

requiring that none of the unitholders (either individually or together with any associated person) be beneficially entitled to more than 20% of the units in the trust.

Of particular significance is the introduction of a broadly drafted general anti-avoidance provision. Duty is charged on an acquisition in respect of which duty would have been charged "but for a tax avoidance scheme". A tax avoidance scheme is a scheme that:

- (a) directly or indirectly has tax avoidance as its purpose or effect; or
- (b) directly or indirectly has tax avoidance as one of its purposes or effects, if the purpose or effect of tax avoidance is not merely incidental to another purpose or effect of the scheme,

whether the scheme had that effect at the time it was entered into or only subsequently.

Despite extensive lobbying by various interest groups, the land-rich changes became operative in Victoria retrospective to 13 May 2004. The amendments themselves are complex and technical, filling some 42 pages. They are potentially extremely far-reaching, in particular the introduction of the general anti-avoidance provision. The full impact of the changes, including the economic impact, remains to be seen.

PETROLEUM (SUBMERGED LANDS) ACT (VIC) AMENDMENT*

The *Petroleum (Submerged Lands) (Amendment) Bill* (Vic) (Bill), which amends the *Petroleum (Submerged Lands) Act 1982* (Vic) received royal assent on 11 May 2004. The *Petroleum (Submerged Lands) (Amendment) Act* (Vic) (Act) comes into operation on a date yet to be proclaimed, or 1 January 2005, whichever is earlier.

The main purpose of the Bill is to amend the *Petroleum (Submerged Lands) Act 1982* (Vic) with respect to the occupational health and safety of persons in offshore petroleum facilities, data management and protection of confidentiality. According to the explanatory memorandum, the amendments contained in the Bill reflect amendments made by the Commonwealth *Petroleum (Submerged Lands) Act 2003* (Commonwealth Amending Act) in respect of the Commonwealth *Petroleum (Submerged Lands) Act 1987* to ensure that a "consistent regulatory regime operates on offshore facilities in State waters and meets the State's obligations under the 1967 Offshore Constitutional Settlement."¹

The amendments result from a 2001 report by the Commonwealth Department of Industry Science and Resources on offshore safety, which found that the then system of regulation was inadequate, with unclear limitations, overlapping Acts and inconsistent application between Commonwealth and State jurisdictions. The Commonwealth Amending Act provides for the creation of a National Offshore Petroleum Safety Authority to regulate occupational health and safety on matters on offshore petroleum facilities in both Commonwealth and State waters. The Commonwealth Amendment Act also provides for amendments to data management and the protection of confidentiality of information and petroleum mining samples.²

A brief overview of the amendments which will be effected by the Act follows:

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¹ *Petroleum (Submerged Lands) (Amendment) Bill* Introduction Print Explanatory Memorandum 2/3/2004, p 1.

² Ibid..

Occupational Health and Safety

Prescribed State occupational health and safety laws will not apply in relation to offshore facilities or activities undertaken at such facilities (including construction and installation of facilities). "Prescribed occupational health and safety laws" mean any laws of Victoria relating to occupational health and safety that are prescribed by the regulations. Regulations have not yet been drafted but are expected to mirror the Commonwealth regulations.

A new occupational health and safety regime is established, controlled and administered by the National Offshore Petroleum Safety Authority Board established under the Commonwealth Act. The occupational health and safety regime is detailed in a new Sched 7 to the *Petroleum (Submerged Lands) Act 1982* (Vic), which contains 79 sections.

Data Management

The regulations may make provision for and in relation to keeping of accounts, records and documents in connection with operations under permits, leases, licences, authorities, consents and samples. They may also require a person to give to the Minister or a specified person, reports, returns, other documents, cores, cuttings and samples in connection with operations. The regulations may also establish a scheme requiring a holder of a permit, lease, licence, authority or consent to submit a data management plan.

Confidentiality

New provisions protect confidentiality of documentary information and mining samples obtained by the Minister and provide for disclosure of information to other Ministers (including interstate and Commonwealth Ministers).

As noted above, regulations under the Amending Act have not yet been drafted. However, these are expected to mirror the relevant Commonwealth regulations for the Commonwealth Amending Act. To date, only Commonwealth regulations regarding data management have been prepared. At the time of writing Victoria was the only state to have implemented the amendments discussed in the Amending Act (there has been a First Reading of the Bill in Tasmania but nothing further). It is understood that complementary legislation is to follow in the other states and the Northern Territory in order to ensure consistency from 1 January 2005.