

ANNOTATED

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S136 of 2015

BETWEEN

THE MARITIME UNION OF AUSTRALIA

First Plaintiff

AUSTRALIAN MARITIME OFFICERS' UNION

Second Plaintiff

AND

**ASSISTANT MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**

First Defendant

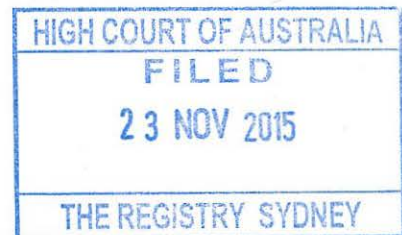
COMMONWEALTH OF AUSTRALIA

Second Defendant

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PLAINTIFFS' SUBMISSIONS

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I INTERNET PUBLICATION

1. These submissions are in a form suitable for publication on the Internet.

II ISSUES

2. The proceeding concerns the validity of two decisions of the first defendant (**Minister**).
3. The first decision is "Determination IMMI 15/073" made on 27 March 2015 (**the Determination**) which, pursuant to s 9A(6) of the *Migration Act 1958* (Cth) (**Migration Act**), excepts from the definition of "offshore resources activity" in s 9A(5) those activities and operations "involving a resources installation that is part of Australia by virtue of s 8". The consequence of the Determination is that certain visa requirements that apply to non-citizens in an area to participate in or support an offshore resources activity do not apply if the activity or operation is one "involving a resources installation that is part of Australia by virtue of s 8".
4. The second decision is "Declaration IMMI 15/074" made on 30 March 2015 (**the Declaration**) which, pursuant to s 33(2)(b)(ii) of the Migration Act, deems individuals in the class of persons who are "on a vessel in an area to participate in, or to support, an offshore resources activity in relation to that area" to have been granted temporary special purpose visas (**SPVs**). The apparently intended consequence of the Declaration is that non-citizens on such a vessel are permitted to participate in or to support an offshore resources activity.
5. The issues are, put generally, whether the exceptions created by the Determination and the Declaration have consumed the rule laid down by Parliament, and specifically:

- (a) whether the Determination is invalid because its scope and breadth takes it beyond the power conferred by s 9A(6), or makes it otherwise repugnant to the Migration Act (especially ss 9A, and 41(2B));
- (b) whether the Declaration is invalid because it is contrary to s 41(2B) of the Migration Act, and therefore made for an unauthorised purpose beyond the power conferred by s 33(2)(b)(ii), or is otherwise repugnant to the Migration Act (especially ss 9A and 41(2B)); and
- (c) whether the Declaration is invalid because in making it the Minister proceeded on the misapprehension that the subjects of the Declaration "may be granted" an SPV and whether, in light of s 16 of the *Parliamentary Privileges Act 1987* (Cth) (**PP Act**), the

Court is permitted to discern that misapprehension of law from the Statement to Parliament made under s 33 of the Migration Act.¹

III NO CONSTITUTIONAL MATTER

6. The Plaintiffs do not consider that any notice should be given in compliance with s 78B of the *Judiciary Act 1903* (Cth).

IV NO JUDGMENT BELOW

7. This proceeding is brought in the Court's original jurisdiction conferred by ss 75(iii) and 75(v) of the *Constitution*.

V MATERIAL FACTS

10 8. The material facts appear in the Special Case.² Apart from a chronology of the regulatory history preceding the Determination and Declaration, there are agreed facts about the use of resources installations that are attached to the seabed in various operations and activities regulated under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**Petroleum Act**) and the *Offshore Minerals Act 1994* (Cth) (**Minerals Act**).³ Those facts inform an appreciation of the practical operation of the Determination.

VI ARGUMENT

Introduction

20 9. The Determination and the Declaration represent the latest manifestations of differences which have existed since 2014 between the Executive and the Parliament over the regulation of foreign labour in Australian offshore resources industries. The Migration Act, since amendments made by the *Migration Amendment (Offshore Resources Activity) Act 2013* (Cth) (**2013 Amending Act**) came into force on 29 June 2014,⁴ has contained a regime under which non-citizens working in the offshore resources industries must hold permanent visas (or prescribed temporary visas). The decisions impugned in this proceeding would have the effect of allowing non-citizens to work in the offshore resources industries *without* permanent (or prescribed) visas. Those decisions have been made after: an unsuccessful attempt to repeal the 2013 Amending Act;⁵ the disallowance by the Senate of regulations that would have

¹ Special Case Book (SCB) 194.

² SCB 15–19.

³ Special Case at [14]–[16] (SCB 17–18).

⁴ SCB 20.

⁵ Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 (Cth) (SCB 61).

prescribed permissible temporary visas;⁶ and the invalidation, by the Full Court of the Federal Court of a legislative instrument which "eviscerate[d] a substantial part of the rule by denuding s 9A(5)(a) and (b) of any content".⁷ The plaintiffs now seek to vindicate the intention of the Parliament, as manifested in the text of the Migration Act, against what they submit is yet further unauthorised administrative action that is repugnant to the legislative scheme.

10. The argument will:

- (A) set out the scheme for the regulation of the offshore resources industries and the scheme requiring individuals participating in or supporting offshore resources industries to hold permanent visas;
 - 10 (B) address the invalidity of the Determination, which depends on whether it is a valid exercise of the statutory power to make an "exception" to the definition of "offshore resources activity";
 - (C) address the invalidity of the Declaration, which depends on: whether it was made for the unauthorised purpose of permitting persons who do not hold permanent visas to work in the offshore resources industries; or whether it was affected by an error of law; and
 - (D) address the *combined* effect of the Determination and Declaration; the impugned decisions, made virtually immediately after the orders in the *AMOU Case* and just three days apart, should be seen, having regard to substance over form, to be a coordinated attempt by the Assistant Minister to negative *entirely* the relevant scheme of the Migration Act — to achieve by two decisions what was previously sought to be achieved (and struck down) by one decision.
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Legislative schemes

Regulation of offshore resources industries

11. The exploration and recovery of petroleum and the injection and storage of greenhouse gas substances in offshore areas is regulated by the Petroleum Act. The exploration and recovery of minerals (other than petroleum) in certain offshore areas is regulated by the Minerals Act. The Petroleum and Minerals Acts apply to all individuals, whether or not Australian citizens or residents, and to all corporations, whether or not incorporated or carrying on business in

⁶ Migration Amendment (Offshore Resources Activity) Regulation 2014 (Cth) (disallowed) (SCB 97, 115).

⁷ Determination IMMI 14/077 (SCB 120); *Australian Maritime Officers' Union v Assistant Minister for Immigration and Border Protection* (2015) 230 FCR 523 (*AMOU Case*) at 541 [67] (SCB 177).

Australia.⁸ The operations of the Petroleum and Minerals Acts are predicated upon the agreement between the Commonwealth and the States referred to as the "Offshore Constitutional Settlement".⁹ That agreement governs the joint responsibility of the Commonwealth and the States for offshore resources.

12. In relevant part, the schemes of the Petroleum and Minerals Acts operate to prohibit individuals and corporations from engaging in certain operations or activities unless they hold a permission granted under the applicable Act to engage in the operation or activity.

13. Section 7 of the Petroleum Act defines a "regulated operation" to mean an activity to which Ch 2 or Ch 3 of the Petroleum Act applies. Ch 2 is about activities relating to petroleum, while Ch 3 is about activities relating to greenhouse gas substances.

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14. Ch 2 prohibits: unauthorised exploration for petroleum in an offshore area;¹⁰ unauthorised recovery of petroleum in an offshore area;¹¹ unauthorised construction or operation of an infrastructure facility in an offshore area;¹² and unauthorised construction or operation of a pipeline in an offshore area.¹³ Ch 2 provides for various kinds of permission which authorise these otherwise prohibited acts. A "petroleum exploration permit" or "petroleum retention lease" authorises exploration for petroleum, recovery of petroleum on an appraisal basis, and other related works.¹⁴ A "petroleum production licence" authorises recovery of petroleum, exploration for petroleum and other related works.¹⁵ An "infrastructure licence" authorises the construction and operation of an infrastructure facility.¹⁶ A "pipeline licence" authorises the construction and operation of a pipeline.¹⁷

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15. Ch 3 is structurally similar to Ch 2, but it deals with the injection and storage of greenhouse gas substances. It prohibits unauthorised exploration for potential greenhouse gas storage formations or injection sites and provides for "greenhouse gas assessment permits" and "greenhouse gas holding leases" to authorise exploration.¹⁸ It prohibits the unauthorised

⁸ Section 35 of the Petroleum Act; s 37 of the Minerals Act.

⁹ Section 5 of the Petroleum Act; s 3 of the Minerals Act.

¹⁰ Section 97 of the Petroleum Act.

¹¹ Section 160 of the Petroleum Act.

¹² Section 193 of the Petroleum Act.

¹³ Section 210 of the Petroleum Act.

¹⁴ Sections 98 and 135 of the Petroleum Act.

¹⁵ Section 161 of the Petroleum Act.

¹⁶ Section 194 of the Petroleum Act.

¹⁷ Section 211 of the Petroleum Act.

¹⁸ Sections 289, 290 and 319 of the Petroleum Act.

injection or storage of greenhouse gas substances into the seabed or subsoil of an offshore area, and provides for "greenhouse gas injection licences" to authorise injection and storage.¹⁹

16. The Minerals Act, likewise, prohibits the exploration for and recovery of minerals in an offshore area unless authorised by a licence or special purpose consent under the Minerals Act.²⁰ A "licence" means an "exploration licence", "retention licence", "mining licence", or "works licence", which are provided for, respectively, in Pts 2.2, 2.3, 2.4, and 2.5 of the Minerals Act; and "special purpose consent" means a consent granted under Pt 2.6 of the Minerals Act.²¹

17. An "exploration licence" authorises exploration for minerals and taking samples of minerals.²² "Retention licences" and "mining licences" authorise certain exploration for and recovery of minerals.²³ A "works licence" can authorise specified activities that are directly connected with activities being carried out under an exploration, retention or mining licence.²⁴ Exploration, retention and mining licences are, by force of the Minerals Act, granted for limited periods of time: 4 years for an exploration licence;²⁵ no more than 5 years for a retention licence;²⁶ and no more than 21 years for a mining licence.²⁷ A "special purpose consent" can authorise the exploration for and taking samples of minerals for scientific investigation, reconnaissance surveys, or collecting small amounts of minerals.²⁸

Scheme for permanent visas in offshore resources industries

18. The object of the Migration Act is to "regulate, in the national interest, the coming into, and presence in, Australia of non-citizens".²⁹ Part 2 of the Migration Act deals with the control of the arrival and presence of non-citizens. A non-citizen in the "migration zone" is a "lawful non-citizen" if, relevantly, he or she holds a visa that is in effect, and is otherwise an "unlawful non-citizen".³⁰

19. The "migration zone" is defined in s 5(1) of the Migration Act and includes, relevantly, "Australian resource installations". "Australian resources installation" means a "resources

¹⁹ Sections 356 and 357 of the Petroleum Act.

²⁰ Section 38 of the Minerals Act.

²¹ Section 4 of the Minerals Act.

²² Section 46 of the Minerals Act.

²³ Sections 133 and 193 of the Minerals Act.

²⁴ Section 267 of the Minerals Act.

²⁵ Section 88 of the Minerals Act.

²⁶ Sections 146(2) and 154 of the Minerals Act.

²⁷ Sections 209(2), 217(2), 227(2) and 232(2) of the Minerals Act.

²⁸ Sections 315 and 316 of the Minerals Act.

²⁹ Section 4(1) of the Migration Act.

³⁰ Sections 13(1) and 14(1) of the Migration Act.

installation" that is deemed to be part of Australia because of the operation of s 8 — that is, if it is "attached to the Australian seabed". A resources installation is taken to be attached to the Australian seabed if it is in "physical contact" with a part of the Australian seabed or with another resources installation that is in physical contact with the Australian seabed.³¹ "Resources installation" means a "resources industry fixed structure" or a "resources industry mobile unit" — that is, a structure or vessel that is, broadly speaking, used in exploring or exploiting natural resources.³²

20. In 2012, the Federal Court of Australia held that certain pipe-laying vessels were not "Australian resources installations", with the effect that workers on board those vessels were not within the migration zone and did not require visas.³³ The Department of Immigration and Citizenship, in part responding to that decision, convened the Migration Maritime Taskforce to conduct a "review on how best to apply the [Migration] Act to [foreign] workers in offshore maritime zones".³⁴ The scope of the Taskforce's review went beyond the particular problem highlighted by the *Allseas* decision and resulted in recommendations for wider reform,³⁵ which the 2013 Amending Act "broadly implemented".³⁶

21. The 2013 Amending Act inserted s 9A into the Migration Act, with effect from 29 June 2014. By force of s 9A(1), a person is "taken to be in the migration zone while he or she is in an area to participate in, or to support, an offshore resources activity in relation to that area". "Offshore resources activity" has the meaning given by s 9A(5),³⁷ which provides:

In this section:

offshore resources activity, in relation to an area, means:

- (a) a regulated operation (within the meaning of section 7 of the [Petroleum Act] that is being carried out, or is to be carried out, within the area, except an operation determined by the Minister under subsection (6); or
- (b) an activity performed under a licence or a special purpose consent (both within the meaning of section 4 of the [Minerals Act]) that is being carried out, or is to be carried out, within the area, except an activity determined by the Minister under subsection (6); or
- (c) an activity, operation or undertaking (however described) that is being carried out or is to be carried out:

³¹ Section 5(14) of the Migration Act.

³² Sections 5(10) and 5(11) of the Migration Act.

³³ *Allseas Construction SA v Minister for Immigration and Citizenship* (2012) 203 FCR 200.

³⁴ Explanatory Memorandum to the Migration Amendment (Offshore Resources Activity) Bill 2013 (Cth) (SCB 31)

³⁵ See Regulation Impact Statement attached to the Explanatory Memorandum to the Migration Amendment (Offshore Resources Activity) Bill 2013 (Cth).

³⁶ *AMOU Case* (2015) 230 FCR 523 at 525 [3] (SCB 160).

³⁷ Section 5(1) of the Migration Act.

- (i) under a law of the Commonwealth, a State or a Territory determined by the Minister under subsection (6); and
- (ii) within the area, as determined by the Minister under subsection (6).

22. Subsection (6) provides:

The Minister may, in writing, make a determination for the purposes of the definition of offshore resources activity in subsection (5).

23. The effect of s 9A is to extend the statutory concept of the migration zone. That statutory concept is extended to include not only particular geographical locations or structures, but participation in or support for certain operations or activities, namely, operations or activities that are regulated or licensed under the Petroleum and Mineral Acts. That extension of the statutory concept is, however, made subject to a power conferred on the Minister by s 9A(6) to make a determination to "except" an operation or an activity, or to include a further activity, operation or undertaking carried out under some Commonwealth, State or Territory law. Such a written determination is not subject to parliamentary disallowance.³⁸

24. Subject to the Migration Act, the Minister may grant a person a visa to travel to or enter or remain in Australia.³⁹ There are classes of visa, and conditions to which classes of visa are subject.⁴⁰ Section 41(1) of the Migration Act enables regulations to provide that visas, or visas of a specified class, be subject to conditions. Section 41 also makes general provision for those conditions. Relevantly, s 41(2)(b) provides that the conditions to which visas are made subject by regulations may include a condition "imposing restrictions about the work that may be done in Australia" by the visa-holder.

25. Sections 41(2B) and (2C) were inserted by the 2013 Amending Act and apply in relation to visas granted on or after 29 June 2014.⁴¹ Section 41(2B) provides that, in addition to any restrictions on work imposed consistently with s 41(2)(b), a condition of a visa which allows the visa-holder to work "is not taken to allow the holder to participate in, or support, an offshore resources activity in relation to any area" unless the visa is a permanent visa or a visa prescribed by the regulations for the purposes of s 41(2B). As submitted below, this provision should be construed to mean that a visa, the conditions of which (if any) allow the visa-holder to work, is not taken to allow the holder to participate in, or support, an offshore resources activity. That is, the provision is engaged whether or not a visa contains a condition specifically permitting the holder to work.

³⁸ Section 9A(7) of the Migration Act.

³⁹ Section 29 of the Migration Act.

⁴⁰ Sections 31 and 41 of the Migration Act.

⁴¹ Item 10(2) of Sched 1 of the 2013 Amending Act (SCB 28).

26. Section 41(2C) (which mirrors s 9A(8)) provides that for the avoidance of doubt a person “may participate in, or support, an offshore resources activity” whether he or she is “on an Australian resources installation” or “is, under s 9A, otherwise in the area to participate in, or support, the activity”. The significance of that is this: the extension of the migration zone effected by s 9A overlaps with pre-existing parts of the migration zone, namely, Australian resources installations. The regime requiring workers to hold permanent or prescribed visas applies to all workers participating in or supporting an offshore resources activity, whether they are within the migration zone solely by virtue of s 9A or also by virtue of being on an Australian resources installation.

