amends the above definition to reflect this change.

Items 9, 10 and 11 - Subsection 5(1) (at the end of subparagraph (a)(iii) of the definition of *the Designated Authority*); Subsection 5(1) (at the end of paragraph (b) of the definition of *the Designated Authority*); Subsection 5(1) (at the end of the definition of *the Designated Authority*)

These items refer to the definition that reads:

“*the Designated Authority*, in relation to:

- (a) an act, matter, circumstance or thing touching, concerning, arising out of or connected with:
  - (i) the exploration of the sea-bed or subsoil of an adjacent area, or of part of an adjacent area, for petroleum; or
  - (ii) the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil; or
  - (iii) the construction or operation of pipelines in an adjacent area; or
- (b) petroleum recovered in an adjacent area;

means the Designated Authority in respect of that adjacent area.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend the above definition to reflect the new provisions that the Designated Authority administering the construction or operation of pipelines, or the recovery of petroleum, in the Eastern Greater Sunrise area would be the Designated Authority for only that part of the adjacent area.

Items 12, 13 and 14 - Subsection 5(1) (at the end of subparagraph (a)(iii) of the definition of *the Joint Authority*); Subsection 5(1) (at the end of paragraph (b) of the definition of *the Joint Authority*); Subsection 5(1) (at the end of the definition of *the Joint Authority*)

These items refer to the definition that reads:

“*the Joint Authority*, in relation to:

- (a) an act, matter, circumstance or thing touching, concerning, arising out of or connected with:
  - (i) the exploration of the sea-bed or subsoil of an adjacent area, or of part of an adjacent area, for petroleum; or
  - (ii) the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil; or
  - (iii) the construction or operation of pipelines in an adjacent area; or
- (b) petroleum recovered in an adjacent area;

means the Joint Authority established by this Act in respect of that adjacent area.”

Since it is proposed that there now be a Joint Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend the above definition to reflect the new provisions that the Joint Authority administering the construction or operation of pipelines, or the recovery of petroleum, in the Eastern Greater Sunrise area would be the Joint Authority for only that part of the adjacent area.

Item 15 - Subsection 5(1)

This item defines the Timor Sea Treaty.

Item 16 - Subsection 5(1)

This item defines the Timor Sea Treaty Designated Authority as having the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*. That Act reflects Article 6 of the Timor Sea Treaty, which, among other things, provides that there is a Timor Sea Treaty Designated Authority responsible for carrying out the day-to-day regulation and management of petroleum activities in the Joint Petroleum Development Area.

Item 17 - Subsection 5(1)

This item defines the part of the Greater Sunrise unit area which lies within the Joint Petroleum Development Area. That part is given the label “Western Greater Sunrise area” and is delineated by coordinates of latitude and longitude set out under the relevant heading in the proposed Schedule 8 to the Act (item 110 refers). The coordinates refer to the Australian Geodetic Datum 1966 data set.

Item 18 - Subsection 8A(3)

This item repeals the current subsection 8A(3) which reads:

“For the purposes of this Act, there is established in respect of the adjacent area in respect of the Northern Territory a Joint Authority consisting of the Commonwealth Minister and the Territory Minister, and that Joint Authority shall be known as the Commonwealth-Northern Territory Off-shore Petroleum Joint Authority.”

Repealing and replacing this means that, whereas the whole Northern Territory adjacent area has hitherto been managed by the one Joint Authority, this item continues that Joint Authority in existence but over a smaller area, ie the Principal Northern Territory PSL area, and creates a second Joint Authority in the adjacent area for the Eastern Greater Sunrise area.

Although the latter entity is called a “Joint Authority”, all its powers are to be vested in the responsible Commonwealth Minister. The proposal that the Commonwealth Minister be nonetheless called the “Joint Authority” is merely a legislative drafting device adopted with a view to avoiding a proliferation of terms for entities with essentially identical functions.

Item 19 - Section 8C

This item refers to section 8C, which reads:

“A Joint Authority has such functions as are conferred on it by this Act in relation to the operation of this Act in respect of the adjacent area in respect of which the Joint Authority is established.”

Since it is proposed that there now be a Joint Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, this item amends the above section to reflect the new provision.

Items 20, 21 and 22 - Subsection 8D(1); Subsection 8D(2); Subsection 8D(3)

These items refer to subsections 8D(1), (2) and (3), which read:

“(1) The business of a Joint Authority may be conducted at meetings of the Joint Authority or by written or other communication between the members of the Joint Authority.

(2) If the members of a Joint Authority disagree with respect to the decision to be made on a matter within the functions of the Joint Authority or the State Minister or the Northern Territory Minister (as the case may be) has not stated to the Commonwealth Minister his opinion as to the decision to be made on such a matter after having been given by the Commonwealth Minister not less than 30 days notice in writing of the opinion of the Commonwealth Minister as to the decision that should be made on the matter, the Commonwealth Minister may decide the matter and that decision shall have effect as the decision of the Joint Authority.

(3) A reference in this Act to the opinion or state of mind of the Joint Authority shall be read as a reference to the opinion or state of mind of the two members of the Joint Authority or, in the event of their disagreement, the opinion or state of mind of the Commonwealth Minister.”

These procedural provisions are relevant only if there are two members of a Joint Authority. Since it is now proposed that there be a Joint Authority for the Eastern Greater Sunrise area consisting only of the Commonwealth Minister, these items clarify to which Joint Authorities these subsections will apply if the amendments are made.

Items 23 and 24 - Before subsection 8H(1); Subsection 8H(1)

These items refer to subsection 8H(1), which reads:

“Subject to this section, a Joint Authority may, by instrument in writing, delegate its powers under this Act, or under an Act that incorporates this Act, to two persons together.”

This provision has been drafted on the premise that there are two members of a Joint Authority. Since it is now proposed that there be a Joint Authority for the Eastern Greater Sunrise area consisting only of the Commonwealth Minister, item 23 serves the purpose of clarifying when the provision in subsection 8H(1) applies.

Item 24 introduces into subsection 8H(1) a new requirement for the purpose of due accountability (and not strictly related to the establishment of the Eastern Greater Sunrise area Joint Authority), that the two delegates of the Joint Authority must be an Australian government employee and a State or Northern Territory government employee or two Australian government employees or two State or Northern Territory government employees. If an Australian government employee is to be appointed, that person must be an APS (Australian Public Service) officer at the SES (Senior Executive Service) level, defined in sections 34 and 35 of the *Public Service Act 1999*.