10 27. The combined effect of ss 9A(5), 13(1) and 41(2B) is that a non-citizen participating in or supporting an offshore resources activity in an area: must have a visa in order to be lawful non-citizen; and must have a permanent visa (there being no prescribed visas) in order to participate in or support that offshore resources activity. The scheme in relation to offshore resources activities thus not only extends the migration zone; it also creates a specific visa regime for workers wishing to participate in or support those activities. That specific visa regime reflects twin policy concerns, articulated in the Explanatory Memorandum, about the “security ramifications” of the “inability ... to regulate foreign workers engaged in offshore resources activities in an immigration context” and the “risk that foreign workers undertaking activities involved in the exploration and exploitation of Australia’s natural resources ... may be working
20 under conditions and receiving wages that do not adhere to Australian standards”, which “reduces work opportunities for Australian citizens” and puts some businesses “at a competitive disadvantage”.⁴²

Invalidity of the Determination

Scope of Section 9A(6)

28. The scope of s 9A(6) must be determined as a matter of statutory construction: beginning and ending with the text, having regard to context, including legislative history and extrinsic material to the extent that it assists in fixing the meaning of the text.⁴³ The power conferred by s 9A(6) is, in terms, to be exercised “for the purposes of the definition” in s 9A(5). That draws attention to the critical word in s 9A(5): “except”. The purpose for which the power in s 9A(6) is exercised
30 is to “except” an operation or an activity from the definition.

⁴² SCB 32.

⁴³ *Thiess v Collector of Customs* (2014) 250 CLR 664 at [22] (French CJ, Hayne, Kiefel, Gageler and Keane JJ).

29. The plaintiffs respectfully adopt the construction of s 9A reached by the Full Court of the Federal Court in the *AMOU Case*.⁴⁴ The Full Court said that "the term 'except' ... does not denote that the Minister's power of determination can be exercised so as completely to extinguish the items within the relevant category or class in s 9A(5)(a) or s 9A(5)(b)".⁴⁵ Their Honours applied the "ordinary meaning" of the word "except" as reflected in an authoritative passage from *Cockle v Isaksen*:⁴⁶

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An exception assumes a general rule or proposition and specifies a particular case or description of case which would be subsumed under the rule or proposition but which, because it possesses special features or characteristics, is to be excluded from the application of the rule or proposition. It is not a conception that can be defined in the abstract with exactness or applied with precision; it must depend very much upon context.

30. That generality of the principle in *Cockle v Isaksen* is reflected in other decisions in which the basic principle has been applied. For example, in *Shop Distributive & Allied Employees Association v Minister for Industrial Affairs (SA)*, the High Court construed the word "exempt" as indicating a power to stand a shop "outside the regime with respect to shop trading hours" but not "to lay down an alternative regime in relation to trading hours".⁴⁷

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31. The *AMOU Case* concerned a determination which purported to except the *entirety* of the definition in s 9A(5)(a) and (b). The Full Court therefore did not need to grapple with the limits of the power of s 9A(6); it was sufficient to hold that there was *some* limit. The Determination in this case presents the question in a different form, because it does not obviously denude s 9A(5)(a) and (b) of *all* content, by literally mirroring the language of the statutory definition, but makes some attempt to describe a class of activity and operation that is to be excepted. It still may not be necessary for the Court to determine the outer limits of s 9A(6), but it is necessary to go beyond saying that there is *some* limit to power and to say something more about the nature and extent of the limits. The limits, which are not stated explicitly in s 9A(6), must be "ascertained by reference to the scope and purpose of the statutory enactment".⁴⁸ The scope and purpose of the provisions is informed by the following six applicable principles.

⁴⁴ (2015) 230 FCR 523.

⁴⁵ (2015) 230 FCR 523 at 540 [66].

⁴⁶ (1957) 99 CLR 155 at 165 (Dixon CJ, McTiernan and Kitto JJ). See also at 168 (Williams J).

⁴⁷ (1995) 183 CLR 552 at 559–60. See also *South Australia v Totani* (2010) 242 CLR 1 at [18] (French CJ), [172] (Hayne J).

⁴⁸ *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 368 (Mason J).

32. **First**, s 9A(6) effectively empowers the Minister to alter the scope of the Migration Act. Such a power “will be strictly construed”.⁴⁹ The Court should “not accept that parliament has intended its own enactments to be subject to suspension, amendment or repeal by any kind of subordinate legislation at the hands of the executive unless direct and unambiguous authority has been expressly spelled out to that effect, or is to be found as a matter of necessary intentment, in the parent statute”; an “amending power must be used ... to fulfil the purposes of the Act, not destroy them”.⁵⁰ The intrinsic vagueness of the power to make a determination under s 9A(6) should, as a matter of constructional choice, be resolved in favour of a *narrower* rather than a *wider* power.

10 33. **Secondly**, the narrow character of the power intended to be conferred by s 9A(6) is underscored by the circumstance that Parliament has decided that the power is not to be subject to parliamentary scrutiny by way of disallowance.⁵¹ It would not lightly be supposed that such an unsupervised power was intended to be more expansive than the words used require it to be. Indeed, it may be contrasted with true “dispensing” provisions in the Migration Act, which *are* attended by parliamentary scrutiny.⁵²

34. **Thirdly**, the ordinary meaning of “except”, as explained in *Cockle v Isaksen* and endorsed in the *AMOU Case*, provides the first indication of the nature and extent of the limits of s 9A(6). An “exception” must “specif[y] ... a particular case or description of case which would be subsumed under the rule or proposition but which, because it possesses special features or characteristics, is to be excluded from the application of the rule or proposition”. The “special features or characteristics” that define the exception must be consistent with the subject-matter, scope and purpose of the statutory enactment.

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35. **Fourthly**, and relatedly, the relevant subject-matter of s 9A(5), read in conjunction with s 41(2B), is to create obligations for non-citizens who wish to participate in or support an activity or operation that is regulated under the Petroleum and Minerals Acts to hold a permanent (or prescribed) visa. That subject-matter pursues purposes related to national

⁴⁹ *Vanstone v Clark* (2005) 147 FCR 299 at 331 [101] (Weinberg J), quoted in the *AMOU Case* (2015) 230 FCR 523 at 547 [74]. See also *Public Service Association and Professional Officers' Association Amalgamated Union (NSW) v New South Wales* [2014] NSWCA 116 at [103]–[108] (Basten JA), citing (among other authorities) *R v Secretary of State for Social Security; Ex parte Britnell* [1991] 1 WLR 198 at 204.

⁵⁰ *New South Wales v Law* (1992) 45 IR 62 at 75 (Kirby P), 89 (Priestley JA).

⁵¹ Section 9A(7) of the Migration Act; s 44(2) (item 26 in the Table) of the *Legislative Instruments Act 2003* (Cth).

⁵² See, eg, ss 46A, 48B, 91L, 91Q, 195A, 351 and 417; *Plaintiff M79/2012 v Minister for Immigration and Citizenship* (2013) 252 CLR 336 at [40].

security and the protection of work opportunities for Australian citizens, as the extrinsic materials confirm:⁵³

The purpose of [the 2013 Amending Act] is ... to ensure that all Australian jobs are regulated under Australian migration laws ...

Without regulation there is a risk that foreign workers involved in the exploration and exploitation of Australia's natural resources ... are working under conditions and receiving wages that are below Australian standards. This reduces work opportunities for Australia citizens ...

10 The government is committed to maintaining the security of Australia's borders. Under the current legislative framework, the government has an incomplete picture of the number and identity of foreign workers in Australia's offshore maritime zones. This is in part due to the absence of a regulated visa scheme to capture those engaged in Australia's offshore maritime zones and the corresponding migration information

This incomplete information has security ramifications ... [V]isa checks are one of the only ways Australia is able to examine non-citizen workers in this security-sensitive industry.

20 36. These important purposes would be undermined by large exceptions to the scope of s 9A(5) and so those purposes properly inform a narrow construction of s 9A(6).

37. *Fifthly*, the intended purpose of s 9A(6) itself bespeaks a narrow power. The narrowness of the power, which appears from its textual relationship with the comprehensive scheme established by ss 9A(5) and 41(2B), is confirmed by the extrinsic material in relation to s 9A(6). The Explanatory Memorandum explained that the power: would "allow the Minister to exclude from the Act activities ... which the Minister considers unsuitable to be captured by the definition";⁵⁴ would "provide the Minister with the flexibility and ability to exempt certain activities";⁵⁵ and would "provide the Minister with an additional tool to ensure that any future emergency can be effectively dealt with and to exclude any unintended consequences which may breach Australia's international obligations".⁵⁶ The notions of "unsuitability", "flexibility", "emergency",
30 and "unintended consequences" all bespeak a narrow power to adjust the reach of what is otherwise intended to be a "comprehensive framework".⁵⁷

38. *Sixthly*, the "operations" and "activities" to which s 9A(5) refers are, under the Petroleum and Minerals Acts, themselves limited in geographic and temporal scope, because of the way the various permissions under those Acts work. That provides a contextual indication that any

⁵³ Second Reading Speech (SCB 58–59). See also Explanatory Memorandum (SCB 30 at 32)

⁵⁴ Explanatory Memorandum at [92] (SCB 47).

⁵⁵ Explanatory Memorandum at [101] (SCB 48)

⁵⁶ Explanatory Memorandum at [102] (SCB 49).

⁵⁷ Second Reading Speech (SCB 59).

corresponding "exceptions" for the purpose of s 9A(5) must also be confined in geographical and temporal scope and not purport to cover entire categories of operation or activity. Relatedly, it is significant that s 9A(5) anticipates exceptions for "an operation" or "an activity" in the singular, which speaks against the permissibility of excluding entire categories of operation or activity.

- 10 39. These considerations of the subject-matter, scope and purpose of s 9A support the following key proposition of construction: the "special features or characteristics"⁵⁸ of "an activity" or "an operation" that would, in the context of the Migration Act, justify an exception from the definition of "offshore resources activity" must be reasonably related to a discernible need for flexible adjustment of the scheme and not simply a negating of a substantial part of the scheme. A determination that purported to "except" from the definition of "offshore resources activity" entire categories of regulated operation or activity would be *ultra vires*; such a determination would lack the necessary "special features or characteristics" as to bring it within the scope of s 9A(6), having regard to the scope and purpose of that section, and the scheme established by ss 9A(5) and 41(2B).

Extent of Determination

40. The Determination (**SCB 187**) purports to except from the definition of "offshore resources activity" "operations" (para (a)) and "activities" (para (b)) "*involving a resources installation that is part of Australia by virtue of section 8 of the [Migration] Act*".
- 20 41. A "resources installation" includes structures that cannot be moved from one place to another and that are used in operations or activities "associated with, or incidental to" exploring or exploiting natural resources; it also includes vessels and moveable structures that are used "wholly or principally" in exploring or exploiting natural resources "by drilling" or similar.⁵⁹ A resources installation is "part of Australia by virtue of section 8" if it is "attached to the Australian seabed", which it will be "taken to be" if it is "in physical contact" with the seabed or another resources installation that is in physical contact with the seabed.⁶⁰
42. A question of construction arises as to the meaning of the word "involving". That word, which denotes a relationship or connection, is intrinsically "capable of a wide range of applications".⁶¹ Its ordinary meanings include a narrower meaning: "contain[ing] implicitly, includ[ing] as

⁵⁸ *Cockle v Isaksen* (1957) 99 CLR 155 at 165.

⁵⁹ Sections 5(1), 5(10), and 5(11) of the Migration Act.

⁶⁰ Sections 5(14) and 8 of the Migration Act.

⁶¹ *Minister for Immigration and Citizenship v Haneef* (2007) 163 FCR 414 at [106].

essential, imply[ing], call[ing] for, entail[ing]⁶² or “includ[ing] as a *necessary* circumstance, condition or consequence”.⁶³ They include a wider meaning: “includ[ing], contain[ing], comprehend[ing]”.⁶⁴ Lindgren J once identified these meanings as the “more limited meaning”, containing an element of “essentiality” or “necessity”, and the “more liberal meaning”, which does not have such an element.⁶⁵

43. Like all relational words, the “nature and breadth of the relationships ... cover[ed] will depend upon ... context and purpose”.⁶⁶ The immediate context is that the word denotes a relationship between an offshore resources activity (which takes its meaning by reference to the Petroleum and Minerals Acts) and a resources installation that is attached to the seabed. It is therefore apt to denote, at least, those offshore resources activities which require the use of a resources installation, in the sense that those activities are always, or ordinarily, carried out using such a resources installation. That would be to construe “involving” in its more limited sense. That more limited construction is sufficient to find that the Determination exceeds the power conferred by s 9A(6), as explained below. If a wider meaning of “involving” were adopted, so as to connote offshore resources activities having a more remote connection with a resources installation, then the case for invalidity would be even stronger. The context of the Determination, being an instrument making an exception to a statutory definition, would, however, suggest a narrower rather than broader construction.

Application of principles in this case

44. Measuring the Determination, properly construed, against the scope of s 9A(6), properly construed, the Court should conclude that the Determination is *ultra vires*.⁶⁷ By selecting as the criterion of operation that the activity or operation is one “involving” a “resources installation” that is in physical contact with the seabed, the Determination has purported to exclude entire categories of activity or operation that were intended to be regulated. Moreover, those categories are at the core of the offshore resources industries.
45. The relevant factual basis for that conclusion is agreed in the Special Case at [14]–[16].

⁶² Shorter Oxford English Dictionary (6th ed).

⁶³ Macquarie Dictionary.

⁶⁴ Shorter Oxford English Dictionary (6th ed); Macquarie Dictionary.

⁶⁵ *Industry Research and Development Board v Coal & Allied Operations Pty Ltd* (2000) 101 FCR 405 at 421. See also *Victoria Police v Marke* (2008) 23 VR 223 at [7]–[8] (Maxwell P).

⁶⁶ *R v Khazaal* (2012) 246 CLR 601 at 613 [31] (French CJ).

⁶⁷ Amended Application for an Order to Show Cause at [4] (SCB 3-4).

46. The Determination purports to exclude all operations for the recovery of petroleum. It purports to exclude all operations for the injection or storage of greenhouse gas substances. It purports to exclude all activities for the recovery of minerals.⁶⁸
47. It also purports to exclude all operations involving exploratory drilling. And it is agreed that, although exploratory operations might involve seismic surveying, a petroleum operation will never proceed to the recovery phase without first carrying out drilling.⁶⁹
48. The Determination also purports to exclude all operations for the construction or operation of an infrastructure facility: an "infrastructure facility" is, by definition, attached to the seabed within the meaning of s 8 of the Migration Act,⁷⁰ and because an "infrastructure facility" is, by definition, "for the purpose of engaging in" certain petroleum or greenhouse gas activities,⁷¹ it is necessarily a "resources installation" within the meaning of s 5(10) of the Migration Act, as a structure to be used "in any operations or activities associated with, or incidental to, exploring or exploiting natural resources".
- 10 49. The Determination also purports to exclude operations for the construction of a pipeline, which is a resources installation within the meaning of s 5(11)(b)(i), (ii) and (iii)(B) of the Migration Act, to the extent that the pipeline being constructed is one that is brought into physical contact with a part of the Australian seabed or another resources installation that is in contact with the seabed, within the meaning of s 5(14).
50. What does the Determination leave in place? It leaves in place those exploratory activities and operations that never proceed beyond seismic surveying; and it leaves in place exploration for offshore minerals (but not their recovery).⁷² It may leave in place some pipeline construction, as well as some activities carried out under particular "works licences" and "special purpose consents" under the Minerals Act.
- 20 51. The Determination therefore excludes entire categories of operation and activity—notably all recovery operations, which are self-evidently the most important operations from any commercial or economic perspective. It does so to such an extent as to negate substantially the scheme of the Migration Act to regulate workers in the offshore resources industries. The character and extent of the purported "exception" is inconsistent with and repugnant to the

⁶⁸ Special Case at [14] (SCB 17).

⁶⁹ Special Case at [16] (SCB 17-18).

⁷⁰ See s 15 of the Petroleum Act and ss 5(14) and 8 of the Migration Act.

⁷¹ Section 15 of the Petroleum Act.

⁷² Special Case at [15] (SCB 17).

stated legislative purposes of ensuring that the government can maintain the security of the industry through visa checks and can ensure that Australian labour standards are applied in connection with the exploration and exploitation of Australian natural resources. The character and extent of the purported "exception" is inconsistent with and repugnant to the stated legislative purpose of providing a power to make exceptions so that the government can have the "flexibility" to deal with "unsuitable" operations or activities, "emergencies", and "unintended consequences". The Determination is therefore beyond the power conferred by s 9A(6) and invalid.

(C) Invalidity of the Declaration

- 10 52. The Declaration deems a class of person to have been granted an SPV under s 33(2)(b)(ii) of the Migration Act. The class is defined by reference to being "on a vessel in an area to participate in, or to support, an offshore resources activity in relation to that area" (provided the vessel has been notified to the Department).

Improper purpose and repugnancy

53. The first ground of challenge to the Declaration is that it was made for an improper purpose or is otherwise repugnant to the Migration Act.⁷³ That ground depends on the proposition that s 41(2B) requires workers "who are on a vessel in an area to participate in, or to support, an offshore resources activity in relation to that area" to have a permanent visa, such that the grant of an SPV to those persons is unauthorised. Section 41(2B) provides:

20 In addition to any restrictions applying because of regulations made for the purposes of paragraph (2)(b), a condition of a visa that allows the holder of the visa to work is not taken to allow the holder to participate in, or support, an offshore resources activity in relation to an area unless the visa is:

- (a) a permanent visa; or
- (b) a visa prescribed by the regulations for the purposes of this subsection.

54. Section 41(2)(b), to which s 41(2B) refers, provides that the regulations may provide that visas be subject to "a condition imposing restrictions about the work that may be done in Australia by the holder".

- 30 55. On a literal reading of s 41(2B), the provision is not engaged unless there is "a condition of a visa that allows the holder of the visa to work". If there is no such condition that expressly allows work then, on this literal reading, s 41(2B) would be no bar to that visa-holder participating in or supporting an offshore resources activity. Such a literal reading, in the

⁷³ Amended Application for an Order to Show Cause at [11] (SCB 4).

plaintiffs' submission, is an erroneous construction of s 41(2B) which would be contrary to the purpose of the section.⁷⁴ The evident purpose of s 41(2B) is to require offshore workers to hold particular kinds of visa. That was the view taken by the Full Court in the *AMOU Case*.⁷⁵ To achieve that evident purpose, the phrase "a condition of a visa that allows the holder of the visa to work" should be construed as though the reference to "a condition" was a reference to "conditions" or as though the reference to "allows" was a reference to "does not disallow" (or both).

56. Construing "a condition" as a reference also to "conditions" is required by s 23(b) of the *Acts Interpretation Act 1901* (Cth), which provides that "words in the singular number include the plural". Construing the reference to "allows" as a reference to "does not disallow" is supported by the immediate context of s 41(2B) and, in particular, the circumstance that s 41(2)(b), to which s 41(2B) is said to be "in addition", contemplates conditions *restricting* work, rather than conditions "allowing" work in the literal sense.

57. The result of this construction would be that if a visa, having whatever conditions (if any) that it has, would permit the holder to work in the offshore resources industries, then s 41(2B) operates to prevent the holder so from working, unless the visa is of the specified kind (permanent or prescribed). This construction best achieves the purpose of s 41(2B) and is consistent with the text. If the literal construction were adopted, then there would be nothing obviously preventing the Minister from granting SPVs to all workers in the offshore resources industry, which would be contrary to the intended (or any) operation of s 41(2B). In fact, on its proper construction, s 41(2B) prevents the Minister from granting SPVs to any workers for the purpose of enabling those workers to participate in or support an offshore resources activity.

58. It might be said against the plaintiffs' construction of s 41(2B) that the Explanatory Memorandum appears to contemplate the grant of SPVs to workers in the offshore resources industries. The transitional provision in the 2013 Amending Act applied s 41(2B) only in relation to visas granted on or after commencement on 29 June 2014. Holders of visas granted before that date would not be subject to the requirement to hold a permanent or prescribed visa. The Explanatory Memorandum contains this statement:

In relation to persons who do not hold a visa on or after commencement of this schedule, the policy intention is to grant a Special Purpose Visa under section 33 of the Act to a person who is taken to be in the migration zone while he or she is in an

⁷⁴ See s 15AA of the *Acts Interpretation Act 1901* (Cth).

⁷⁵ (2015) 230 FCR 523 at 546 [72(b)] (SCB 182).

area to participate in, or to support, an offshore resources activity in relation to that area, for a limited time.

59. With respect to the author of that statement, it cannot be reconciled with the Act. Persons who "[did] not hold a visa on or after commencement" were required to obtain a visa in order to be a lawful non-citizen. They would necessarily obtain a visa granted *after* commencement, which would be subject to s 41(2B) by force of the Migration Act. Persons who *did* hold a visa upon commencement would *not* be subject to s 41(2B) and would have no need for an SPV. The "policy intention" identified in the Explanatory Memorandum was legally misconceived. In any event, that asserted "policy intention" cannot be "determinative" of the meaning of s 41(2B) and "cannot overcome the need to carefully consider the words of the statute to ascertain its meaning".⁷⁶
- 10
60. If the plaintiffs' construction of s 41(2B) is accepted, then the Declaration is contrary to s 41(2B). The only purpose of granting SPVs to the identified persons is to enable them to participate in or support an offshore resources activity. That is an unauthorised purpose and is otherwise repugnant to the Migration Act.

Misapprehension of law

61. The second ground of challenge is that the Minister, in making the Declaration, proceeded on the misapprehension that she was declaring that the persons in the class "may be granted" an SPV when, in truth, she was declaring that the persons in the class were to be "taken to have been granted" an SPV.⁷⁷ The difference between a discretion and a deeming is so significant that if the Minister did misunderstand in this way what she was doing in purported exercise of power under s 33(2)(b)(ii) of the Migration Act, then the resulting Declaration is affected by a "misapprehen[sion] or disregard[] [of] the nature or limits of [her] functions or powers" amounting to jurisdictional error.⁷⁸
- 20
62. The plaintiffs rely in this respect upon the Statement to Parliament that the Minister made pursuant to s 33 of the Migration Act.⁷⁹ The question is whether the Court, consistently with s 16 of the PP Act, is entitled to discern that error from an examination of the Statement.
63. On a literal reading of ss 16(2)(b) and 16(3)(c), the Statement to Parliament is a document presented to a House, therefore forming part of "proceedings in Parliament", and this ground of

⁷⁶ *Minister for Immigration and Citizenship v Saeed* (2010) 241 CLR 252 at 264–265 [31]–[34], citing *Re Bolton; Ex parte Beane* (1987) 162 CLR 514 at 518.

⁷⁷ Amended Application for an Order to Show Cause at [11A] (SCB 4).

⁷⁸ *Craig v South Australia* (1995) 184 CLR 163 at 177.

⁷⁹ SCB 194.

the plaintiffs' challenge invites the Court to "draw[] ... conclusions wholly or partly from" the Statement, contrary to s 16(3).

64. The plaintiffs submit that s 16(3) of the PP Act should not be construed so broadly as to prevent reliance upon the reasons given for an administrative decision to establish jurisdictional error in that decision. The construction to be placed upon s 16(3) is akin to that reached by Davies JA in *Laurence v Katter* [2000] 1 Qd R 147 at 204 (a construction admittedly rejected by intermediate appellate courts in South Australia and Victoria):⁸⁰

10 [Subsection (3)] makes it unlawful in ... proceedings to tender or receive evidence, ask questions or make statements, submissions or comments concerning proceedings in Parliament ... if that would impeach or question the freedom of proceedings in Parliament.

If the tender or the submission would not impeach or question the "freedom of proceedings", then it is not prohibited by s 16(3) of the PP Act properly construed.

65. The Statement to Parliament pursuant to s 33 of the Migration Act simply "sets out the Minister's reasons for the declaration"⁸¹ and it does so some time *after* those reasons have been acted upon.⁸² It is simply a record of something already done outside Parliament and there can be no impeachment or calling into question of the freedom of parliamentary proceedings by inviting the Court to draw conclusions from that record. In making a statement to Parliament under s 33, a Minister is obliged simply to inform the Parliament of her reasons for a decision already made; the possibility that a Court might examine those reasons in the future could not impair the Minister's freedom in any cognisable sense.⁸³

- 20 66. In the United Kingdom, where Art 9 of the *Bill of Rights* 1689 applies, evidence of what has been said in parliamentary proceedings has been admitted as evidence in judicial review proceedings.⁸⁴ Reliance upon ministerial statements to Parliament "to explain the conduct occurring outside Parliament, and the policy and motivation leading to it" is now described in

⁸⁰ *Rann v Olsen* (2000) 76 SASR 450 at [53], [91]–[93], [100], [106]–[108], [113]–[114] (Doyle CJ), [255] (Perry J), [283] (Mullighan J), [393] (Lander J); *R v Theophanous* (2003) 141 A Crim R 216 at [69] (Winneke ACJ, Vincent and Eames JJ).

⁸¹ Section 33(6)(b) of the Migration Act.

⁸² See s 33(8) of the Migration Act.

⁸³ In this respect, the statement is materially distinguishable from that considered by French J in *Hamsher v Swiff* (1992) 33 FCR 545, which was sought to be relied upon as evidence of a decision or as the foundation of an estoppel.

⁸⁴ Enid Campbell, *Parliamentary Privilege* (2003) at 90, citing: *In re Findlay* [1985] AC 318; *Pierson v Home Secretary* [1997] 3 All ER 577; *R v Home Secretary; Ex parte Venables* [1998] AC 407; *R v Home Secretary; Ex parte Hindley* [1998] QB 751; *R v Home Secretary; Ex parte Brind* [1991] 1 AC 696; *Secretary of State for Foreign Affairs; Ex parte World Development Movement* [1995] 1 WLR 386; *R v Secretary of State for the Home Department; Ex parte Fire Brigades Union* [1995] 2 AC 513.

the United Kingdom as an “established practice” and “unobjectionable although the aim and effect is to show that such conduct involved the improper exercise of a power”.⁸⁵ This reflects the distinct roles of parliamentary scrutiny and judicial review in maintaining the rule of law. In Australia, the importance of judicial supervision of administrative decision-making by policing jurisdictional error is a reason that is highlighted by the present case, and not engaged in *Laurence v Katter* or *Rann v Olsen*, to favour a narrow construction of s 16(3).

(D) Decisions taken together: coordinated repugnancy

67. The Court can take further comfort in making findings of invalidity from a consideration of the *combined* operation of the Determination and the Declaration. If an operation or an activity involves a resources installation that is attached to the seabed, then the Determination negatives the statutory requirement for individuals participating in or supporting that operation or activity to hold a permanent visa. If an operation or an activity does *not* involve such a resources installation, then it is because it involves a vessel: seismic surveying, mineral exploration, or pipelaying. The persons on those vessels are granted SPVs by the Declaration. Together, the Determination and Declaration *entirely* negative the scheme of the Migration Act for visas in the offshore resources industries. The Full Court of the Federal Court struck down the Minister’s attempt to achieve that result by a single decision in the *AMOU Case*. Immediately after that decision, the Minister sought to reinstate the illegal result by making two decisions within three days of each other.

68. For the reasons given in these submissions, both of those decisions are repugnant to the Migration Act and should be declared invalid.

VII APPLICABLE PROVISIONS

69. The applicable statutory provisions, as in force on 27 and 30 March 2015 (and as still in force at the date of these submissions) are set out in Annexure A.

VIII ORDERS SOUGHT

70. The questions stated for the opinion of the Full Court should be answered as follows:

1. Is Determination IMMI 15/073, entered on the Federal Register of Legislative Instruments on 27 March 2015, invalid?

Answer: Paragraph 2 of Determination IMMI 15/073 is invalid.

⁸⁵ *Toussaint v Attorney-General of Saint Vincent and Grenadines* [2007] 1 WLR 2825; [2007] UKPC 48 at [16]–[17] (Lords Hoffmann, Hope, Scott, Walker and Mance) and the cases there cited. Two leading commentators more recently described the practice as “commonplace”: Oonagh Gay and Hugh Tomlinson QC, “Privilege and Freedom of Speech” in Horne, Drewry and Oliver (eds), *Parliament and the Law* (Hart, 2013) 35 at 48.

2. Is Declaration IMMI 15/074, made on 30 March 2015, invalid?

Answer: Yes.

3. If the answer to either or both of Question 1 and Question 2 is "Yes", what relief, if any, should be granted?

Answer: A declaration that paragraph 2 of Determination IMMI 15/073 is invalid and a writ of prohibition prohibiting the First Defendant from acting upon or giving effect to the paragraph; a declaration that Declaration IMMI 15/074 is invalid and writs of certiorari and prohibition quashing it and prohibiting the First Defendant from acting upon or giving effect to it.

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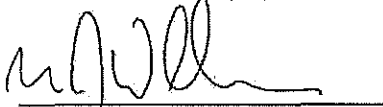
4. Who should pay the costs of the Special Case?

Answer: The defendants.

IX ESTIMATE OF TIME

71. The plaintiffs estimate that they will require a total of 2 hours 30 minutes for the presentation of oral argument, including reply submissions.

Date: 23 November 2015



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Annexure A

The extracts from the Acts below represent the legislation as it stands on 23 November 2015.

Migration Act 1958 (Cth)

Sections 5 [in part], 8, 9A, 13, 14, 29, 31, 33, 41

10 Section 5: “Australian resources installation”, “Australian seabed”, “migration zone”, “resources installation”, ss 5(10), 5(11), 5(12), 5(13), 5(14)

Offshore Minerals Act 1994 (Cth)

Sections 3, 4 [in part], 37, 38, 46, 88, 133, 146, 154, 193, 209, 217, 227, 232, 267, 315, 316

Section 4: “licence”, “special purpose consent”

Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)

20 Sections 5, 7 [in part], 35, 97, 98, 135, 160, 161, 193, 194, 210, 211, 289, 290, 319, 356, 357

Section 7: “regulated operation”

Parliamentary Privileges Act 1987 (Cth)

Section 16



10

Migration Act 1958

No. 62, 1958

Compilation No. 124

20

Compilation date: 1 July 2015

Includes amendments up to: Act No. 104, 2015

Registered: 21 July 2015

This compilation is in 2 volumes

Volume 1: sections 1–261K

Volume 2: sections 262–507

Schedule

Endnotes

30

Each volume has its own contents

40

Prepared by the Office of Parliamentary Counsel, Canberra

50

Section 5

- (ii) whose approval has not been cancelled under section 140M, or otherwise ceased to have effect under section 140G, in relation to that class; or
- (b) a person (other than a Minister) who is a party to a work agreement.

Note: A partnership or an unincorporated association may be an approved sponsor: see subsections 140ZB(1) and 140ZE(1) respectively.

area in the vicinity of the Protected Zone means an area in respect of which a notice is in force under subsection (8).

ASIO means the Australian Security Intelligence Organisation.

ASIO Act means the *Australian Security Intelligence Organisation Act 1979*.

assessed score, in relation to an applicant for a visa, means the total number of points given to the applicant in an assessment under section 93.

assessment, in relation to ASIO, has the same meaning as in subsection 35(1) of the ASIO Act.

Australian Border Force Commissioner has the same meaning as in the *Australian Border Force Act 2015*.

Australian passport means a passport issued under the *Australian Passports Act 2005*.

Australian resources installation means a resources installation that is deemed to be part of Australia because of the operation of section 8.

Australian seabed means so much of the seabed adjacent to Australia (other than the seabed within the Joint Petroleum Development Area) as is:

- (a) within the area comprising:
 - (i) the areas described in Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and
 - (ii) the Coral Sea area; and

- (b) part of:
- (i) the continental shelf of Australia;
 - (ii) the seabed beneath the territorial sea of Australia (including the territorial sea adjacent to any island forming part of Australia); or
 - (iii) the seabed beneath waters of the sea that are on the landward side of the territorial sea of Australia and are not within the limits of a State or Territory.

Australian sea installation means a sea installation that is deemed to be part of Australia because of the operation of section 9.

Australian waters means:

- (a) in relation to a resources installation—waters above the Australian seabed; and
- (b) in relation to a sea installation—waters comprising all of the adjacent areas and the coastal area.

authorised officer, when used in a provision of this Act, means an officer authorised in writing by the Minister, the Secretary or the Australian Border Force Commissioner for the purposes of that provision.

Note: Section 5D can affect the meaning of this term for the purposes of carrying out identification tests.

authorised system, when used in a provision of this Act, means an automated system authorised in writing by the Minister or the Secretary for the purposes of that provision.

behaviour concern non-citizen means a non-citizen who:

- (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least one year; or
- (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least one year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as one period;

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maritime officer has the same meaning as in the *Maritime Powers Act 2013*.

master, in relation to a vessel, means the person in charge or command of the vessel.

member of the crew means:

- (a) in relation to a vessel other than an aircraft—the master of the vessel, or a person whose name is on the articles of the vessel as a member of the crew; or
- (b) in relation to an aircraft—the master of the aircraft, or a person employed by the operator of the aircraft and whose name is included in a list of members of the crew of the aircraft furnished by the master as prescribed.

member of the family unit of a person has the meaning given by the regulations made for the purposes of this definition.

member of the same family unit: one person is a *member of the same family unit* as another if either is a member of the family unit of the other or each is a member of the family unit of a third person.

migration decision means:

- (a) a privative clause decision; or
- (b) a purported privative clause decision; or
- (c) a non-privative clause decision; or
- (d) an AAT Act migration decision.

migration zone means the area consisting of the States, the Territories, Australian resource installations and Australian sea installations and, to avoid doubt, includes:

- (a) land that is part of a State or Territory at mean low water; and
- (b) sea within the limits of both a State or a Territory and a port; and
- (c) piers, or similar structures, any part of which is connected to such land or to ground under such sea;

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but does not include sea within the limits of a State or Territory but not in a port.