Since the rank profiles in State and Northern Territory Public Service structures may vary from one jurisdiction to the next, no attempt is being made to include any analogous requirement about the rank of a State or Northern Territory government employee who receives a Joint Authority delegation.

In other respects, the provisions of the *Acts Interpretation Act 1901* apply to delegations of Joint Authority powers. Section 34AA of the Acts Interpretation Act provides:

“Where an Act confers power to delegate a function or power, then, unless the contrary intention appears, the power of delegation shall not be construed as being limited to delegating the function or power to a specified person but shall be construed as including a power to delegate the function or power to any person from time to time holding, occupying, or performing the duties of, a specified office or position, even if the office or position does not come into existence until after the delegation is given.”

Section 34AB of the Acts Interpretation Act provides:

“Where an Act confers power on a person or body (in this section called the *authority*) to delegate a function or power:

- (a) the delegation may be made either generally or as otherwise provided by the instrument of delegation;

- (b) the powers that may be delegated do not include that power to delegate;
- (c) a function or power so delegated, when performed or exercised by the delegate, shall, for the purposes of the Act, be deemed to have been performed or exercised by the authority;
- (d) a delegation by the authority does not prevent the performance or exercise of a function or power by the authority; and
- (e) if the authority is not a person, section 34A applies as if it were.”

Section 34A of the Acts Interpretation Act provides:

“Where, under any Act, the exercise of a power or function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter and that power or function has been delegated in pursuance of that or any other Act, that power or function may be exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.”

#### Item 25 – Section 8H(2A)

This item is required to enable the operation of item 24 (above).

#### Item 26 - At the end of Part 1A

This item inserts the new section 8J which will enable adherence to the terms of the Greater Sunrise unitisation agreement which requires Australia and East Timor to act in concert on matters to do with the development of the Greater Sunrise unit area. Article 25 of that agreement provides for the free flow of information between Australia and East Timor concerning petroleum exploration and exploitation in the Greater Sunrise unit area.

This item also inserts the new section 8K providing for delegation of the Greater Sunrise Off-shore Petroleum Joint Authority powers. The stipulation explained under item 24 requiring a delegate of a Joint Authority to be a government employee and the provisions of the Acts Interpretation Act that are quoted under item 24 apply also in relation to a delegation under section 8K. The proposed new subsection 8K(2) addresses the situation that occurs from time to time of the responsible Commonwealth Minister being replaced. It also addresses the less common situation of the Ministerial position falling vacant. For efficient administration, this sub-item ensures that, in either case, any existing delegation continues to have effect.

Subsection 33(3) of the Acts Interpretation Act provides that where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Item 27 - Subsection 14(1)

This item refers to subsection 14(1), which reads: “For the purposes of this Act, there shall be, in respect of each adjacent area, a Designated Authority.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, this item amends the above definition to reflect this change.

#### Items 28 and 29 - Subsections 14(5) and (6); After section 14

These items repeal and replace the current subsections 14(5) and (6) which read:

- “(5) The Designated Authority in respect of the adjacent area in respect of the Northern Territory is the Northern Territory Minister.
- (6) The functions and powers of the Northern Territory Minister as Designated Authority may be performed and exercised by another Northern Territory Minister acting for and on behalf of that Minister.”

This replacement means that, whereas the whole Northern Territory adjacent area has hitherto been administered by the one Designated Authority, the proposed new section 14A continues that Designated Authority in existence but over a smaller area, ie the Principal Northern Territory PSL area and creates a second Designated Authority within the same adjacent area for the Eastern Greater Sunrise area.

The proposed subsection 14A(4) provides that the Commonwealth Minister, or his or her delegate, will be the Designated Authority for the Eastern Greater Sunrise area.

Item 29 also inserts the new section 14B which will enable adherence to the terms of the Greater Sunrise unitisation agreement which requires Australia and East Timor to act in concert on matters to do with the development of the Greater Sunrise unit area. Article 25 of that agreement provides for the free flow of information between Australia and East Timor concerning petroleum exploration and exploitation in the Greater Sunrise unit area.

#### Item 30 – Subsection 15(1)

This item inserts an amended subsection 15(1) providing for delegation of Designated Authority powers, including the powers of the Designated Authority for the Eastern Greater Sunrise area. The purpose of the amended subsection is so that the stipulation explained under item 24 requiring a delegate of a Joint Authority to be a government employee applies also in relation to Designated Authority delegations.

#### Item 31 - After subsection 41(1)

This item provides for requirements to be placed on a licence applicant to ensure consistency of these requirements with those of the Timor Sea Treaty Designated Authority, which is responsible for administration in the Joint Petroleum Development Area.

#### Item 32 - Subsection 43(1A)

This item is required to enable the operation of item 33 (below).

#### Item 33 - After subsection 43(1A)

This item provides that the Joint Authority must not offer to grant a production licence to an applicant in respect of the Eastern Greater Sunrise area unless the Joint Authority has given the Timor Sea Treaty Designated Authority notice that it is considering such action. In the notice, the Joint Authority must have identified the unit operator and, with it, the Joint Authority must have provided to the Timor Sea Treaty Designated Authority copies of the documents which, under the Greater Sunrise unitisation agreement, require regulatory approval, ie the Joint Venturers' Agreements for the exploitation of the unit reservoirs and the proposed Development Plan.

This item also provides that, before the offer is made, the Joint Authority must have approved the unit operator, each Joint Venturers' Agreement and the Development Plan in respect of the

development (all or any of which may have been varied and re-submitted for approval since an application was made) and must be satisfied that the Timor Sea Treaty Designated Authority has approved the same unit operator, Joint Venturers' Agreements and Development Plan. In addition, the Joint Authority cannot advise the applicant that it is prepared to grant a production licence unless the Joint Authority has determined the conditions subject to which the licence is to be granted. These conditions must be advised to the applicant as provided by paragraph 43(2)(a) of the Act.

Item 34 - After paragraph 43(3)(b)

This item introduces a requirement for the Joint Authority to notify the applicant in writing of any decision to refuse the application on the grounds that the Joint Authority is not satisfied that the Timor Sea Treaty Designated Authority has given the approvals mentioned in paragraph 43(1B)(b).

Item 35 - Paragraph 59(1)(a)

This item excludes the operation of section 59 of the Act in respect of either of the Greater Sunrise reservoirs. Section 59 makes general provisions in relation to the unit development of a field. For the Greater Sunrise petroleum resource, these provisions are overridden by the specific provisions of the Greater Sunrise unitisation agreement.