Note: See also section 9A, which concerns offshore resources activities.

minor means a person who is less than 18 years old.

movement records means information stored in a notified data base.

natural resources means the mineral and other non-living resources of the seabed and its subsoil.

non-citizen means a person who is not an Australian citizen.

non-disclosable information means information or matter:

- (a) whose disclosure would, in the Minister's opinion, be contrary to the national interest because it would:
 - (i) prejudice the security, defence or international relations of Australia; or
 - (ii) involve the disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet; or
- (b) whose disclosure would, in the Minister's opinion, be contrary to the public interest for a reason which could form the basis of a claim by the Crown in right of the Commonwealth in judicial proceedings; or
- (c) whose disclosure would found an action by a person, other than the Commonwealth, for breach of confidence;

and includes any document containing, or any record of, such information or matter.

non-political crime:

- (a) subject to paragraph (b), means a crime where a person's motives for committing the crime were wholly or mainly non-political in nature; and
- (b) includes an offence that, under paragraph (a), (b) or (c) of the definition of *political offence* in section 5 of the *Extradition Act 1988*, is not a political offence in relation to a country for the purposes of that Act.

removee means an unlawful non-citizen removed, or to be removed, under Division 8 of Part 2.

residence determination has the meaning given by subsection 197AB(1).

resources installation means:

- (a) a resources industry fixed structure within the meaning of subsection (10); or
- (b) a resources industry mobile unit within the meaning of subsection (11).

score, in relation to a visa applicant, means the total number of points given to the applicant under section 93 in the most recent assessment or re-assessment under Subdivision B of Division 3 of Part 2.

sea installation has the same meaning as in the Sea Installations Act.

Sea Installations Act means the *Sea Installations Act 1987*.

Secretary means the Secretary of the Department.

serious Australian offence means an offence against a law in force in Australia, where:

- (a) the offence:
 - (i) involves violence against a person; or
 - (ii) is a serious drug offence; or
 - (iii) involves serious damage to property; or
 - (iv) is an offence against section 197A or 197B (offences relating to immigration detention); and
- (b) the offence is punishable by:
 - (i) imprisonment for life; or
 - (ii) imprisonment for a fixed term of not less than 3 years; or
 - (iii) imprisonment for a maximum term of not less than 3 years.

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(c) a decision of the Immigration Assessment Authority under paragraph 473CC(2)(b).

(10) A reference in this Act to a resources industry fixed structure shall be read as a reference to a structure (including a pipeline) that:

- (a) is not able to move or be moved as an entity from one place to another; and
- (b) is used or is to be used off-shore in, or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources.

(11) A reference in this Act to a resources industry mobile unit shall be read as a reference to:

(a) a vessel that is used or is to be used wholly or principally in:

- (i) exploring or exploiting natural resources by drilling the seabed or its subsoil with equipment on or forming part of the vessel or by obtaining substantial quantities of material from the seabed or its subsoil with equipment of that kind; or
- (ii) operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (i); or

(b) a structure (not being a vessel) that:

- (i) is able to float or be floated;
- (ii) is able to move or be moved as an entity from one place to another; and
- (iii) is used or is to be used off-shore wholly or principally in:

(A) exploring or exploiting natural resources by drilling the seabed or its subsoil with equipment on or forming part of the structure or by obtaining substantial quantities of material from the seabed or its subsoil with equipment of that kind; or

(B) operations or activities associated with, or incidental to, activities of the kind referred to in sub-subparagraph (A).

- 10
- (12) A vessel of a kind referred to in paragraph (11)(a) or a structure of a kind referred to in paragraph (11)(b) shall not be taken not to be a resources industry mobile unit by reason only that the vessel or structure is also used or to be used in, or in any operations or activities associated with, or incidental to, exploring or exploiting resources other than natural resources.
- (13) The reference in subparagraph (11)(a)(ii) to a vessel that is used or is to be used wholly or principally in operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (11)(a)(i) shall be read as not including a reference to a vessel that is used or is to be used wholly or principally in:
- 20
- (a) transporting persons or goods to or from a resources installation; or
- (b) manoeuvring a resources installation, or in operations relating to the attachment of a resources installation to the Australian seabed.
- (14) A resources installation shall be taken to be attached to the Australian seabed if:
- (a) the installation:
- 30
- (i) is in physical contact with, or is brought into physical contact with, a part of the Australian seabed; and
- (ii) is used or is to be used, at that part of the Australian seabed, wholly or principally in or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources; or
- (b) the installation:
- (i) is in physical contact with, or is brought into physical contact with, another resources installation that is taken to be attached to the Australian seabed by virtue of the operation of paragraph (a); and
- 40
- (ii) is used or is to be used, at the place where it is brought into physical contact with the other installation, wholly or principally in or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources.

Section 8

8 Certain resources installations to be part of Australia

- 10
- (1) For the purposes of this Act, a resources installation that:
- (a) becomes attached to the Australian seabed after the commencement of this subsection; or
 - (b) at the commencement of this subsection, is attached to the Australian seabed;
- shall, subject to subsection (2), be deemed to be part of Australia and shall be deemed not to be a place outside Australia.
- (2) A resources installation that is deemed to be part of Australia by virtue of the operation of this section shall, for the purposes of this Act, cease to be part of Australia if:
- (a) the installation is detached from the Australian seabed, or from another resources installation that is attached to the Australian seabed, for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits); or
 - (b) after having been detached from the Australian seabed otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits).
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30 **9 Certain sea installations to be part of Australia**

- (1) For the purposes of this Act, a sea installation that:
- (a) becomes installed in an adjacent area or in a coastal area after the commencement of this subsection; or
 - (b) at the commencement of this subsection, is installed in an adjacent area or in a coastal area;
- shall, subject to subsection (2), be deemed to be part of Australia and shall be deemed not to be a place outside Australia.
- 40

- (2) A sea installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of this Act, cease to be part of Australia if:
- (a) the installation is detached from its location for the purpose of being taken to a place outside the outer limits of Australian waters; or
 - (b) after having been detached from its location otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters.

9A Migration zone etc.—offshore resources activities

Migration zone etc.

- (1) For the purposes of this Act, a person is taken to be in the migration zone while he or she is in an area to participate in, or to support, an offshore resources activity in relation to that area.

Example 1: A person is taken to be in the migration zone under this section if the person is on a vessel in an area to participate in an offshore resources activity under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* in that area by exploring for, or recovering, petroleum.

Example 2: A person who is a member of the crew of the vessel is also taken to be in the migration zone under this section if the person is supporting the offshore resources activity.

Example 3: Neither a stowaway on the vessel, nor a person on the vessel because the person was rescued at sea, is taken to be in the migration zone, because neither is participating in, or supporting, the offshore resources activity.

- (2) To avoid doubt, a person may be taken to be in the migration zone under subsection (1):
- (a) whether or not the person's participation in, or support of, an offshore resources activity in the area concerned has started, is continuing or has concluded; and
 - (b) whether or not the offshore resources activity concerned has started, is continuing or has concluded.

- (3) For the purposes of this Act:

Section 9A

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- (a) a person is taken to be in Australia while he or she is taken to be in the migration zone because of subsection (1); and
- (b) a person is taken to travel to Australia if the person travels to an area in which the person is taken to be in the migration zone because of subsection (1); and
- (c) a person is taken to enter Australia when the person enters an area in which the person is taken to be in the migration zone because of subsection (1); and
- (d) subject to section 80—a person is taken to leave Australia when the person leaves an area in which the person is taken to be in the migration zone because of subsection (1).

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- (4) Unless a provision of this Act, or another Act, expressly provides otherwise, this section does not have the effect of extending, for the purposes of another Act, the circumstances in which a person:
 - (a) is in the migration zone or is taken to be in the migration zone; or
 - (b) is in Australia or is taken to be in Australia; or
 - (c) travels to Australia or is taken to travel to Australia; or
 - (d) enters Australia or is taken to enter Australia; or
 - (e) leaves Australia or is taken to leave Australia.

Meaning of offshore resources activity

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- (5) In this section:

offshore resources activity, in relation to an area, means:

- (a) a regulated operation (within the meaning of section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) that is being carried out, or is to be carried out, within the area, except an operation determined by the Minister under subsection (6); or
- (b) an activity performed under a licence or a special purpose consent (both within the meaning of section 4 of the *Offshore Minerals Act 1994*) that is being carried out, or is to be carried out, within the area, except an activity determined by the Minister under subsection (6); or

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(c) an activity, operation or undertaking (however described) that is being carried out, or is to be carried out:

- (i) under a law of the Commonwealth, a State or a Territory determined by the Minister under subsection (6); and
- (ii) within the area, as determined by the Minister under subsection (6).

(6) The Minister may, in writing, make a determination for the purposes of the definition of *offshore resources activity* in subsection (5).

(7) A determination made under subsection (6) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

(8) To avoid doubt, for the purposes of subsection (1), a person may participate in, or support, an offshore resources activity in relation to an area whether the person:

- (a) is on an Australian resources installation in the area; or
- (b) is otherwise in the area to participate in, or support, the activity.

10 Certain children taken to enter Australia at birth

A child who:

- (a) was born in the migration zone; and
- (b) was a non-citizen when he or she was born;

shall be taken to have entered Australia when he or she was born.

11 Visa applicable to 2 or more persons

Where:

- (a) 2 or more persons who are the holders of the same visa travel to Australia on board the same vessel; and

Part 2—Arrival, presence and departure of persons

Division 1—Immigration status

13 Lawful non-citizens

- (1) A non-citizen in the migration zone who holds a visa that is in effect is a lawful non-citizen.
- (2) An allowed inhabitant of the Protected Zone who is in a protected area in connection with the performance of traditional activities is a lawful non-citizen.

14 Unlawful non-citizens

- (1) A non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen.
- (2) To avoid doubt, a non-citizen in the migration zone who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Migration Act as in force then became, on that date, an unlawful non-citizen.

15 Effect of cancellation of visa on status

To avoid doubt, subject to subsection 13(2) (certain inhabitants of protected zone), if a visa is cancelled its former holder, if in the migration zone, becomes, on the cancellation, an unlawful non-citizen unless, immediately after the cancellation, the former holder holds another visa that is in effect.

16 Removal of immigration rights of inhabitant of Protected Zone

The Minister may declare, in writing, that it is undesirable that a specified inhabitant of the Protected Zone continue to be permitted to enter or remain in Australia.

Division 3—Visas for non-citizens

Subdivision A—General provisions about visas

10

28 Interpretation

In this Division:

specified period includes the period until a specified date.

29 Visas

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- (1) Subject to this Act, the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following:

- (a) travel to and enter Australia;
- (b) remain in Australia.

Note: A maritime crew visa is generally permission to travel to and enter Australia only by sea (as well as being permission to remain in Australia) (see section 38B).

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- (2) Without limiting subsection (1), a visa to travel to, enter and remain in Australia may be one to:
- (a) travel to and enter Australia during a prescribed or specified period; and
 - (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely.

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- (3) Without limiting subsection (1), a visa to travel to, enter and remain in Australia may be one to:
- (a) travel to and enter Australia during a prescribed or specified period; and
 - (b) if, and only if, the holder travels to and enters during that period:
 - (i) remain in it during a prescribed or specified period or indefinitely; and

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Section 30

(ii) if the holder leaves Australia during a prescribed or specified period, travel to and re-enter it during a prescribed or specified period.

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(4) Without limiting section 83 (person taken to be included in visa), the regulations may provide for a visa being held by 2 or more persons.

30 Kinds of visas

(1) A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a permanent visa, to remain indefinitely.

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(2) A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain:

- (a) during a specified period; or
- (b) until a specified event happens; or
- (c) while the holder has a specified status.

31 Classes of visas

(1) There are to be prescribed classes of visas.

Note: See also subsection 35A(4), which allows additional classes of permanent and temporary visas to be prescribed as protection visas by regulations made for the purposes of this subsection.

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(2) As well as the prescribed classes, there are the classes provided for by the following provisions:

- (a) section 32 (special category visas);
- (b) section 33 (special purpose visas);
- (c) section 34 (absorbed person visas);
- (d) section 35 (ex-citizen visas);
- (e) subsection 35A(2) (permanent protection visas);
- (f) subsection 35A(3) (temporary protection visas);
- (fa) subsection 35A(3A) (safe haven enterprise visas);

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- (g) section 37 (bridging visas);
 - (h) section 37A (temporary safe haven visas);
 - (i) section 38 (criminal justice visas);
 - (j) section 38A (enforcement visas);
 - (k) section 38B (maritime crew visas).

(3) The regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 35A, 37, 37A or 38B but not by section 33, 34, 35, 38 or 38A).

(3A) To avoid doubt, subsection (3) does not require criteria to be prescribed for a visa or visas including, without limitation, visas of the following classes:

- 20
- (a) special category visas (see section 32);
 - (b) permanent protection visas (see subsection 35A(2));
 - (c) temporary protection visas (see subsection 35A(3));
 - (ca) safe haven enterprise visas (see subsection 35A(3A));
 - (d) bridging visas (see section 37);
 - (e) temporary safe haven visas (see section 37A);
 - (f) maritime crew visas (see section 38B).

Note 1: An application for any of these visas is invalid if criteria relating to both the application and the grant of the visa have not been prescribed (see subsection 46AA(2)).

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Note 2: If criteria are prescribed by the regulations for any of these visas, the visa cannot be granted unless any criteria prescribed by this Act, as well as any prescribed by regulation, are satisfied (see subsection 46AA(4)).

(4) The regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both.

(5) A visa is a visa of a particular class if this Act or the regulations specify that it is a visa of that class.

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Section 32

32 Special category visas

(1) There is a class of temporary visas to be known as special category visas.

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(2) A criterion for a special category visa is that the Minister is satisfied the applicant is:

(a) a non-citizen:

(i) who is a New Zealand citizen and holds, and has presented to an officer or an authorised system, a New Zealand passport that is in force; and

(ii) is neither a behaviour concern non-citizen nor a health concern non-citizen; or

(b) a person declared by the regulations, to be a person for whom a visa of another class would be inappropriate; or

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(c) a person in a class of persons declared by the regulations, to be persons for whom a visa of another class would be inappropriate.

(3) A person may comply with subparagraph (2)(a)(i) by presenting a New Zealand passport to an authorised system only if:

(a) the New Zealand passport is of a kind determined under section 175A to be an eligible passport for the purposes of Division 5 of Part 2; and

(c) before the person is granted a special category visa, neither the system nor an officer requires the person to present the passport to an officer.

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33 Special purpose visas

(1) There is a class of temporary visas to travel to, enter and remain in Australia, to be known as special purpose visas.

(2) Subject to subsection (3), a non-citizen is taken to have been granted a special purpose visa if:

(a) the non-citizen:

(i) has a prescribed status; or

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- (ii) is a member of a class of persons that has a prescribed status; or
 - (b) the Minister declares, in writing, that:
 - (i) the non-citizen is taken to have been granted a special purpose visa; or
 - (ii) persons of a class, of which the non-citizen is a member, are taken to have been granted special purpose visas.
- (3) A non-citizen is not taken to have been granted a special purpose visa if a declaration under subsection (9) is in force in relation to the non-citizen or a class of persons of which the non-citizen is a member.
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- (4) A special purpose visa granted under subsection (2) is granted at the beginning of the later or latest of the following days:
- (a) if paragraph (2)(a) applies:
 - (i) the day the non-citizen commences to have the prescribed status;
 - (ii) the day the class of persons, of which the non-citizen is a member, commences to have the prescribed status;
 - (iii) the day the non-citizen commences to be a member of the class of persons that has a prescribed status;
 - (b) if paragraph (2)(b) applies:
 - (i) the day the declaration is made;
 - (ii) if a day is specified in the declaration as the day the visa comes into effect—that day;
 - (iii) the day the non-citizen commences to be a member of the class of persons specified in the declaration.
- 30
- (5) A special purpose visa ceases to be in effect at the earliest of the following times:
- (a) if paragraph (2)(a) applies:
 - (i) if the non-citizen ceases to have a prescribed status—the end of the day on which the non-citizen so ceases; or
 - (ii) if the non-citizen ceases to be a member of a class of persons that has a prescribed status—the end of the day on which the non-citizen so ceases; or
- 40

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- (iii) if the Minister makes a declaration under subsection (9) in relation to the non-citizen, or a class of persons of which the non-citizen is a member—the time when that declaration takes effect;
- (b) if paragraph (2)(b) applies:
- (i) if a day is specified in the declaration as the day the visa ceases to be in effect—the end of that day; or
- (ii) if an event is specified in the declaration as the event that causes the visa to cease to be in effect—the end of the day on which the event happens; or
- (iii) if the non-citizen ceases to be a member of a class of persons specified in the declaration—the end of the day on which the non-citizen so ceases; or
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- (iv) if the declaration is revoked—the end of the day of the revocation; or
- (v) if the Minister makes a declaration under subsection (9) in relation to the non-citizen, or a class of persons of which the non-citizen is a member—the time when that declaration takes effect.
- (5A) For the purposes of subsection (5), the time when a declaration made by the Minister under subsection (9) takes effect is:
- (a) if the Minister specifies a time in the declaration (which must be after the time when the declaration is made) as the time the declaration takes effect—the time so specified; or
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- (b) if the Minister does not specify such a time in the declaration—the end of the day on which the declaration is made.
- (6) If the Minister makes a declaration under paragraph (2)(b), he or she is to cause to be laid before each House of the Parliament a statement that:
- (a) sets out the contents of the declaration; and
- (b) sets out the Minister's reasons for the declaration.
- (7) A statement under subsection (6) is not to include:
- 40
- (a) the name of the non-citizen; or

(b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.

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(8) A statement under subsection (6) is to be laid before each House of the Parliament within 15 sitting days of that House after:

(a) if the declaration is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or

(b) if the declaration is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

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(9) The Minister may make a written declaration, for the purposes of this section, that it is undesirable that a person, or any persons in a class of persons, travel to and enter Australia or remain in Australia.

(10) Section 43 and Subdivisions AA, AB, AC (other than section 68), AE, AG, AH, C, D, E, F, FA, FB and H do not apply in relation to special purpose visas.

34 Absorbed person visas

(1) There is a class of permanent visas to remain in, but not re-enter, Australia, to be known as absorbed person visas.

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(2) A non-citizen in the migration zone who:

(a) on 2 April 1984 was in Australia; and

(b) before that date, had ceased to be an immigrant; and

(c) on or after that date, has not left Australia, where left Australia has the meaning it had in this Act before 1 September 1994; and

(d) immediately before 1 September 1994, was not a person to whom section 20 of this Act as in force then applied;

is taken to have been granted an absorbed person visa on 1 September 1994.

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- (iv) any other personal identifier of a type prescribed for the purposes of paragraph (3C)(a).

Note: Division 13AB sets out further restrictions on the personal identifiers that minors and incapable persons can be required to provide.

- 10 (3B) In requiring, for the purposes of subsection (3), a person to provide a personal identifier, an officer must not contravene regulations made for the purposes of paragraph (3C)(b).

- (3C) The regulations:

- (a) may prescribe other types of personal identifiers; and
(b) may provide that a particular personal identifier referred to in subsection (3A), or a particular combination of such personal identifiers, must not be required except in the circumstances prescribed for the purposes of this paragraph.

- 20 (4) A person is taken not to have complied with a requirement referred to in subsection (3) unless the one or more personal identifiers are provided to an authorised officer by way of one or more identification tests carried out by an authorised officer.

Note: If the types of identification tests that the authorised officer may carry out are specified under section 5D, then each identification test must be of a type so specified.

- (5) However, subsection (4) does not apply, in circumstances prescribed for the purposes of this subsection, if the personal identifier is of a prescribed type and the person:

- 30 (a) provides a personal identifier otherwise than by way of an identification test carried out by an authorised officer; and
(b) complies with any further requirements that are prescribed relating to the provision of the personal identifier.

41 Conditions on visas

- (1) The regulations may provide that visas, or visas of a specified class, are subject to specified conditions.

Section 41

General rules about conditions

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- (2) Without limiting subsection (1), the regulations may provide that a visa, or visas of a specified class, are subject to:
- (a) a condition that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa, or a temporary visa of a specified kind) while he or she remains in Australia; or
 - (b) a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restrictions on doing:
 - (i) any work; or
 - (ii) work other than specified work; or
 - (iii) work of a specified kind.
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- (2A) The Minister may, in prescribed circumstances, by writing, waive a condition of a kind described in paragraph (2)(a) to which a particular visa is subject under regulations made for the purposes of that paragraph or under subsection (3).

Conditions about offshore resources activity

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- (2B) In addition to any restrictions applying because of regulations made for the purposes of paragraph (2)(b), a condition of a visa that allows the holder of the visa to work is not taken to allow the holder to participate in, or support, an offshore resources activity in relation to any area unless the visa is:
- (a) a permanent visa; or
 - (b) a visa prescribed by the regulations for the purposes of this subsection.

Note: For *offshore resources activity*, see subsection 9A(5).

- 40
- (2C) To avoid doubt, for the purposes of subsection (2B), a person may participate in, or support, an offshore resources activity in relation to an area whether the person:
- (a) is on an Australian resources installation in the area; or

- (b) is, under section 9A, otherwise in the area to participate in, or support, the activity.

Additional conditions

- (3) In addition to any conditions specified under subsection (1), or in subsection (2B), the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purposes of this subsection.

42 Visa essential for travel

- (1) Subject to subsections (2), (2A) and (3), a non-citizen must not travel to Australia without a visa that is in effect.

Note: A maritime crew visa is generally permission to travel to Australia only by sea (see section 38B).

- (2) Subsection (1) does not apply to an allowed inhabitant of the Protected Zone travelling to a protected area in connection with traditional activities.

- (2A) Subsection (1) does not apply to a non-citizen in relation to travel to Australia:

- (a) if the travel is by a New Zealand citizen who holds and produces a New Zealand passport that is in force; or
(b) if the travel is by a non-citizen who holds and produces a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island; or
(c) if:
(i) the non-citizen is brought to the migration zone under subsection 245F(9) of this Act or under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013*; and
(ii) the non-citizen is a person who would, if in the migration zone, be an unlawful non-citizen; or
(ca) the non-citizen is brought to Australia under section 198B; or



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Offshore Minerals Act 1994

Act No. 28 of 1994 as amended

This compilation was prepared on 30 January 2012
taking into account amendments up to Act No. 113 of 2011

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Volume 1 includes: Reader's Guide
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Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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**An Act relating to exploration for, and the recovery
of, minerals (other than petroleum) in certain
offshore areas, and for related purposes**

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Chapter 1—Introduction

Part 1.1—Legislative formalities and background

1 Short title [see Note 1]

This Act may be cited as the *Offshore Minerals Act 1994*.

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2 Commencement [see Note 1]

This Act commences on the day on which it receives the Royal Assent.

3 Commonwealth-State agreement (the Offshore Constitutional Settlement)

(1) The Commonwealth and the States have agreed that:

- (a) Commonwealth offshore mining legislation should be limited to the area that is outside State coastal waters; and
- (b) the States should share, in the manner provided by this Act, in the administration of the Commonwealth offshore mining legislation; and
- (c) State offshore mining legislation should apply to State coastal waters beyond the baseline for the territorial sea (that is, the first 3 nautical miles of the territorial sea); and
- (d) the Commonwealth and the States should try to maintain, as far as practicable, common principles, rules and practices in regulating and controlling offshore mining beyond the baseline of Australia's territorial sea.

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Note: So far as the agreement relates to petroleum, it is reflected in Commonwealth legislation by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

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Section 3

- (2) Other Acts that provide background to the agreement (commonly referred to as the *Offshore Constitutional Settlement*) are:
- (a) the *Seas and Submerged Lands Act 1973*; and
 - (b) the *Coastal Waters (State Powers) Act 1980*; and
 - (c) the *Coastal Waters (State Title) Act 1980*; and
 - (d) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and
 - (e) the *Coastal Waters (Northern Territory Powers) Act 1980*; and
 - (f) the *Coastal Waters (Northern Territory Title) Act 1980*.

Note 1: The *Seas and Submerged Lands Act 1973*:

- declared and enacted that the sovereignty in respect of the territorial sea and the associated airspace, seabed and subsoil is vested in and exercisable by the Crown in right of the Commonwealth;
- gave the Governor-General power to declare, by Proclamation, the limits of the territorial sea;
- declared and enacted that the sovereignty in respect of waters of the sea that are on the landward side of the baseline of the territorial sea (but not within the limits of a State) and in respect of the associated airspace, seabed and subsoil is vested in and exercisable by the Crown in right of the Commonwealth;
- declared and enacted that the sovereign rights of Australia as a coastal State in respect of the Continental Shelf of Australia (for the purpose of exploring it and exploiting its natural resources) are vested in and exercisable by the Crown in right of the Commonwealth;
- gave the Governor-General power to declare, by Proclamation, the limits of the Continental Shelf of Australia.

Note 2: The *Coastal Waters (State Powers) Act 1980* was enacted following a request from the Parliaments of all the States under paragraph 51(xxxviii) of the Constitution of the Commonwealth and provided that the legislative powers exercisable under the Constitution of each State extended to the making of certain laws that would operate offshore.

Note 3: The *Coastal Waters (State Title) Act 1980* vested in each State certain property rights in the seabed beneath the coastal waters of the State.

Note 4: The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* makes provision, based on the agreement referred to in subsection (1), for the licensing regime that applies to the exploration for and recovery of petroleum in offshore areas.

Note 5: The *Coastal Waters (Northern Territory Powers) Act 1980* makes similar provision to the State Powers Act in relation to the Northern Territory.

Note 6: The *Coastal Waters (Northern Territory Title) Act 1980* makes similar provision to the State Title Act in relation to the Northern Territory.

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licence means:

- (a) an exploration licence; or
- (b) a retention licence; or
- (c) a mining licence; or
- (d) a works licence.

licence area means the block or blocks covered by a licence.

mineral has the meaning given by section 22.

Mining Licence Fees Act means the *Offshore Minerals (Mining Licence Fees) Act 1981*.

native title and *native title rights and interests* have the same meaning as in the *Native Title Act 1993*.

offshore area means a Commonwealth-State offshore area or an external territory offshore area.

offshore exploration or mining activity means:

- (a) the exploration for minerals in an offshore area; or
- (b) the recovery of minerals from an offshore area; or
- (c) activities carried out in an offshore area under a works licence.

offshore mining register means a register kept for the purposes of Part 3.1.

petroleum means:

- (a) a hydrocarbon or a mixture of hydrocarbons; or
- (b) a mixture of one or more hydrocarbons and one or more of the following:
 - (i) hydrogen sulphide;
 - (ii) nitrogen;
 - (iii) helium;
 - (iv) carbon dioxide.

primary payment period for the provisional grant or provisional renewal of a licence means the period of 30 days after the day on which the applicant is given a written notice:

- (a) in the case of the grant of an exploration licence—under section 66 or 83; and

sample of the seabed or subsoil in an offshore area includes a core or cutting from the seabed or subsoil in that area.

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secondary payment period for the provisional grant or provisional renewal of a licence means the period of 30 days after the day on which an extension of the primary payment period for the grant or renewal concerned ends.

share in a licence has the meaning given by subsections 6(1), (2) and (3).

special purpose consent means a consent granted under Part 2.6.

standard block has the meaning given by section 19.

State has a meaning that is affected by the operation of section 5.

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State Minister means:

- (a) a Minister of State for a State; or
- (b) a Minister of State for the Northern Territory.

successor licence to a licence has the meaning given by section 8.

Note: See section 15.

surrender day for an exploration licence means:

- (a) the day on which the initial term of the licence ends; or
- (b) a day on which the term of a renewal of the licence ends.

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tender block has the meaning given by section 20.

the 1981 Act means the *Minerals (Submerged Lands) Act 1981*.

transfer:

- (a) when used in relation to a licence—has the meaning given by subsection 7(1); and
- (b) when used in relation to a share in a licence—has the meaning given by subsections 7(2) and (3).

vary a licence condition includes revoke or suspend.

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Works Licence Fees Act means the *Offshore Minerals (Works Licence Fees) Act 1981*.

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Part 1.4—Application of this Act

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35 Act does not apply to exploration for or recovery of petroleum

This Act does not apply to the exploration for or recovery of petroleum.

Note 1: For *petroleum* see section 4.

Note 2: Offshore petroleum exploration and mining are regulated by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

36 Act extends to certain external territories

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This Act extends to the following external territories:

- (a) the Territory of Ashmore and Cartier Islands;
- (b) Norfolk Island;
- (c) the Territory of Heard Island and McDonald Islands;
- (d) Christmas Island;
- (e) the Territory of Cocos (Keeling) Islands;
- (f) the Coral Sea Islands Territory.

Note 1: This Act treats the Coral Sea Islands Territory offshore area as part of Queensland's offshore area.

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Note 2: This Act operates in a Commonwealth-State offshore area on the basis of shared administration between the Commonwealth and the State and this involves sharing powers between Designated Authorities and Joint Authorities. In external territory offshore areas, the responsible Commonwealth Minister exercises all the powers and therefore has both Designated Authority powers and Joint Authority powers. When the Commonwealth-State offshore area regime requires communication and consultation between Designated Authorities and Joint Authorities, this Act contains special provisions dealing with external territory offshore areas (see, for example, section 64).

Note 3: This Act provides for review of the decisions of the Designated Authority in relation to external territory offshore areas (see Part 4.3).

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37 Act applies to all individuals and corporations

- (1) This Act applies to all individuals, including:
 - (a) individuals who are not Australian citizens; and
 - (b) individuals who are not resident in Australia or an external territory.

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Section 37

- (2) This Act applies to all corporations, including:
- (a) corporations that are not incorporated in Australia; and
 - (b) corporations that do not carry on business in Australia or an external territory.

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Chapter 2—Regulation of offshore exploration and mining

Part 2.1—General

38 General prohibition on exploring and mining in offshore areas without appropriate authorisation under this Act

A person must not:

- (a) explore for minerals in an offshore area; or
- (b) recover minerals from an offshore area;

unless the exploration or recovery is authorised by a licence or special purpose consent granted under this Act.

Note: A works licence may be necessary because *exploration* includes activities that are directly related to exploration (see subsection 23(1)) and *recovery* includes activities that are directly related to recovery (see subsection 24(1)).

Maximum penalty: 300 penalty units.

39 Licences and consents available under this Act

This Act provides for the grant of:

- (a) exploration licences (see Part 2.2); and
- (b) retention licences (see Part 2.3); and
- (c) mining licences (see Part 2.4); and
- (d) works licences (see Part 2.5); and
- (e) special purpose consents (see Part 2.6).

Note 1: An exploration licence is designed to cover the exploration phase of a project and authorises:

- exploration; and
- the recovery of mineral samples.

Note 2: A retention licence is designed to ensure the retention of rights pending the transition of a project from the exploration phase to the commercial mining phase and authorises:

- exploration; and
- the recovery of minerals but not as part of a commercial mining operation.

Part 2.2—Exploration licences

Division 1—General

45 Exploration licences

- (1) This Part provides for the grant of exploration licences over blocks in an offshore area.
- (2) An exploration licence may be granted over a standard block (see Division 2) or over a tender block (see Division 3).

Note: A tender block is a block that has been declared available for tender.
A standard block is any block that is not a reserved block (see sections 19 and 20).

46 Activities authorised by an exploration licence

- (1) Subject to subsection (2), an exploration licence holder may:
 - (a) explore for minerals in the licence area; and
 - (b) take samples of minerals in the licence area.

Note 1: Under subsection 23(1) the concept of *exploration* extends to activities that are directly related to exploration.

Note 2: Under subsection 24(1) the concept of *recovery* extends to activities that are directly related to the recovery of minerals.

- (2) If the licence is expressed to restrict the kind of minerals covered by the licence, the holder is not permitted to explore for, or to take samples of, minerals not covered by the licence.
- (3) A restriction on the kind of minerals covered by the licence may be inclusive (for example, only minerals A, B and C) or exclusive (for example, all minerals except A, B and C).
- (4) For the purposes of subsection (2), the holder does not take samples of an excluded mineral if, in the course of exploring for, or taking samples of, another mineral, the holder recovers some excluded mineral.

Division 4—Duration of exploration licence

88 Initial term of exploration licence

- 10
- (1) An exploration licence comes into force on:
 - (a) the day on which the grant of the licence is registered; or
 - (b) if a day later than the day on which the grant of the licence is registered is specified in the licence as its commencement day—that specified day.
 - (2) The initial term of an exploration licence ends 4 years after:
 - (a) the day on which the licence is provisionally granted; or
 - (b) if a day later than the day on which the licence is provisionally granted is specified in the licence as its commencement day—that specified day.

20 Note: The licence may be surrendered at any time (see section 127).

89 Term of renewal of exploration licence

- 30
- (1) A renewal of an exploration licence comes into force on:
 - (a) the day on which the renewal is registered; or
 - (b) the day on which the previous term of the licence expires; whichever is the later.

Note: See Division 6 for renewal.

- (2) The term of a renewal of a licence ends 2 years after the day on which the previous term of the licence expires.

Note: The licence may be surrendered at any time (see section 127).

- (3) Ignore section 90 in working out the period of 2 years referred to in subsection (2).
- (4) An exploration licence is not to be renewed more than 3 times.

90 Effect of suspension of rights on term of exploration licence

- 40
- (1) If the Joint Authority suspends rights conferred by an exploration licence for a specified period under section 48, the Joint Authority may extend the term of the licence.

Part 2.3—Retention licences

Division 1—General

132 Retention licences

This Part provides for the grant of retention licences over blocks in an offshore area.

Note: A retention licence is designed to allow an exploration licence holder to retain rights over an area if:

- the holder has identified and evaluated a significant mineral deposit in the exploration licence area; and
- mining the deposit is not commercially viable in the short term for some reason (for example, the political situation, the prevailing situation in the commodity market for particular minerals, the need to arrange finance or build up capital reserves, the need to develop new technologies or the impending development of new technologies); and
- there is a reasonable prospect of development of the deposit in the longer term.