Item 36 and 37 – Subsection 59B(1)

These items refer to subsection 59B(1) of the Act which currently reads as follows:

“A person may apply to the Designated Authority for the grant by the Joint Authority of an infrastructure licence.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 59B(1) to reflect this change.

Item 38 - Paragraph 59B(2)(b)

This item refers to subsection 59B which sets out the process for applying for an infrastructure licence. The inclusion of the words “or part of an adjacent area” clarifies that the correct process when applying for an infrastructure licence in the Eastern Greater Sunrise area is to approach the Designated Authority for that area, not the Designated Authority for the Principal Northern Territory PSL area.

Items 39, 40, 41 and 42 - Subsection 60(1); Subsection 60(4); Subsection 60(5); Subsection 60(6)

These items refer to section 60 of the Act which currently reads as follows:

“(1) A person shall not, in the adjacent area:

- (a) commence or continue the construction of, or the alteration or reconstruction of, a pipeline;  
or
- (b) operate a pipeline;  
except under and in accordance with a pipeline licence.

(4) A person must not, in the adjacent area, commence to operate a pipeline unless:

- (a) it has been constructed and tested in accordance with a pipeline licence; and
- (b) the Designated Authority has certified in writing that he or she is satisfied that the pipeline has been so constructed and tested and is fit to be operated.

(5) A person shall not, in the adjacent area, recommence to operate a pipeline the previous operation of which was discontinued except with and in accordance with a consent in writing of the Designated Authority.

(6) The Designated Authority may, for reasons that he thinks sufficient, refuse to give his consent or certificate for the purposes of this section or attach conditions to such a consent.

Penalty: Imprisonment for 5 years.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 60 to reflect this change.

Items 43 and 44 - Subsection 62(1); At the end of paragraph 62(1)(d)

These items refer to subsection 62(1) of the Act which currently reads as follows:

“Where:

- (a) the construction of a pipeline is commenced, continued or completed in contravention of this Act; or
- (b) a pipeline is altered or reconstructed in contravention of this Act;

the Designated Authority may, by instrument in writing served on the appropriate person, direct him:

- (c) to make such alterations to the pipeline as are specified in the instrument; or
- (d) to move the pipeline to a specified place in, or to remove it from, the adjacent area;

within the period specified in the instrument.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 62(1) to reflect this change.

Items 45 and 46 - Section 63

These items refer to section 63 of the Act which currently reads as follows:

“The Designated Authority may, by instrument published in the *Gazette*, declare a pumping station, a tank station or a valve station in an adjacent area to be a terminal station.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 63 to reflect this change.

Items 47, 48, 49, 50 and 51 - Subsection 65(1); Subsection 65(2); Subsection 65(2A); Subsection 65(3)

These items refer to the first four subsections of section 65 of the Act which currently read as follows:

“(1) Where a person makes an application in accordance with section 64 for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum



recovered in a licence area within or outside that, or another, adjacent area, the Joint Authority may, if:

- (a) that person is not the registered holder of the production licence for that licence area; and
- (b) the application has not been rejected under subsection 64(3);

inform that person, by instrument in writing served on the person, that it is prepared to grant the person a pipeline licence.

- (2) Where an application for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area is made in accordance with section 64 by the registered holder of the production licence for that licence area (the *licensee*), the Joint Authority:
  - (a) shall, if the conditions to which the production licence for that licence area is, or has from time to time been, subject and the provisions of this Part and of the regulations have been complied with; or
  - (b) may, if:
    - (i) any of the conditions to which the production licence for that licence area is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
    - (ii) the Joint Authority is, nevertheless, satisfied that special circumstances exist that justify the granting of a pipeline licence;

by instrument in writing served on the person who is then the registered holder of the production licence for that licence area (the *licensee*), inform the person that it is prepared to grant to the person a pipeline licence.

- (2A) If a person makes an application in accordance with section 64 for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum recovered from a place beyond the outer limits of any adjacent area, the Joint Authority may inform the person, by instrument in writing served on the person, that it is prepared to grant the person a pipeline licence.
- (3) Where an application for a pipeline licence in respect of the construction in an adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area is made in accordance with section 64 by the registered holder of the production licence for that licence area (the *licensee*), the Joint Authority shall, if:
  - (a) any of the conditions to which the production licence is, or has from time to time been, subject or any of the provisions of this Part and of the regulations has not been complied with; and
  - (b) the Joint Authority is not satisfied that special circumstances exist that justify the granting of a pipeline licence;

by instrument in writing served on the person who is then the registered holder of the production licence for that licence area (the *licensee*), refuse to grant a pipeline licence.

Since it is proposed that there now be a Joint Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 65 to reflect this change.

Items 52, 53 and 54 - Paragraph 66(a); Subparagraph 66(a)(i); Paragraph 66(c)

These items refer to section 66 of the Act which currently reads as follows:

“A pipeline licence, while it remains in force, authorizes the pipeline licensee, subject to this Act and the regulations and in accordance with the conditions to which the pipeline licence is subject:

- (a) to construct in an adjacent area:
  - (i) a pipeline of the design, construction, size and capacity specified in the pipeline licence along the route, and in the position in relation to the sea-bed in that adjacent area, so specified; and
  - (ii) the pumping stations, tank stations and valve stations so specified in the positions so specified;
- (b) to operate that pipeline and those pumping stations, tank stations and valve stations; and
- (c) to carry on such operations, to execute such works and to do all such other things in that adjacent area as are necessary for or incidental to the construction and operation of that pipeline and of those pumping stations, tank stations and valve stations.”

Since it is proposed that there now be a Joint Authority with the power to grant pipeline licences specifically for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 66 to reflect this change.

#### Item 55 – At the end of subsection 76(1)

This item refers to subsection 76(1) of the Act which currently reads as follows:

“For the purposes of this Part, the Designated Authority shall keep a Register of titles and special prospecting authorities granted under this Act relating to the adjacent area.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, this item amends this subsection to reflect this change. This provision will not preclude the Designated Authority for the Eastern Greater Sunrise area arranging for the Register for that area to be kept by the officials of another Designated Authority.

#### Item 56 - Section 92

This item refers to section 92 of the Act which currently reads as follows:

“In this Division, *the Supreme Court*, means, in relation to an application for the rectification of the Register kept by, or in relation to an appeal against a determination of, the Designated Authority in respect of the adjacent area in respect of a State or Territory, the Supreme Court of, or having jurisdiction in, that State or Territory.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, this item amends section 92 to reflect this change.