See section 145 for the grounds on which a retention licence may be granted.

133 Activities authorised by a retention licence

- (1) Subject to subsections (2) and (3), a retention licence holder may:
- (a) explore for minerals in the licence area; and
 - (b) recover minerals in the licence area.

Note 1: The retention licence may specify a restricted range of activities that are the only ones authorised by the licence (see subsection 146(3)).

Note 2: Under subsection 23(1) the concept of *exploration* extends to activities that are directly related to exploration.

Note 3: Under subsection 24(1) the concept of *recovery* extends to activities that are directly related to the recovery of minerals.

- (2) A retention licence does not authorise the recovery of minerals as part of a commercial mining operation.
- (3) If the licence is expressed to restrict the kind of minerals covered by the licence, the holder is not permitted to explore for, or to recover, minerals not covered by the licence.

Section 134

(4) A restriction on the kind of minerals covered by the licence may be inclusive (for example, only minerals A, B and C) or exclusive (for example, all minerals except A, B and C).

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(5) For the purposes of subsection (3), the holder does not recover an excluded mineral if, in the course of exploring for, or recovering, another mineral, the holder recovers some excluded mineral.

134 Joint Authority may cancel or not renew retention licence without compensation

No compensation is payable because of the cancellation or non-renewal of a retention licence by the Joint Authority.

Note 1: The Joint Authority may cancel the licence under section 189 or 190.

Note 2: The Joint Authority may refuse under section 165 or 166 to renew the licence.

20

135 Licence rights may be suspended

(1) The Joint Authority must suspend particular rights conferred by a retention licence if the Joint Authority is satisfied that it is necessary in the national interest to do so.

(2) The Joint Authority may suspend rights under subsection (1) for a specified period or for an indefinite period.

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(3) The Joint Authority may end a suspension at any time.

(4) A suspension or the ending of a suspension must be in writing.

(5) If the Joint Authority:

(a) suspends rights conferred by a retention licence; or

(b) ends a suspension;

the Joint Authority must give the licence holder a written notice that informs the holder of the suspension or the ending of a suspension.

Note: See section 181 for the effect of the suspension on the obligations associated with the licence.

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(6) A suspension takes effect when:

(a) the holder has been given notice of the suspension under subsection (5); and

(b) the suspension has been registered under section 337.

146 Matters to be specified in the licence

- 10
- (1) The licence must specify:
 - (a) the blocks covered by the licence; and
 - (b) the term of the licence; and
 - (c) the licence conditions.
 - (2) The term specified under paragraph (1)(b) is not to exceed 5 years.
 - (3) The licence may specify the activities that may be carried out under the licence.
 - (4) If the licence includes a specification under subsection (3), the licence authorises only the specified activities.

20 147 Applicant must be notified

- 30
- (1) The Designated Authority must give the applicant written notice of the Joint Authority's decision under section 143 or 144.
 - (2) If the Joint Authority provisionally grants a retention licence:
 - (a) the Designated Authority must give the licence to the provisional holder; and
 - (b) the notice under subsection (1) must contain the following information:
 - (i) notification of any determination under section 399 that the provisional holder must lodge a security;
 - (ii) notification that the provisional grant will lapse unless the provisional holder, before the end of the primary payment period:
 - (A) gives the Designated Authority a written acceptance of the grant; and
 - (B) lodges any security required by the Joint Authority under section 399; and
 - (C) pays the fees that must be paid for the licence under the Retention Licence Fees Act.

40 148 Amendment of conditions

- (1) If the provisional holder is dissatisfied with a licence condition, the provisional holder may ask the Joint Authority to amend the condition.

Division 3—Duration of retention licence

154 Initial term of retention licence

- 10
- (1) A retention licence comes into force on:
 - (a) the day on which the grant of the licence is registered; or
 - (b) if a day later than the day on which the grant of the licence is registered is specified in the licence as its commencement day—that specified day.

- (2) The initial term of a retention licence expires at the end of the period specified in the licence under subsection 146(1).

Note 1: For the maximum initial term see subsection 146(2).

Note 2: The licence may be surrendered at any time (see section 187).

- 20
- (3) The period runs from:
 - (a) the day on which the licence is provisionally granted; or
 - (b) if a day later than the day on which the licence is provisionally granted is specified in the licence as its commencement day—that specified day.

155 Term of renewal of licence

- 30
- (1) A renewal of a retention licence comes into force on:
 - (a) the day on which the renewal is registered; or
 - (b) the day on which the previous term of the licence expires; whichever is the later.

Note: See Division 5 for renewal.

- (2) The term of a renewal of a licence expires at the end of the period specified in the notice under section 169.

Note 1: For the maximum term of renewal see subsection 169(3).

Note 2: The licence may be surrendered at any time (see section 187).

- 40
- (3) The period runs from the expiry of the previous term of the licence.
 - (4) Ignore section 156 in working out the period referred to in subsection (3).

Part 2.4—Mining licences

Division 1—General

192 Mining licences

- (1) This Part provides for the grant of mining licences over blocks in an offshore area.
- (2) A mining licence may be granted over:
- (a) a vacant standard block (see Division 2); or
 - (b) certain blocks that are not vacant (see Division 2); or
 - (c) a tender block (see Division 3).

Note 1: A tender block is a block that has been declared available for tender. A standard block is any other block (see sections 19 and 20).

Note 2: A retention or exploration licence holder may apply for a mining licence over the same area or part of the same area.

193 Activities authorised by a mining licence

- (1) Subject to subsection (2), a mining licence holder may:
- (a) recover minerals in the licence area; and
 - (b) explore for minerals in the licence area.
- Note 1: Under subsection 23(1) the concept of *exploration* extends to activities that are directly related to exploration.
- Note 2: Under subsection 24(1) the concept of *recovery* extends to activities that are directly related to the recovery of minerals.
- (2) If the licence is expressed to restrict the kind of minerals covered by the licence, the holder is not permitted to recover, or to explore for, minerals not covered by the licence.
- (3) A restriction on the kind of minerals covered by the licence may be inclusive (for example, only minerals A, B and C) or exclusive (for example, all minerals except A, B and C).
- (4) For the purposes of subsection (2), the holder does not recover an excluded mineral if, in the course of recovering, or exploring for, another mineral, the holder recovers some excluded mineral.

Section 208

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- (3) If the applicant does what is required by sections 199 to 204, the responsible Commonwealth Minister (as the Joint Authority for that offshore area) may:
- (a) provisionally grant a mining licence to the applicant; or
 - (b) subject to section 208, refuse the application.

Note: Under section 232, the grant of the licence cannot be effective before it is registered (see section 333 for registration). The grant will not be registered until it has been properly accepted (see section 214 for *proper acceptance*).

208 Refusal of application for mining licence made under section 198

- 20
- (1) If the Joint Authority proposes to refuse an application for a mining licence made under section 198, the Designated Authority must notify the applicant of the proposed refusal.
- (2) The notice must:
- (a) be in writing; and
 - (b) specify the reason for the proposed refusal; and
 - (c) invite the applicant to make written submissions in relation to the proposed refusal; and
 - (d) specify the day by which submissions should be given to the Designated Authority; and
 - (e) specify an address where submissions are to be lodged.
- 30
- (3) The day specified under paragraph (2)(d) must be not less than 30 days after the day on which the notice is given.
- (4) The Joint Authority may refuse to grant an application for a mining licence made under section 198 only if:
- (a) the applicant has been given a notice under subsection (1); and
 - (b) the Joint Authority has considered any submission made by the applicant; and
 - (c) the Joint Authority is satisfied that no special circumstances exist that justify the licence being granted.
- 40

209 Matters to be specified in the licence

- (1) The licence must specify:
- (a) the blocks covered by the licence; and
-

- (b) the term of the licence; and
- (c) the licence conditions.

- 10 (2) The term specified under paragraph (1)(b) is not to exceed 21 years.

210 Applicant must be notified

- 20 (1) The Designated Authority must give the applicant written notice of the Joint Authority's decision under section 206 or 207.
- (2) If the Joint Authority provisionally grants a mining licence:
- (a) the Designated Authority must give the licence to the provisional holder; and
 - (b) the notice under subsection (1) must contain the following information:
 - (i) notification of any determination under section 399 that the provisional holder must lodge a security;
 - (ii) notification that the provisional grant will lapse unless the provisional holder, before the end of the primary payment period:
 - (A) gives the Designated Authority a written acceptance of the grant; and
 - (B) lodges any security required by the Joint Authority under section 399; and
 - 30 (C) pays the fees that must be paid for the licence under the Mining Licence Fees Act.

211 Amendment of conditions

- 40 (1) If the provisional holder is dissatisfied with a licence condition, the provisional holder may ask the Joint Authority to amend the condition.
- (2) The request must:
- (a) be made within 30 days after the day on which the provisional holder is given the licence under section 210; and
 - (b) be lodged with the Designated Authority.
- (3) If the Joint Authority is given a request under subsection (1), the Joint Authority may amend the licence conditions.

**Division 3—Application for and grant of mining licence
over tender block**

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**217 Matters to be determined before applications for mining licence
over tender blocks invited**

- (1) If the Joint Authority proposes to invite applications for the grant of a mining licence over reserved blocks, the Joint Authority must, before inviting the applications, determine:
 - (a) the procedure and criteria that the Joint Authority will adopt to allocate the licence; and
 - (b) the amount of security that will be required for the licence under section 399; and
 - (c) the initial term of the licence; and
 - (d) the licence conditions.
- (2) The term determined under paragraph (1)(c) is not to exceed 21 years.

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**218 Joint Authority may invite applications for mining licence over
tender blocks**

- (1) Subject to subsection (2), the Joint Authority may invite applications for the grant of a mining licence over reserved blocks.
- (2) Applications may be invited for a licence covering a group of reserved blocks only if the group forms a discrete area.
- (3) The Joint Authority is to invite applications by publishing a tender block licence notice for the licence in the Gazette.

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Note 1: A mining licence may cover not more than 20 tender blocks (see section 219).

Note 2: A mining licence might be made available by a tender block notice if a mineral deposit in the area had already been identified and sufficient information was already available to justify the issue of a mining licence rather than an exploration licence.

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219 Tender block licence notice—mining licence

- (1) A tender block licence notice for a mining licence must:
 - (a) specify the blocks to be covered by the licence; and

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Section 227

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- (2) The responsible Commonwealth Minister (as the Joint Authority for that offshore area):
- (a) must refuse an application if the applicant does not do what is required by sections 221 to 223; and
 - (b) may provisionally grant a mining licence to an applicant whose application has not been refused under paragraph (a).

Note: Under section 232, the grant of the licence cannot be effective before it is registered (see section 333 for registration). The grant will not be registered until it has been properly accepted (see section 228 for *proper acceptance*).

- 20
- (3) The responsible Commonwealth Minister may provisionally grant a licence under subsection (2) even if there is only one application that is not refused under paragraph (2)(a).
- (4) When provisionally granting a licence under subsection (2), the responsible Commonwealth Minister must follow the procedure and apply the criteria specified in the tender block licence notice published for the licence under section 218.

227 Successful applicant must be notified

- 30
- (1) If the Joint Authority provisionally grants a mining licence under section 225, 226 or 231, the Designated Authority must give the provisional holder:
- (a) the licence; and
 - (b) written notice that the provisional grant will lapse unless the provisional holder, before the end of the primary payment period:
 - (i) gives the Designated Authority a written acceptance of the grant; and
 - (ii) lodges any security required by the Joint Authority under section 399; and
 - (iii) pays the fees that must be paid for the licence under the Mining Licence Fees Act; and
 - (iv) if the tender is determined on the basis of the amounts of money offered for the licence—pays the Commonwealth the amount that the provisional holder offered for the licence under subsection 221(3).
- 40

- (2) The licence must specify:
- (a) the blocks covered by the licence; and
 - (b) the term of the licence; and
 - (c) the licence conditions.

Note: For the term of a licence see subsection 217(2).

228 Acceptance of grant of mining licence over tender blocks

The provisional grant of a mining licence is properly accepted by the provisional holder if, within 30 days after the day on which the provisional holder is given notice under section 227, the provisional holder:

- (a) gives the Designated Authority a written acceptance of the grant; and
- (b) lodges any security required by the Joint Authority under section 399; and
- (c) pays the fees that must be paid for the licence under the Mining Licence Fees Act; and
- (d) if the tender is determined on the basis of the amounts of money offered for the licence—pays the Commonwealth the amount that the provisional holder offered for the licence under subsection 221(3).

Note: Under section 232, the grant of the licence cannot be effective before it is registered (see section 333 for registration).

229 Conditions applicable to licence on grant

If the provisional grant of the licence is properly accepted, the licence is subject to the conditions determined under section 217.

230 Lapse of provisional grant of mining licence

If the provisional grant of the licence is not properly accepted under section 229, the provisional grant lapses.

231 Provisional grant to next applicant if grant lapses

- (1) If the provisional grant of the licence lapses under section 230, the Joint Authority may provisionally grant the licence to another of the applicants for the licence.

Division 4—Duration of mining licence

232 Initial term of mining licence

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- (1) A mining licence comes into force on:
- (a) the day on which the grant of the licence is registered; or
 - (b) if a day later than the day on which the grant of the licence is registered is specified in the licence as its commencement day—that specified day.
- (2) The initial term of a mining licence ends:
- (a) if the licence is granted under Division 2—at the end of the period specified in the licence under subsection 209(1); or
 - (b) if the licence is granted under Division 3—at the end of the period specified under subsection 227(2).
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Note 1: For the maximum initial term of renewal see subsections 209(2) and 217(2).

Note 2: The licence may be surrendered at any time (see section 264).

- (3) The period runs from:
- (a) the day on which the licence is provisionally granted; or
 - (b) if a day later than the day on which the licence is provisionally granted is specified in the licence as its commencement day—that specified day.
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233 Term of renewal of licence

- (1) A renewal of a mining licence comes into force on:
- (a) the day on which the renewal is registered; or
 - (b) the day on which the previous term of the licence expires; whichever is the later.

Note: See Division 6 for renewal.

- (2) The term of a renewal of a licence ends at the end of the period specified in the notice under section 246.

Note 1: For the maximum term of renewal see subsection 246(3).

Note 2: The licence may be surrendered at any time (see section 264).

Part 2.5—Works licences

Division 1—General

267 Works licences

- (1) This Part provides for the grant of works licences over blocks in an offshore area.

Note: A works licence allows licence-related activities to be carried out on blocks that are outside the licence area of the exploration, retention or mining licence concerned.

- (2) A works licence can only authorise activities that:

- (a) are directly connected with activities that are carried out, or are to be carried out, under an exploration, retention or mining licence; and
- (b) are necessary or desirable for the exploration, retention or mining licence holder to:
- (i) effectively exercise the licence rights; or
 - (ii) effectively perform the licence obligations.

- (3) A works licence can be granted over a particular block even though the block is a reserved block or is in someone else's licence area.

- (4) More than one works licence can be granted over a particular block.

- (5) A works licence may be granted so as to allow activities that are connected with 2 or more licences.

268 Activities authorised by a works licence

A works licence holder may carry out in the licence area the activities that are specified in the licence.

269 Joint Authority may cancel or not renew works licence without compensation

No compensation is payable because of the cancellation or non-renewal of a works licence by the Joint Authority.

Part 2.6—Special purpose consents

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315 Special purpose consents

- (1) This Part provides for the grant of special purpose consents.
- (2) A special purpose consent may be granted over:
 - (a) a standard block; or
 - (b) a reserved block; or
 - (c) a tender block.
- (3) A special purpose consent may be granted over a block even if the block is in the licence area of a licence or the consent area of another special purpose consent.
- (4) A special purpose consent can only be granted for:
 - (a) a scientific investigation; or
 - (b) a reconnaissance survey; or
 - (c) the collection of only small amounts of minerals.
- (5) The exploration of an area is a reconnaissance survey if the exploration is carried out to work out whether the area explored is sufficiently promising to justify more detailed exploration under an exploration licence.

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316 Activities authorised by a special purpose consent

- (1) A special purpose consent holder may:
 - (a) explore for minerals; and
 - (b) take samples of or recover minerals;in the consent area for the purposes specified in the consent.

Note 1: Under subsection 23(1) the concept of *exploration* extends to activities that are directly related to exploration.

Note 2: Under subsection 24(1) the concept of *recovery* extends to activities that are directly related to the recovery of minerals.
- (2) The grant of a consent does not give the consent holder:
 - (a) any exclusive or proprietary rights over the blocks covered by the consent; or

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Part 2.6—Special purpose consents

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315 Special purpose consents

- (1) This Part provides for the grant of special purpose consents.
- (2) A special purpose consent may be granted over:
 - (a) a standard block; or
 - (b) a reserved block; or
 - (c) a tender block.
- (3) A special purpose consent may be granted over a block even if the block is in the licence area of a licence or the consent area of another special purpose consent.
- (4) A special purpose consent can only be granted for:
 - (a) a scientific investigation; or
 - (b) a reconnaissance survey; or
 - (c) the collection of only small amounts of minerals.
- (5) The exploration of an area is a reconnaissance survey if the exploration is carried out to work out whether the area explored is sufficiently promising to justify more detailed exploration under an exploration licence.

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316 Activities authorised by a special purpose consent

- (1) A special purpose consent holder may:
 - (a) explore for minerals; and
 - (b) take samples of or recover minerals;in the consent area for the purposes specified in the consent.

Note 1: Under subsection 23(1) the concept of *exploration* extends to activities that are directly related to exploration.

Note 2: Under subsection 24(1) the concept of *recovery* extends to activities that are directly related to the recovery of minerals.

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- (2) The grant of a consent does not give the consent holder:
 - (a) any exclusive or proprietary rights over the blocks covered by the consent; or

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Section 317

- (b) any option or preference when it comes to the grant of a licence over blocks covered by the consent.

317 Application for a consent

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A person may apply to the Joint Authority for a special purpose consent.

318 How to apply

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- (1) The application must:
 - (a) be made in writing; and
 - (b) include details of the activities for which consent is being sought; and
 - (c) specify the blocks for which the consent is being sought; and
 - (d) be lodged with the Designated Authority.
- (2) If the activity involves the collection of only small amounts of minerals (see paragraph 315(4)(c)), the application must also specify:
 - (a) the mineral to be recovered; and
 - (b) the proposed quantity of the mineral to be recovered.

319 Payment of fee

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- (1) The applicant must pay the application fee prescribed by the regulations.
- (2) The fee must be paid when the application is made.
- (3) The Joint Authority may refund any fee paid under subsection (1) but only if it is satisfied that special circumstances exist that justify the refund of the fee.

320 Applicant must obtain agreement of exploration, retention and mining licence holders affected by the application

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- (1) Subject to subsection (3), the applicant must obtain the agreement of interested licence holders to the application.
- (2) The agreement must be in writing.

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Offshore Petroleum and Greenhouse Gas Storage Act 2006

No. 14, 2006

Compilation No. 36

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Compilation date: 1 July 2015
Includes amendments up to: Act No. 41, 2015
Registered: 21 August 2015

This compilation is in 3 volumes

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Volume 1: sections 1–465
Volume 2: sections 466–791
Volume 3: Schedules
Endnotes

Each volume has its own contents

40

Prepared by the Office of Parliamentary Counsel, Canberra

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- (b) structural integrity provisions; and
 - (c) environmental management provisions.
- The National Offshore Petroleum Titles Administrator is responsible for:
 - (a) assisting and advising the Joint Authority and the responsible Commonwealth Minister; and
 - (b) keeping registers of titles; and
 - (c) data and information management.

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Note: Generally, the *baseline* is the line of lowest astronomical tide along the coast, but it also encompasses straight lines across bays (bay closing lines), rivers (river closing lines) and between islands, as well as along heavily indented areas of coastline (straight baselines) under certain circumstances.

5 Commonwealth-State agreement (the Offshore Constitutional Settlement)

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- (1) This section explains the agreement known as the Offshore Constitutional Settlement, to the extent to which that agreement relates to exploring for, and exploiting, petroleum.
- (2) The Commonwealth, the States and the Northern Territory have agreed that:
 - (a) Commonwealth offshore petroleum legislation should be limited to the area that is outside the coastal waters of the States and the Northern Territory; and
 - (b) for this purpose, the outer limits of State and Northern Territory coastal waters should start 3 nautical miles from the baseline of the territorial sea; and
 - (c) the States and the Northern Territory should share, in the manner provided by this Act, in the administration of the Commonwealth offshore petroleum legislation; and

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Section 5

(d) State and Northern Territory offshore petroleum legislation should apply to State and Northern Territory coastal waters; and

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

(3) The table summarises other Acts that provide background to the Offshore Constitutional Settlement:

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Other Acts		
Item	Act	Summary of Act
1	<i>Seas and Submerged Lands Act 1973</i>	This Act: (a) declared and enacted that the sovereignty in respect of the territorial sea and the associated airspace, seabed and subsoil is vested in and exercisable by the Crown in right of the Commonwealth; and (b) gave the Governor-General power to declare, by Proclamation, the limits of the territorial sea; and (c) declared and enacted that the sovereignty in respect of waters of the sea that are on the landward side of the baseline of the territorial sea (but not within the limits of a State) and in respect of the associated airspace, seabed and subsoil is vested in and exercisable by the Crown in right of the Commonwealth; and (d) declared and enacted that the sovereign rights of Australia as a coastal state in respect of the continental shelf of Australia (for the purpose of exploring it and exploiting its natural resources) are vested in and exercisable by the Crown in right of the Commonwealth; and (e) gave the Governor-General power to declare, by Proclamation, the limits of the continental shelf of Australia.

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Section 6

Other Acts		
Item	Act	Summary of Act
2	<i>Coastal Waters (State Powers) Act 1980</i>	This Act was enacted following a request from the Parliaments of all the States under paragraph 51(xxxviii) of the Constitution of the Commonwealth and provided that the legislative powers exercisable under the Constitution of each State extended to the making of certain laws that would operate offshore.
3	<i>Coastal Waters (Northern Territory Powers) Act 1980</i>	This Act makes similar provision to the <i>Coastal Waters (State Powers) Act 1980</i> in relation to the Northern Territory.
4	<i>Coastal Waters (State Title) Act 1980</i>	This Act vested in each State certain property rights in the seabed beneath the coastal waters of the State.
5	<i>Coastal Waters (Northern Territory Title) Act 1980</i>	This Act makes similar provision to the <i>Coastal Waters (State Title) Act 1980</i> in relation to the Northern Territory.
6	<i>Offshore Minerals Act 1994</i>	This Act makes provision, based on the Offshore Constitutional Settlement, for the licensing regime that applies to the exploration for, and recovery of, minerals (other than petroleum) in offshore areas.

6 Simplified maps

- (1) This section sets out simplified maps illustrating areas off the coast of Australia that are relevant to this Act.
- (2) In the interests of simplification:
 - (a) coastlines and boundaries have been smoothed; and
 - (b) the maps do not show certain waters within the limits of a State or Territory; and
 - (c) the line marking the outer limits of the coastal waters of a State or Territory appears to be further out to sea than it actually is.

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production licence, infrastructure licence, pipeline licence, petroleum special prospecting authority, petroleum access authority, greenhouse gas assessment permit, greenhouse gas holding lease, greenhouse gas injection licence, greenhouse gas search authority or greenhouse gas special authority.

regulated operation means:

- (a) an activity to which Chapter 2 applies; or
- (b) an activity to which Chapter 3 applies.

For the purposes of paragraph (b), assume that each reference in subsection 356(1) to a substance were a reference to a greenhouse gas substance.

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Regulatory Levies Act means the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

renewal:

- (a) when used in relation to a petroleum exploration permit, petroleum retention lease or petroleum production licence—has the meaning given by subsection 11(1); or
- (b) when used in relation to a greenhouse gas assessment permit or greenhouse gas holding lease—has the meaning given by subsection 11(2).

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responsible Commonwealth Minister means:

- (a) the Minister who is responsible for the administration of this Act; or
- (b) another Minister acting for and on behalf of the Minister referred to in paragraph (a).

responsible Northern Territory Minister means:

- (a) the Minister of the Northern Territory who is authorised under a law of the Northern Territory to perform the functions, and exercise the powers, of a member of the Joint Authority for the Northern Territory under this Act; or

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Section 34

- (b) if a part only of a graticular section is, or parts only of a graticular section are, within an offshore area, the area of that part, or of those parts, constitutes a *block*.

Note: See also section 282 (certain portions of blocks to be blocks).

Block that is constituted by a graticular section

- (4) A reference in this Act to a *block that is constituted by a graticular section* includes a reference to a block that is constituted by the area of a part only, or by the areas of parts only, of a graticular section.

Graticular section that constitutes a block

- (5) A reference in this Act to a *graticular section that constitutes a block* includes a reference to:

- (a) a graticular section only part of which constitutes a block; or
(b) a graticular section only parts of which constitute a block.

Note: For datum, see section 39.

34 External Territories

This Act extends to the following external Territories:

- (a) Norfolk Island;
(b) the Territory of Christmas Island;
(c) the Territory of Cocos (Keeling) Islands;
(d) the Territory of Ashmore and Cartier Islands;
(e) the Territory of Heard Island and McDonald Islands.

35 Application of Act

This Act applies to:

- (a) all individuals, whether or not Australian citizens, and whether or not resident in the Commonwealth or a Territory; and
(b) all corporations, whether or not incorporated or carrying on business in the Commonwealth or a Territory.

- If a petroleum pool is identified in a petroleum exploration permit area, the Joint Authority may declare a location over the blocks to which the petroleum pool extends.

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97 Prohibition of unauthorised exploration for petroleum in offshore area

- (1) A person commits an offence if:
- (a) the person explores for petroleum; and
 - (b) the exploration occurs in an offshore area.

Penalty: Imprisonment for 5 years.

- (2) Subsection (1) does not apply to conduct that is:
- (a) authorised by a petroleum exploration permit; or
 - (b) otherwise authorised or required by or under this Act.

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Note: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

98 Rights conferred by petroleum exploration permit

- (1) A petroleum exploration permit authorises the permittee, in accordance with the conditions (if any) to which the permit is subject:
- (a) to explore for petroleum in the permit area; and
 - (b) to recover petroleum on an appraisal basis in the permit area; and
 - (c) to carry on such operations, and execute such works, in the permit area as are necessary for those purposes.
- (2) Express references in this Act to the injection or storage of a substance do not imply that subsection (1) does not operate so as to authorise the permittee:
- (a) to carry on operations to inject a substance into the seabed or subsoil of an offshore area; or

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Section 99

(b) to carry on operations to store (whether on a permanent basis or otherwise) a substance in the seabed or subsoil of an offshore area.

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(3) The regulations may provide that a petroleum exploration permit authorises the permittee, in accordance with the conditions (if any) to which the permit is subject:

(a) to explore in the permit area for a potential greenhouse gas storage formation; and

(b) to explore in the permit area for a potential greenhouse gas injection site; and

(c) to carry on such operations, and execute such works, in the permit area as are necessary for those purposes.

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(4) The rights conferred on the permittee by or under subsection (1) or (3) are subject to this Act and the regulations.

99 Conditions of petroleum exploration permits

(1) The Joint Authority may grant a petroleum exploration permit subject to whatever conditions the Joint Authority thinks appropriate.

Note: A grant of a permit may be a grant by way of renewal—see section 11.

(2) The conditions (if any) must be specified in the permit.

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(2A) Subsection (1) does not apply to a boundary-change petroleum exploration permit.

Permit to which Royalty Act applies

(3) A petroleum exploration permit to which the Royalty Act applies is subject to a condition that the permittee will comply with the provisions of the Royalty Act.

Note: The Royalty Act applies to a small number of North West Shelf titles.

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(4) Despite subsection (2), the condition mentioned in subsection (3) does not need to be specified in the permit.

Section 135

135 Rights conferred by petroleum retention lease

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- (1) A petroleum retention lease authorises the lessee, in accordance with the conditions (if any) to which the lease is subject:
- (a) to explore for petroleum in the lease area; and
 - (b) to recover petroleum on an appraisal basis in the lease area; and
 - (c) to carry on such operations, and execute such works, in the lease area as are necessary for those purposes.
- (2) Express references in this Act to the injection or storage of a substance do not imply that subsection (1) does not operate so as to authorise the lessee:
- (a) to carry on operations to inject a substance into the seabed or subsoil of an offshore area; or
 - 20 (b) to carry on operations to store (whether on a permanent basis or otherwise) a substance in the seabed or subsoil of an offshore area.
- (3) The regulations may provide that a petroleum retention lease authorises the lessee, in accordance with the conditions (if any) to which the lease is subject:
- (a) to explore in the lease area for a potential greenhouse gas storage formation; and
 - (b) to explore in the lease area for a potential greenhouse gas injection site; and
 - 30 (c) to carry on such operations, and execute such works, in the lease area as are necessary for those purposes.
- (4) The rights conferred on the lessee by or under subsection (1) or (3) are subject to this Act and the regulations.

136 Conditions of petroleum retention leases

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- (1) The Joint Authority may grant a petroleum retention lease subject to whatever conditions the Joint Authority thinks appropriate.
- (2) The conditions (if any) must be specified in the lease.
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Section 160

160 Prohibition of unauthorised recovery of petroleum in offshore area

- 10 (1) A person commits an offence if:
- (a) the person carries on petroleum recovery operations; and
 - (b) the operations are carried on in an offshore area.

Penalty: Imprisonment for 5 years.

- (2) Subsection (1) does not apply if the operations are:
- (a) authorised by a petroleum production licence; or
 - (b) otherwise authorised or required by or under this Act.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

20 **161 Rights conferred by petroleum production licence**

- (1) A petroleum production licence authorises the licensee, in accordance with the conditions (if any) to which the licence is subject:
- (a) to recover petroleum in the licence area; and
 - (b) to recover petroleum from the licence area in another area to which the licensee has lawful access for that purpose; and
 - (c) to explore for petroleum in the licence area; and
 - (d) to carry on such operations, and execute such works, in the licence area as are necessary for those purposes.

- 30 (2) Express references in this Act to the injection or storage of a substance do not imply that subsection (1) does not operate so as to authorise the licensee:
- (a) to carry on operations to inject a substance into the seabed or subsoil of an offshore area; or
 - (b) to carry on operations to store (whether on a permanent basis or otherwise) a substance in the seabed or subsoil of an offshore area.

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- (3) The regulations may provide that a petroleum production licence authorises the licensee, in accordance with the conditions (if any) to which the licence is subject:
- (a) to explore in the licence area for a potential greenhouse gas storage formation; and
 - (b) to explore in the licence area for a potential greenhouse gas injection site; and
 - (c) to carry on such operations, and execute such works, in the licence area as are necessary for those purposes.
- (4) The regulations may provide that, if:
- (a) petroleum is recovered in the licence area of a petroleum production licence (the *first licence*); and
 - (b) operations for the recovery or processing of the petroleum are carried on using a facility located in the licence area of another petroleum production licence (the *second licence*); and
 - (c) a prescribed substance (which may be a hydrocarbon) is recovered as an incidental consequence of the recovery of the petroleum;
- the second licence authorises the licensee of the second licence, in accordance with the conditions (if any) to which the second licence is subject:
- (d) to inject the substance into the seabed or subsoil of the licence area of the second licence; and
 - (e) to store (whether on a permanent basis or otherwise) the substance in the seabed or subsoil of the licence area of the second licence; and
 - (f) to carry on such operations, and execute such works, in the licence area of the second licence as are necessary for those purposes.
- (5) Subsections (3) and (4) do not limit subsection (1).
- (6) The rights conferred on the licensee by or under subsection (1), (3) or (4) are subject to this Act and the regulations.
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Part 2.5—Infrastructure licences

Division 1—General provisions

192 Simplified outline

The following is a simplified outline of this Part:

- It is an offence to construct or operate an infrastructure facility in an offshore area except:
 - (a) under an infrastructure licence; or
 - (b) as otherwise authorised or required by or under this Act.
- This Part provides for the grant of infrastructure licences.
- An infrastructure licence authorises the licensee to construct and operate an infrastructure facility in the licence area. An infrastructure facility may relate to petroleum or a greenhouse gas substance.

193 Prohibition of unauthorised construction or operation of an infrastructure facility in an offshore area

- (1) A person commits an offence if:
- (a) the person:
 - (i) starts to construct or reconstruct an infrastructure facility; or
 - (ii) continues to construct or reconstruct an infrastructure facility; or
 - (iii) starts to alter an infrastructure facility; or
 - (iv) continues to alter an infrastructure facility; or
 - (v) operates an infrastructure facility; and

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(b) the person's conduct occurs in an offshore area.

Penalty: Imprisonment for 5 years.

(2) Subsection (1) does not apply if the conduct is:

- (a) authorised by an infrastructure licence; or
- (b) otherwise authorised or required by or under this Act.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

194 Rights conferred by an infrastructure licence

(1) An infrastructure licence authorises the licensee, in accordance with the conditions (if any) to which the licence is subject:

(a) in the case of an infrastructure licence granted before the commencement of this section:

(i) to construct infrastructure facilities in the licence area; and

(ii) to operate infrastructure facilities in the licence area; so long as those facilities are for engaging in:

(iii) a subsection 15(2) activity; or

(iv) a subsection 15(3) activity specified in the licence as the result of a variation under section 205; or

(b) in the case of an infrastructure licence granted after the commencement of this section:

(i) to construct infrastructure facilities in the licence area; and

(ii) to operate infrastructure facilities in the licence area; so long as those facilities are for engaging in:

(iii) a subsection 15(2) activity specified in the licence; or

(iv) a subsection 15(3) activity specified in the licence.

(2) The rights conferred on the licensee by subsection (1) are subject to this Act and the regulations.