#### Items 57, 58, 59, 60 and 61 - Subsection 101(1); Paragraph 101(2)(b); Subsection 101(2); Subsection 101(2C)

These items refer to three subsections of section 101 of the Act which currently read as follows:

“(1) The Designated Authority may, by instrument in writing served on the registered holder of a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority, give to the registered holder a direction as to any matter with respect to which regulations may be made.

- (2) A direction given under this section to a registered holder applies to the registered holder and may also be expressed to apply to:
- (a) a specified class of persons, being a class constituted by or included in one or both of the following classes of persons:
    - (i) servants or agents of, or persons acting on behalf of, the registered holder;
    - (ii) persons performing work or services, whether directly or indirectly, for the registered holder; or
  - (b) any person (not being a person to whom the direction applies otherwise than in accordance with this paragraph) who is in the adjacent area for any reason touching, concerning, arising out of or connected with the exploration of the sea-bed or subsoil of the adjacent area for petroleum or the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil or is in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, that is in the adjacent area for a reason of that kind;

and where a direction so expressed is given, the direction shall be deemed to apply to each person included in that specified class or to each person who is in the adjacent area as mentioned in paragraph (b), as the case may be.

[...]

(2C) Where a direction under this section applies to a registered holder and to a person referred to in paragraph (2)(b), the Designated Authority may, by notice in writing given to the registered holder, require the registered holder to cause to be displayed at such places in an adjacent area, and in such manner, as are specified in the notice, copies of the instrument by which the direction was given, and the registered holder shall comply with that requirement.

Penalty: 50 penalty units.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 101 to reflect this change.

#### Item 62 - Subsection 102(1A)

This item refers to subsection 102(1A) of the Act which constrains a Designated Authority from taking action under subsection 102(1) of the Act without the approval of the Joint Authority where a direction was given to a person by the Joint Authority. The item amends this provision to disapply it in relation to a Joint Authority consisting of one member as, in such a case, the Joint Authority is also the Designated Authority and consultations will not be required.

#### Item 63 – At the end of section 103A

This item refers to subsection 103A(5) of the Act which currently reads as follows:

“If an instrument under this section results in the acquisition of property from a person, being an acquisition of property within the meaning of paragraph 51(xxx) of the Constitution, the Commonwealth is liable to pay to that person such compensation as is determined by agreement between the Commonwealth and that person or, in the absence of agreement, by action brought by that person against the Commonwealth in the High Court or the Supreme Court of, or having jurisdiction in, the State or Territory in relation to which the Joint Authority concerned is established.”

As the Eastern Greater Sunrise area, which is an area within an adjacent area, is not adjacent to a State or the Northern Territory, the amendments proposed by this item will prevent the sterilisation of the avenue of court redress for holders of permits or leases in the Eastern Greater Sunrise area.

Items 64, 65, 66, 67, 68, 69 and 70 - Subsection 107(2); Paragraph 107(2)(a); Paragraph 107(2)(b); Paragraph 107(2)(c); Paragraph 107(2)(d)

These items refer to subsection 107(2) of the Act which currently reads as follows:

“The Designated Authority may, by written notice served on a person who is a permittee, lessee, licensee, infrastructure licensee or pipeline licensee, direct the person to do any one or more of the following:

- (a) to remove or cause to be removed from the permit area, lease area, licence area, infrastructure licence area or part of the adjacent area in which the pipeline is constructed, as the case may be, all property brought into the area or part by any person engaged or concerned in the operations authorised by the permit, lease, licence, infrastructure licence or pipeline licence or to make arrangements that are satisfactory to the Designated Authority with respect to the property;
- (b) to plug or close off, to the satisfaction of the Designated Authority, all wells made in that area or part by any person engaged or concerned in those operations;
- (c) subject to this Part and to the regulations, to make provision, to the satisfaction of the Designated Authority, for the conservation and protection of the natural resources in that area or part; and
- (d) to make good, to the satisfaction of the Designated Authority, any damage to the sea-bed or subsoil in that area or part caused by any person engaged or concerned in those operations.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 107(2) to reflect this change.

Items 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80 - Subsection 112(1); Subsection 112(1C); Subsection 112(4); Subsection 112(4A); Subsection 112(4B)

These items refer to five subsections of section 112 of the Act which currently read as follows:

“(1) A permittee, lessee or licensee may make an application to the Designated Authority for the grant of an access authority to enable him to carry on, in an area, being part of the adjacent area that is not part of the permit area, lease area or licence area, petroleum exploration operations or operations related to the recovery of petroleum in or from the permit area, lease area or licence area.

[...]

(1C) The holder of a permit, lease, licence or special prospecting authority in respect of a block or blocks within an adjacent area may make an application to the Designated Authority for that adjacent area for the grant of an access authority to enable the applicant to carry on, in a block or blocks in an adjacent area adjoining the first-mentioned adjacent area:

- (a) petroleum exploration operations; or
- (b) where the applicant is the holder of a permit, lease or licence, operations related to the recovery of petroleum in or from any block that is the subject of the permit, lease or licence.

[...]

- (4) Subject to subsection (4AA), the Designated Authority shall not grant an access authority on an application under a provision of this section other than subsection (1C) in respect of a block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the applicant, or vary such an access authority as in force in respect of a block that is the subject of a permit, lease licence or special prospecting authority of which the registered holder is a person other than the registered holder of the access authority, unless:
- (a) he has, by instrument in writing served on that person, given not less than one month's notice of his intention to grant, or vary, as the case may be, the access authority;
  - (b) he has served a copy of the instrument:
    - (i) on such other persons, if any, as he thinks fit; and
    - (ii) in a case where he intends to vary an access authority—on the registered holder of the access authority;
  - (c) he has, in the instrument:
    - (i) given particulars of the access authority proposed to be granted, or of the variation proposed to be made, as the case may be; and
    - (ii) specified a date on or before which a person on whom the instrument, or a copy of the instrument, is served may, by instrument in writing served on the Designated Authority, submit any matters that he wishes the Designated Authority to consider; and
  - (d) he has taken into account any matters so submitted to him on or before the specified date by a person on whom the first-mentioned instrument, or a copy of that instrument, has been served.

[...]

(4A) The Designated Authority shall not grant or vary an access authority on an application under subsection (1C) without the approval of the Designated Authority for the adjacent area within which the block or blocks to be specified in the access authority are situated.