(3) To avoid doubt, the grant of an infrastructure licence is not a precondition to doing anything that could be authorised by a

petroleum exploration permit, petroleum retention lease, petroleum production licence or pipeline licence.

195 Conditions of infrastructure licences

- (1) The Joint Authority may grant an infrastructure licence subject to whatever conditions the Joint Authority thinks appropriate.
- (2) The conditions (if any) must be specified in the licence.
- (3) An infrastructure licence is subject to the condition that, if:
 - (a) regulations are made for the purpose of subsection (4); and
 - (b) those regulations impose requirements on the licensee; the licensee will comply with those requirements.
- (4) The regulations may establish a regime for third party access to services provided by means of the use of an infrastructure facility that is for engaging in any of the activities to which subsection 15(3) applies.

Note: Subsection 15(3) applies to certain greenhouse gas activities.
- (5) Despite subsection (2), the condition mentioned in subsection (3) does not need to be specified in the licence.

196 Duration of infrastructure licence

- (1) An infrastructure licence remains in force indefinitely.
- (2) Subsection (1) has effect subject to this Chapter.

Note 1: For the surrender of an infrastructure licence, see Part 2.12.
Note 2: For the cancellation of an infrastructure licence, see Part 2.13.
Note 3: For the termination of an infrastructure licence if there have been no operations for 5 years, see section 197.

Part 2.6—Pipeline licences

Division 1—General provisions

209 Simplified outline

The following is a simplified outline of this Part:

- It is an offence to construct or operate a pipeline in an offshore area without a pipeline licence.
- This Part provides for the grant of pipeline licences.
- A pipeline licence authorises the licensee to construct and operate a pipeline. A pipeline may be used to convey petroleum or a greenhouse gas substance.
- A pipeline licensee must not cease to operate the pipeline without the consent of the Joint Authority.

210 Prohibition of unauthorised construction or operation of a pipeline in an offshore area

General offence

- (1) A person commits an offence if:
- (a) the person:
 - (i) starts to construct or reconstruct a pipeline; or
 - (ii) continues to construct or reconstruct a pipeline; or
 - (iii) starts to alter a pipeline; or
 - (iv) continues to alter a pipeline; or
 - (v) operates a pipeline; and
 - (b) the person's conduct occurs in an offshore area.

Penalty: Imprisonment for 5 years.

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- (2) Subsection (1) does not apply to conduct that is authorised by a pipeline licence.

Note 1: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

Note 2: See also subsections (7) and (8) of this section.

Defences

- (7) Subsection (1) does not apply if:

- (a) in an emergency in which there is a likelihood of loss or injury; or
- (b) for the purpose of maintaining a pipeline in good order or repair;

the person engages in the conduct to avoid that loss or injury, or to maintain the pipeline in good order and repair, and the person:

- (c) as soon as practicable, notifies NOPSEMA and the Titles Administrator of the conduct; and
- (d) complies with any directions given to the person by NOPSEMA or the responsible Commonwealth Minister.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7)—see subsection 13.3(3) of the *Criminal Code*.

- (8) Subsection (1) does not apply to anything done in compliance with a direction under:

- (a) this Act; or
- (b) the regulations.

Note: The defendant bears an evidential burden in relation to the matter in subsection (8)—see subsection 13.3(3) of the *Criminal Code*.

211 Rights conferred by pipeline licence

- (1) A pipeline licence authorises the licensee, in accordance with the conditions (if any) to which the licence is subject:

- (a) to construct in the offshore area specified in the licence a pipeline:
 - (i) of the design, construction, size and capacity specified in the licence; and

Section 212

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- (ii) along the route specified in the licence; and
 - (iii) in the position, in relation to the seabed, specified in the licence; and
- (b) to construct in the offshore area specified in the licence the pumping stations, tank stations and valve stations specified in the licence in the positions specified in the licence; and
- (c) to operate:
- (i) that pipeline; and
 - (ii) those pumping stations, tank stations and valve stations; and
- (d) to carry on such operations, to execute such works and to do all such other things in the offshore area specified in the licence as are necessary for, or incidental to, the construction or operation of:
- (i) that pipeline; and
 - (ii) those pumping stations, tank stations and valve stations.

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- (2) The rights conferred on the licensee by subsection (1) are subject to this Act and the regulations.

212 Conditions of pipeline licences

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- (1) The Joint Authority may grant a pipeline licence subject to whatever conditions the Joint Authority thinks appropriate.
- (2) The conditions (if any) must be specified in the licence.

Completion of pipeline

- (3) A pipeline licence may be granted subject to a condition that the licensee must complete the construction of the pipeline within the period specified in the licence.
- (4) Subsection (3) does not limit subsection (1).

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Section 289

- If an eligible greenhouse gas storage formation is identified in a greenhouse gas permit area, the responsible Commonwealth Minister may declare that the formation is an identified greenhouse gas storage formation.

289 Prohibition of unauthorised exploration for potential greenhouse gas storage formation, or potential greenhouse gas injection site, in offshore area

- (1) A person commits an offence if:
- (a) the person explores for:
 - (i) a potential greenhouse gas storage formation; or
 - (ii) a potential greenhouse gas injection site; and
 - (b) the exploration occurs in an offshore area.

Penalty: Imprisonment for 5 years.

- (2) Subsection (1) does not apply to conduct that is:
- (a) authorised by a greenhouse gas assessment permit; or
 - (b) otherwise authorised or required by or under this Act.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

290 Rights conferred by greenhouse gas assessment permit

- (1) A greenhouse gas assessment permit authorises the permittee, in accordance with the conditions (if any) to which the permit is subject:
- (a) to explore in the permit area for a potential greenhouse gas storage formation; and
 - (b) to explore in the permit area for a potential greenhouse gas injection site; and
 - (c) to inject, on an appraisal basis, a greenhouse gas substance into a part of a geological formation, so long as the relevant well is situated in the permit area; and

- 10 (d) to store, on an appraisal basis, a greenhouse gas substance in a part of a geological formation, so long as the injection of the stored greenhouse gas substance takes place at a well situated the permit area; and
- (e) to inject, on an appraisal basis:
- (i) air; or
 - (ii) petroleum; or
 - (iii) water;
- into a part of a geological formation for purposes in connection with the exploration authorised by paragraph (a) or (b), so long as the relevant well is situated in the permit area; and
- 20 (f) to store, on an appraisal basis:
- (i) air; or
 - (ii) petroleum; or
 - (iii) water;
- in a part of a geological formation for purposes in connection with the exploration authorised by paragraph (a) or (b), so long as the injection of the stored air, petroleum or water takes place at a well situated in the permit area; and
- (g) with the written consent of the responsible Commonwealth Minister, to recover petroleum in the permit area for the sole purpose of appraising a discovery of petroleum that was made as an incidental consequence of:
- (i) the exploration authorised by paragraph (a) or (b); or
 - (ii) the injection authorised by paragraph (c) or (e); and
- 30 (h) to carry on such operations, and execute such works, in the permit area as are necessary for those purposes.
- (2) The rights conferred on the permittee by subsection (1) are subject to this Act and the regulations.
- (3) If petroleum is recovered by the permittee in the permit area as authorised by paragraph (1)(g), the petroleum does not become the property of the permittee.
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- (4) A greenhouse gas storage permit does not authorise the permittee to make a well outside the permit area.

291 Conditions of greenhouse gas assessment permits

- (1) The responsible Commonwealth Minister may grant a greenhouse gas assessment permit subject to whatever conditions the responsible Commonwealth Minister thinks appropriate.

- (2) The conditions (if any) must be specified in the permit.

Approval of key greenhouse gas operations

- (3) A greenhouse gas assessment permit is subject to the condition that the permittee will not carry on key greenhouse gas operations under the permit unless:

- (a) the responsible Commonwealth Minister has approved the operations under section 292; and
(b) the permittee complies with the conditions (if any) to which the approval is subject.

Securities

- (4) A greenhouse gas assessment permit is subject to the condition that, if the permittee is given a notice under section 454, the permittee will comply with the notice.

Work-bid greenhouse gas assessment permits

- (5) Any or all of the following conditions may be specified in a work-bid greenhouse gas assessment permit:

- (a) conditions requiring the permittee to carry out work in, or in relation to, the permit area (including conditions requiring the permittee to carry out the work during a period of 12 months or longer, or during periods each of which is 12 months or longer);
(b) conditions relating to the amounts that the permittee must spend in carrying out such work;

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- (b) the applicant is not currently in a position to inject and permanently store a greenhouse gas substance, but is likely to be in such a position within 15 years.

319 Rights conferred by greenhouse gas holding lease

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- (1) A greenhouse gas holding lease authorises the lessee, in accordance with the conditions (if any) to which the lease is subject:
- (a) to explore in the lease area for a potential greenhouse gas storage formation; and
- (b) to explore in the lease area for a potential greenhouse gas injection site; and
- (c) to inject, on an appraisal basis, a greenhouse gas substance into a part of a geological formation, so long as the relevant well is situated in the lease area; and
- (d) to store, on an appraisal basis, a greenhouse gas substance in a part of a geological formation, so long as the injection of the stored greenhouse gas substance takes place at a well situated in the lease area; and
- (e) to inject, on an appraisal basis:
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- (i) air; or
- (ii) petroleum; or
- (iii) water;
- into a part of a geological formation for purposes in connection with the exploration authorised by paragraph (a) or (b), so long as the relevant well is situated in the lease area; and
- (f) to store, on an appraisal basis:
- (i) air; or
- (ii) petroleum; or
- (iii) water;
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- in a part of a geological formation for purposes in connection with the exploration authorised by paragraph (a) or (b), so

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Part 3.3 Greenhouse gas holding leases

Division 1 General provisions

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long as the injection of the stored air, petroleum or water takes place at a well situated in the lease area; and

(g) with the written consent of the responsible Commonwealth Minister, to recover petroleum in the lease area for the sole purpose of appraising a discovery of petroleum that was made as an incidental consequence of:

- (i) the exploration authorised by paragraph (a) or (b); or
- (ii) the injection authorised by paragraph (c) or (e); and

(h) to carry on such operations, and execute such works, in the lease area as are necessary for those purposes.

(2) The rights conferred on the lessee by subsection (1) are subject to this Act and the regulations.

(3) If petroleum is recovered by the lessee in the lease area as authorised by paragraph (1)(g), the petroleum does not become the property of the lessee.

(4) A greenhouse gas holding lease does not authorise the lessee to make a well outside the lease area.

320 Conditions of greenhouse gas holding leases

(1) The responsible Commonwealth Minister may grant a greenhouse gas holding lease subject to whatever conditions the responsible Commonwealth Minister thinks appropriate.

(2) The conditions (if any) must be specified in the lease.

Approval of key greenhouse gas operations

(3) A greenhouse gas holding lease is subject to the condition that the lessee will not carry on key greenhouse gas operations under the lease unless:

- (a) the responsible Commonwealth Minister has approved the operations under section 321; and
- (b) the lessee complies with the conditions (if any) to which the approval is subject.

Chapter 3 Regulation of activities relating to injection and storage of greenhouse gas substances

Part 3.4 Greenhouse gas injection licences

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- There are 2 ways in which a greenhouse gas injection licence can be granted:
 - (a) grant of a greenhouse gas injection licence as a result of an application made by a greenhouse gas assessment permittee or greenhouse gas holding lessee;
 - (b) grant of a greenhouse gas injection licence as a result of an application made by a petroleum production licensee.

20 **356 Prohibition of unauthorised injection and storage of substances in offshore area**

- (1) A person commits an offence if:
- (a) the person carries on operations to inject a substance into the seabed or subsoil of an offshore area; or
 - (b) the person carries on operations to store (whether on a permanent basis or otherwise) a substance in the seabed or subsoil of an offshore area.

Penalty: Imprisonment for 5 years.

- 30 (2) Subsection (1) does not apply if the operations are:
- (a) authorised by a greenhouse gas injection licence; or
 - (b) otherwise authorised or required by or under:
 - (i) this Act; or
 - (ii) any other law of the Commonwealth; or
 - (c) specified in the regulations.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

357 Rights conferred by greenhouse gas injection licence

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(1) A greenhouse gas injection licence authorises the licensee, in accordance with the conditions (if any) to which the licence is subject:

(a) to inject a greenhouse gas substance into an identified greenhouse gas storage formation that is wholly situated in the licence area, so long as the relevant well is situated in the licence area; and

(b) to permanently store a greenhouse gas substance in an identified greenhouse gas storage formation that is wholly situated in the licence area, so long as the injection of the stored greenhouse gas substance takes place at a well situated in the licence area; and

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(c) to explore in the licence area for a potential greenhouse gas storage formation; and

(d) to explore in the licence area for a potential greenhouse gas injection site; and

(e) to inject, on an appraisal basis, a greenhouse gas substance into a part of a geological formation, so long as the relevant well is situated in the licence area; and

(f) to store, on an appraisal basis, a greenhouse gas substance in a part of a geological formation, so long as the injection of the stored greenhouse gas substance takes place at a well situated in the licence area; and

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(g) to inject, on an appraisal basis:

(i) air; or

(ii) petroleum; or

(iii) water;

into a part of a geological formation for purposes in connection with the exploration authorised by paragraph (c) or (d), so long as the relevant well is situated in the licence area; and

(h) to store, on an appraisal basis:

(i) air; or

(ii) petroleum; or

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Chapter 3 Regulation of activities relating to injection and storage of greenhouse gas substances

Part 3.4 Greenhouse gas injection licences

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(iii) water;
in a part of a geological formation for purposes in connection with the exploration authorised by paragraph (c) or (d), so long as the injection of the stored air, petroleum or water takes place at a well situated in the licence area; and

(i) with the written consent of the responsible Commonwealth Minister, to recover petroleum in the licence area for the sole purpose of appraising a discovery of petroleum that was made as an incidental consequence of:

(i) the injection authorised by paragraph (a), (e) or (g); or

(ii) the exploration authorised by paragraph (c) or (d); and

(j) to carry on such operations, and execute such works, in the licence area as are necessary for those purposes.

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(2) The rights conferred on the licensee by subsection (1) are subject to this Act and the regulations.

(3) If petroleum is recovered by the licensee in the licence area as authorised by paragraph (1)(i), the petroleum does not become the property of the licensee:

(4) A greenhouse gas injection licence does not authorise the licensee to make a well outside the licence area.

358 Conditions of greenhouse gas injection licences

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(1) The responsible Commonwealth Minister may grant a greenhouse gas injection licence subject to whatever conditions the responsible Commonwealth Minister thinks appropriate.

(2) The conditions (if any) must be specified in the licence.

Injection and storage of greenhouse gas substance

(3) A greenhouse gas injection licence is subject to the condition that the licensee will not:

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Parliamentary Privileges Act 1987

Act No. 21 of 1987 as amended

This compilation was prepared on 1 July 2003
taking into account amendments up to Act No. 24 of 2001

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The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

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15 Application of laws to Parliament House

It is hereby declared, for the avoidance of doubt, that, subject to section 49 of the Constitution and this Act, a law in force in the Australian Capital Territory applies according to its tenor (except as otherwise provided by that or any other law) in relation to:

- (a) any building in the Territory in which a House meets; and
- (b) any part of the precincts as defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*.

16 Parliamentary privilege in court proceedings

- (1) For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.
- (2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, *proceedings in Parliament* means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:
 - (a) the giving of evidence before a House or a committee, and evidence so given;
 - (b) the presentation or submission of a document to a House or a committee;
 - (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
 - (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.
- (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

Section 16

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- (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
 - (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
 - (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

(4) A court or tribunal shall not:

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- (a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or
 - (b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence;

unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.

(5) In relation to proceedings in a court or tribunal so far as they relate to:

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- (a) a question arising under section 57 of the Constitution; or
 - (b) the interpretation of an Act;

neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission in evidence of a record of proceedings in Parliament published by or with the authority of a House or a committee or the making of statements, submissions or comments based on that record.

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(6) In relation to a prosecution for an offence against this Act or an Act establishing a committee, neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission of evidence, the asking of questions, or the making of statements, submissions or comments, in relation to proceedings in Parliament to which the offence relates.

- (7) Without prejudice to the effect that article 9 of the Bill of Rights, 1688 had, on its true construction, before the commencement of this Act, this section does not affect proceedings in a court or a tribunal that commenced before the commencement of this Act.

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17 Certificates relating to proceedings

For the purposes of this Act, a certificate signed by or on behalf of the President of the Senate, the Speaker of the House of Representatives or a chairman of a committee stating that:

- (a) a particular document was prepared for the purpose of submission, and submitted, to a House or a committee;
- (b) a particular document was directed by a House or a committee to be treated as evidence taken in camera;
- (c) certain oral evidence was taken by a committee in camera;
- (d) a document was not published or authorised to be published by a House or a committee;
- (e) a person is or was an officer of a House;
- (f) an officer is or was required to attend upon a House or a committee;
- (g) a person is or was required to attend before a House or a committee on a day;
- (h) a day is a day on which a House or a committee met or will meet; or
- (i) a specified fine was imposed on a specified person by a House;

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is evidence of the matters contained in the certificate.

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