(4B) Where:

- (a) an application under subsection (1C) for the grant of an access authority is in respect of the block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the applicant; or
- (b) a proposal to vary an access authority granted on an application under that subsection is in respect of a block that is the subject of a permit, lease, licence or special prospecting authority of which the registered holder is a person other than the registered holder of the access authority;

the Designated Authority for the adjacent area within which the block is situated shall not approve the grant or the variation unless:

- (c) the Designated Authority has, by instrument in writing served on that person, given not less than one month's notice of the intention to grant, or vary, as the case may be, the access authority;
- (d) a copy of the instrument has been served:
  - (i) on such other persons, if any, as the Designated Authority thinks fit; and
  - (ii) where it is proposed to vary an access authority—on the registered holder of the access authority;
- (e) the instrument gives:

- (i) particulars of the access authority that it is proposed to grant or vary, as the case may be; and
  - (ii) notice that a person on whom the instrument, or a copy of the instrument, has been served may, by instrument in writing served on the Designated Authority on or before the date specified in the instrument, submit any matters that the person wishes the Designated Authority to consider; and
- (f) the Designated Authority has taken into account any matters submitted in accordance with the notice referred to in subparagraph (e)(ii).”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 112 to reflect this change.

#### Items 81, 82 and 83 - Subsection 115(1)

These items refer to subsection 115(1) of the Act which currently reads as follows:

“Where the Designated Authority, or an inspector, in respect of an adjacent area has reason to believe that a person is capable of giving information or producing documents relating to petroleum exploration operations, operations for the recovery of petroleum, operations relating to the processing or storage of petroleum or the preparation of petroleum for transport or operations connected with the construction or operation of a pipeline in that adjacent area, he may, by instrument in writing served on that person, require that person:

- (a) to furnish to him in writing, within the period and in the manner specified in the instrument, any such information; or
- (b) to attend before him or a person specified in the instrument, at such time and place as is so specified and there to answer questions relating to those operations and to produce such documents relating to those operations as are so specified.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 115(1) to reflect this change. The added mention under item 82 of the Designated Authority or an inspector gaining the right to information and documents relating to the measurement of the amount of petroleum recovered implements a provision set out in Article 24 of the Greater Sunrise unitisation agreement.

#### Item 84 - Subsection 119(1)

This item refers to subsection 119(1) of the Act which currently reads as follows:

“For the purpose of protecting a well or structure, or any equipment, in an adjacent area, the Designated Authority may, by instrument published in the *Gazette*, prohibit:

- (a) all vessels;
  - (b) all vessels other than specified vessels; or
  - (c) all vessels other than the vessels included in specified classes of vessels;
- from entering or remaining in a specified area (in this section called a *safety zone*) surrounding the well, structure or equipment without the consent in writing of the Designated Authority.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, this item amends subsection 119(1) to reflect this change.

Items 85 and 86 - Subsection 122(1)

These items refer to subsection 122(1) of the Act which currently reads as follows:

“The Designated Authority may, by instrument in writing served on a person carrying on operations in an adjacent area under a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority, access authority or instrument of consent under section 123, direct that person to do any one or more of the following things:

- (a) to keep such accounts, records and other documents in connexion with those operations as are specified in the instrument;
- (b) to collect and retain such cores, cuttings and samples in connexion with those operations as are so specified; and
- (c) to furnish to the Designated Authority, or to such person as is so specified, in the manner so specified, such reports, returns, other documents, cores, cuttings and samples in connexion with those operations as are so specified.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 122(1) to reflect this change.

Items 87 and 88 - Paragraph 122A(1)(a); Paragraph 122A(2)(a)

These items refer to section 122A of the Act, a new provision which has received Royal Assent and is to come into force by 5 June 2004. The paragraphs referred to in these items are contained in subsections 122A(1) and (2) which currently read as follows:

“(1) The regulations may make provision for and in relation to:

- (a) the keeping of accounts, records and other documents in connection with operations in an adjacent area under:
  - (i) a permit; or
  - (ii) a lease; or
  - (iii) a licence; or
  - (iv) an infrastructure licence; or
  - (v) a pipeline licence; or
  - (vi) a special prospecting authority; or
  - (vii) an access authority; or
  - (viii) a consent under section 123; and
- (b) the collection and retention of cores, cuttings and samples in connection with those operations; and
- (c) the giving to the Designated Authority, or a specified person, of reports, returns, other documents, cores, cuttings and samples in connection with those operations.

(2) In particular, the regulations may establish a scheme that:

- (a) applies in relation to operations in an adjacent area under:
  - (i) a permit; or
  - (ii) a lease; or
  - (iii) a licence; or
  - (iv) an infrastructure licence; or
  - (v) a pipeline licence; or

- (vi) a special prospecting authority; or
  - (vii) an access authority; or
  - (viii) a consent under section 123;
- held by a person (the *holder*); and
- (b) requires the holder to prepare and submit a plan (a *data management plan*) that deals with any or all of the following:
    - (i) the keeping of accounts, records and other documents in connection with those operations;
    - (ii) the collection and retention of cores, cuttings and samples in connection with those operations;
    - (iii) the giving to the Designated Authority, or to a person specified in the data management plan, of reports, returns, other documents, cores, cuttings and samples in connection with those operations; and
  - (c) empowers the Designated Authority to make decisions about the approval of:
    - (i) a data management plan; and
    - (ii) variations of a data management plan; and
  - (d) requires the holder to comply with an approved data management plan submitted by the holder.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 122A to reflect this change.

Items 89, 90 and 91 - Subsection 123(1); Subsection 123(3)

These items refer to subsections 123(1) and (3) of the Act which currently read as follows:

“(1) The Designated Authority may, by instrument in writing, consent to the carrying on in an adjacent area by any person of petroleum exploration operations in the course of a scientific investigation.

[...]

(3) An instrument of consent in force under subsection (1) authorizes the person specified in the instrument, subject to section 124 and in accordance with the conditions, if any, to which the instrument is subject, to carry on, in the adjacent area so specified, petroleum exploration operations so specified in the course of the scientific investigation so specified.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend section 123 to reflect this change.

Items 92 and 93 - Subsection 125(1); At the end of subsection 125(1);

These items refer to subsection 125(1) of the Act which currently reads as follows:

“The Designated Authority in respect of an adjacent area may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act and the regulations in respect of that adjacent area.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 125(1) to reflect this change.



Item 94 - After subsection 125(2)

This item provides that the Designated Authority of the Eastern Greater Sunrise area may specify in the certificate that appoints an inspector that the inspector is a Greater Sunrise visiting inspector. The powers of such inspectors are provided for in item 100 (below).

Item 95 - Subsection 126(1)

This item amends subsection 126(1) of the Act so that the general powers available to an inspector throughout an entire adjacent area are not available to a Greater Sunrise visiting inspector.

Item 96, 97, 98 and 99 - Paragraph 126(1)(a); Paragraph 126(1)(b); Paragraph 126(1)(c)

This item refers to the following part of subsection 126(1) of the Act:

“(1) For the purposes of this Act and the regulations, an inspector, at all reasonable times and on production of the certificate furnished to him under section 125:

- (a) shall have access to any part of the adjacent area specified in the certificate and to any structure, ship, aircraft or building in that area that, in his opinion, has been, is being or is to be used in connexion with petroleum exploration operations, operations for the recovery of petroleum, operations relating to the processing or storage of petroleum or the preparation of petroleum for transport or operations connected with the construction or operation of a pipeline in that area.
- (b) may inspect and test any equipment that, in his opinion has been, is being or is to be used in that area in connexion with any of those operations; and
- (c) may enter any structure, ship, aircraft, building or place in that area or in the State or Territory to which that area is, in Schedule 2, specified as being adjacent, in which, in his opinion, there are documents relating to any of these operations and may inspect, take extracts from and make copies of any of those documents”.

Since it is proposed that an inspector be now able to be appointed for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 126(1) to reflect this change.

Item 100 - After subsection 126(1)

This item inserts subsection 126(1A) which provides that, for the purposes of paragraph (1)(c), the Eastern Greater Sunrise area is taken to be specified as being an adjacent area in respect of the Northern Territory. Paragraph (1)(c) concerns the entry rights of inspectors in the area adjacent to a State or the Northern Territory. As the Eastern Greater Sunrise area is not an adjacent area, ie is not adjacent to a State or the Northern Territory, this item will enable non-visiting inspectors appointed by the Designated Authority for the Eastern Greater Sunrise area to exercise all the standard powers of inspectors.

This item also inserts subsection 126(1B). This subsection specifies the powers of a Greater Sunrise visiting inspector so as to give effect to the provisions of Article 24 of the Greater Sunrise unitisation agreement. In accordance with this Article, subsection 126(1B) will enable East Timor to satisfy itself that its fundamental interests in regard to measurement of unit petroleum are met.

Item 101 - Subsection 126(2)

This item refers to subsection 126(2) of the Act which currently reads as follows:

“(2) A person who is the occupier or person in charge of any building, structure or place, or is the person in charge of any ship, aircraft or equipment referred to in subsection (1) shall provide an inspector with all reasonable facilities and assistance for the effective exercise of his powers under this section.

Penalty: 50 penalty points.”

The item amends the subsection so that Greater Sunrise visiting inspectors are also entitled to all reasonable facilities and assistance for the exercise of powers conferred by the section.

Item 102 - Subsection 127

This item refers to section 127 of the Act which establishes property rights in relation to petroleum recovered by a permittee, lessee or licensee in the permit area, lease area or licence area.

This item disapplies the current provisions of section 127 in relation to petroleum recovered from the Greater Sunrise unit reservoirs so that ownership can be apportioned in accordance the Greater Sunrise unitisation agreement and the Timor Sea Treaty.

Item 103 – At the end of section 127

This item inserts new subsection 127(2), which specifies the property rights applicable for petroleum recovered from one of the Greater Sunrise unit reservoirs by a relevant titleholder.

This item also inserts subsection 127(3), which makes provision for subsection 127(1) to automatically reflect the result of any change in the ratio of petroleum apportioned to the Joint Petroleum Development Area and Australia pursuant to Article 8 of the Greater Sunrise unitisation agreement.

Items 104 and 105 - Subsection 137(1); At the end of subsection 137(1)

These items refer to subsection 137(1) of the Act which currently reads as follows:

“All courts shall take judicial notice of the signature of a person who is, or has been, the Designated Authority, or a delegate of the Designated Authority, in respect of an adjacent area and of the fact that that person is, or has been the Designated Authority, or a delegate of the Designated Authority, in respect of that area.”

Since it is proposed that there now be a Designated Authority for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, these items amend subsection 137(1) to reflect this change.

Item 106 - Subsection 157(3)

This item refers to subsection 157(3) of the Act which currently reads as follows:

“(3) The regulations may, to the extent to which this Act does not do so, provide for the exercise of Australia’s rights under international law in relation to the exploration for, and the exploitation of, petroleum as a natural resource of the continental shelf.”

The item amends this provision so that the regulation making power is not restricted to exercising Australia’s rights but also encompasses complying with Australia’s obligations under international law.

Item 107 – At the end of subsection 157(3)

This item modifies subsection 157(3) (set out above) so that it applies in relation to petroleum exploration and production as a natural resource of the continental shelf whether within or without of an adjacent area. This will enable regulations under the *Petroleum (Submerged Lands) Act 1967* to be applied in the Western Greater Sunrise area as provided for in Annex II, and associated Articles, of the Greater Sunrise unitisation agreement.

Item 108 – Subclause 29(1) of Schedule 7

This item amends subclause 29(1) of Schedule 7 of the Act so that Greater Sunrise visiting inspectors do not have the investigatory powers in relation to occupational health and safety conferred on other inspectors who have been appointed under section 125 of the Act.

Item 109 – Subclause 29(1) of Schedule 7

This item refers to subclause 29(1) of Schedule 7 of the Act which currently reads as follows:

“A person who, under section 125, holds an appointment as an inspector in relation to an adjacent area has the powers, functions and duties of an investigator under this Schedule.”

Since it is proposed that an inspector be now able to be appointed for the Eastern Greater Sunrise area, ie for only a part of an adjacent area, this item amends this subclause to reflect this change.

Item 110 – At the end of the Act

This item adds Schedule 8 to the Act, which prescribes the coordinates of latitude and longitude for the Greater Sunrise unit area, the Eastern Greater Sunrise area and the Western Greater Sunrise area. The geographic coordinates refer to the Australian Geodetic Datum 1966 data set: see sections 150M and 150W of the Act.

Items 111, 112, 113, 114, 115 and 116 - Subsection 44(1); Subsection 44(2); Subsection 44(4); Paragraph 44A(b)

The background to these items is that when the Act was amended in 2000, changes were made to sections 43 and 44 but the need to update certain cross references to the amended section 43 was inadvertently overlooked in sections 44 and 44A.

Specifically, subsections 43(1) and (1A) currently read as follows:

“(1) This section applies if an application for the grant of a licence has been made under section 39A, 40, 40A or 40B.

- (1A) If:
- (a) the applicant has given any further information as and when required by the Designated Authority under subsection 41(2); and
  - (b) the Joint Authority is satisfied that the area comprised in the block, or any one or more of the blocks, specified in the application contains petroleum;
- the Joint Authority must, by written notice served on the applicant, tell the applicant that it is prepared to grant to the applicant a licence in respect of the block or blocks as to which the Joint Authority is satisfied as mentioned in paragraph (b).”

Before the amendments made in 2000, the equivalent of subsection (1A) was annotated as “subsection (1)” and cross references to it in sections 44 and 44A were not updated in the 2000 amendments. Additionally, the equivalent of “written notice” in subsection (1A) was, in the old subsection (1), a reference to an “instrument in writing”. Cross references to this expression were likewise not updated. These items correct the editorial defects that appeared in the Act as a result.

## **Schedule 2 – Amendments of other Acts**

### *Petroleum Resource Rent Tax Assessment Act 1987 (PRRTA Act)*

#### Items 1 and 2 – Section 2

These items insert definitions in the definitions section of the PRRTA Act for the terms “apportionment percentage figure” and “current apportionment percentage” that cross-reference respectively to subsections (2) and (1) of the proposed new section 2C, set out under item 11.

#### Item 3 – Section 2

This item inserts a definition in the definitions section of the PRRTA Act for the term “Greater Sunrise project”.

#### Item 4 – Section 2

This item inserts a definition in the definitions section of the PRRTA Act for the term “Greater Sunrise unit area”, which cross-references to the addition proposed to the Petroleum (Submerged Lands) Act under Schedule 1 item 2 of this Bill.

#### Item 5 – Section 2

This item inserts a definition in the definitions section of the PRRTA Act for the term “Greater Sunrise unit reservoirs”, which cross-references to the addition proposed to the Petroleum (Submerged Lands) Act under Schedule 1 item 5 of this Bill.

The Greater Sunrise unit reservoirs are the reservoirs of petroleum which, because they are partly within the area of the Timor Sea Treaty and partly within exclusively Australian territory, are the subject of the Greater Sunrise unitisation agreement. For PRRT purposes, they are identified according to the definition in subsection 5(1) of the Petroleum (Submerged Lands) Act, which identifies them as the unit reservoirs within the meaning of that agreement.

Item 6 – Section 2 (definition of *production licence*)

The PRRT applies where there is a petroleum project, and there is a project on the basis that an eligible production licence (or licences) is in force, under section 19 of the PRRTA Act. The definition of an eligible production licence is unchanged, as this is a production licence other than one related to the North West Shelf exploration permits. However, the definition of a production licence is extended to include, as well as a production licence under the Petroleum (Submerged Lands) Act, anything giving a lawful authority or right to recover petroleum (this term includes gas) in the Joint Petroleum Development Area from any of the Greater Sunrise unit reservoirs. (The reference to the Western Greater Sunrise area does not operate to exclude any part of the Joint Petroleum Development Area, as it includes all of the Joint Petroleum Development Area in which any part of a Greater Sunrise reservoir is located.)

Item 7 – Section 2 (definition of *production licence area*)

Within the Joint Petroleum Development Area, no recovery of petroleum is allowed unless certain production sharing contracts have been made, and unless certain approvals have been given. The making of the required contracts and the receipt of the required approvals thus make lawful recovery that would otherwise have been unlawful, and will so provide a lawful authority or right of the kind included in the substituted definition of a production licence.

The main operative provisions of the PRRT depend on the production licence being in force, not on whether it was granted; and the assignment rules of sections 48 and 48A of the PRRTA Act do not depend on the transfer of, or acquisition of interests in, a production licence – they depend on the transfer of a vendor’s entitlement to derive assessable receipts in relation to a project. So it is not necessary to provide any further deeming of the character of the extended production licence.

The production licence area, within which some forms of deductible expenditure are incurred, and by reference to which some other expenditures including exploration expenditures are defined, is extended to the whole Western Greater Sunrise area as well as any licence area for Petroleum (Submerged Lands) Act purposes if the petroleum project is a Greater Sunrise project. This applies whether the Greater Sunrise project is one with a Petroleum (Submerged Lands) Act production licence or not. Thus, this item provides that every Greater Sunrise project has a production licence area for the purposes of PRRT, wherever the recovery of petroleum takes place.

Item 8– Section 2 (note to the definition of *transferable exploration expenditure*);

This item makes a minor editorial amendment to allow a new note to be inserted by the next item without creating confusion.

Item 9 – Section 2 (at the end of the definition of *transferable exploration expenditure*)

This item adds a note drawing attention to the fact that special rules apply in relation to the transfer of Greater Sunrise exploration expenditure which are set out under item 16.

Item 10 – Section 2

This item inserts a definition in the definitions section of the PRRTA Act for the term “Western Greater Sunrise area”, which cross-references to the addition proposed to the Petroleum (Submerged Lands) Act under Schedule 1 item 17 of this Bill.

### Item 11 – After section 2B

This item inserts in the PRRTA Act the proposed new section 2C which deals with calculating the apportionment percentage figure for a year of tax.

All Greater Sunrise apportionments are calculated by reference to the *apportionment percentage figure* for a year of tax. In each year of tax, that figure is either based on the *current apportionment percentage* for Petroleum (Submerged Lands) Act purposes or is the average of the figures for the year, weighted to the number of days in the year for which each figure applied. For convenience in substitution into the apportionment formulas in the proposed new section, the apportionment percentage figure is not a percentage, but is instead the number which is the numerator of the fraction out of 100 represented by the percentage. (So, for example, a percentage of 80 per cent has an apportionment percentage figure of 80.)

The current apportionment percentage for Petroleum (Submerged Lands) Act purposes is the percentage apportioned to Australia under the Greater Sunrise unitisation agreement as most recently adjusted. At present that percentage is 79.9 per cent. It can change because technical information shows that the proportion of resources contained in the Greater Sunrise unit reservoirs in Australia is different; this would be a technical redetermination, and these cannot happen more than once in a year of tax. It can also change because of an agreement to change the proportion; this would be a political decision, and theoretically could result in more than one change in a year of tax, but in practice it is most improbable that more than one change would ever happen in a year of tax. So the proposed new section is drafted on the basis that only one change to the apportionment percentage can happen in a year of tax. Should additional changes be likely, some corresponding change to this calculation would be required.

### Item 12 – At the end of section 22 (after the note)

PRRT is imposed in relation to taxable profit of a year of tax. For Greater Sunrise projects, this item ensures the taxable profit is adjusted by the apportionment percentage; that is, what would otherwise be the project's taxable profit is multiplied by the apportionment percentage figure and divided by 100. This means that Greater Sunrise projects pay PRRT on the same basis as other projects, but pay only the share of PRRT reflecting apportionment in accordance with the Greater Sunrise unitisation agreement.

### Items 13 and 14 – Subsection 23(1); At the end of section 23

While a taxpayer with an interest in a Greater Sunrise project will incur all the deductible expenditures, it is not certain that they will obtain all the assessable receipts. This arises because of the production sharing arrangements that apply to that portion of production attributed to the Joint Petroleum Development Area. This would distort the calculation of PRRT, of which the apportionment share should go to Australia; it would defer and reduce PRRT liability, by understating the extent to which and when a Greater Sunrise project had recovered its costs.

The proposed new provisions therefore require assessable receipts in relation to Greater Sunrise projects to be calculated as if what a taxpayer recovers from a Greater Sunrise unit reservoir became entirely the property of that taxpayer. That means that even if some part of the petroleum recovered, and of any marketable petroleum commodities produced from it, is otherwise treated as being owned by another party, it will not be treated that way in calculating assessable receipts. The amendments proposed by these items ensure that when that part of the petroleum or related

marketable petroleum commodities is sold or otherwise dealt with, the relevant assessable receipts arise and are to be ascribed as if the taxpayer owned all the petroleum. This does not mean that all receipts are ascribed to that taxpayer; for example, if the taxpayer shares assessable receipts with another taxpayer (say, under a joint venture agreement), the ascribed receipts are shared accordingly.

#### Item 15 – At the end of section 46

Tax credits in relation to the PRRT are given for the excess of deductible expenditures including closing-down expenditure over assessable receipts for the year of tax, subject to certain limits. For Greater Sunrise projects, this item provides that the excess (as limited) is adjusted by the apportionment percentage; that is, what would otherwise be the amount for which a 40 per cent tax credit would apply is multiplied by the apportionment percentage figure and divided by 100. This item provides that Greater Sunrise projects get PRRT tax credits on the same basis as other projects, but only the share of PRRT tax credits reflecting apportionment in accordance with the Greater Sunrise unitisation agreement.

#### Item 16 – After Part 1 of the Schedule

Some Greater Sunrise exploration expenditure in the Joint Petroleum Development Area has not been covered by the PRRT. Thus it has not been treated as transferable: it was not subject to rules requiring that it must only be transferred to other petroleum projects to the extent it could be used up in the current year of tax. That expenditure is to be taken not to be, and never to have been, transferable to other projects, so as to reflect the reasonable expectation of all taxpayers at the time the expenditure was incurred that it was not part of PRRT expenditure and was not transferable, though it will now be part of PRRT expenditure. If that expenditure were not excluded from being transferable, there would be potential difficulties for taxpayers in working out when and to what extent it should have been transferred in the past; and it should not be transferred in the future, as it was incurred without any expectation that it would or could be transferred. For this reason, the provisions inserted by this item ensure that Greater Sunrise exploration expenditure incurred in the Western Greater Sunrise area (the part of the Greater Sunrise area within the Joint Petroleum Development Area) is excluded from being transferable, where it was incurred before the unitisation agreement's effect, that is before 6 March 2003.

When the provisions for the transfer of certain exploration expenditure between a taxpayer's projects, or between projects of members of the same wholly-owned company group, operate there need be no special implications for Greater Sunrise projects. If transfer is only between Greater Sunrise projects, or is only between petroleum projects that are not Greater Sunrise projects, the transferred expenditure translates to the same effect on aggregate PRRT liability as if it had been utilised in the project in which it was incurred.

However, when expenditure is transferred from a Greater Sunrise project to a petroleum project that is not a Greater Sunrise project, the new law has to ensure that the amount of expenditure received is reduced to reflect the apportionment percentage for the Greater Sunrise project. Otherwise PRRT would be reduced by transferring expenditure from Greater Sunrise projects to other kinds of petroleum projects. Correspondingly, when expenditure is transferred from a petroleum project that is not a Greater Sunrise project to a Greater Sunrise project, the new law has to ensure that the amount of expenditure received is increased to reflect the apportionment percentage for the Greater Sunrise project. Otherwise aggregate PRRT would be increased by transferring expenditure from other kinds of petroleum projects to Greater Sunrise projects.

Where expenditure is transferred from a Greater Sunrise project to a petroleum project that is not a Greater Sunrise project, the amount received is reduced by the apportionment percentage. This adjustment is made by multiplying the amount transferred by the apportionment percentage figure, and dividing by 100.

Where expenditure is transferred from a petroleum project that is not a Greater Sunrise project to a Greater Sunrise project, the amount received is increased by the inverse of the apportionment percentage. This adjustment is made by multiplying the amount transferred by 100 and dividing by the apportionment percentage figure.

Because these adjustments apply both for the purposes of Part 5 and Part 6 of the Schedule, they do not use the specific terminology of either Part. (For Part 5, that would be a reference to the amount transferred to the receiving project, for the purposes of clause 26; for Part 6, that would be a reference to the amount transferred to the profit company in relation to the receiving project, for the purposes of clause 35.) However, these adjustments are so worded as to ensure that the amounts required to be transferred from a project will continue to be so much, and only so much, as will provide amounts received that will be fully used in the year of tax.

Items 17 and 18 – At the end of the clause 20; At the end of the clause 29

These items insert notes with the same wording as the one explained under item 9.

*Radiocommunications Act 1992*

Item 19 - At the end of paragraph 16(1)(d)

This clause provides for the amendment of section 16(1)(d) of the *Radiocommunications Act 1992* by including a reference to the proposed inclusion of a new section 17A. Section 16 of the Act allows for its application outside Australia.

Item 20 - After section 17

This new provision allows for the application of the Radiocommunications Act in the Western Greater Sunrise area to all acts, matters, things and people, directly or indirectly connected with exploration and exploitation of the Greater Sunrise unit reservoirs.