

Western Australia

**Barrow Island Royalty Variation Agreement Act  
1985**

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Western Australia

## **Barrow Island Royalty Variation Agreement Act 1985**

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Western Australia

Reprinted under the  
*Reprints Act 1984* as at  
3 January 2003

## **Barrow Island Royalty Variation Agreement Act 1985**

**An Act to ratify an agreement between the State of Western Australia and West Australian Petroleum Pty. Limited relating to Petroleum Lease 1H granted under the *Petroleum Act 1936*, to amend the *Petroleum Act 1967* and for related purposes.**

## **Part I — Preliminary**

**1. Short title**

This Act may be cited as the *Barrow Island Royalty Variation Agreement Act 1985*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on the day on which it is assented to by the Governor<sup>1</sup>.

## **Part II — Ratification and effect of Agreement**

### **3. Interpretation**

In this Part —

**“the Agreement”** means the agreement a copy of which is set forth in the Schedule to this Act and includes that agreement as varied from time to time in accordance with its provisions.

### **4. Ratification of agreement**

- (1) The Agreement is hereby ratified.
- (2) The implementation of the Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979* but subject to section 5, the Agreement shall operate and take effect according to its terms notwithstanding any other Act or law.

### **5. Legal character of Barrow Island lease preserved**

- (1) In this section —

**“the Barrow Island lease”** means the petroleum lease dated 27 February 1967 granted under the *Petroleum Act 1936*<sup>2</sup> and registered as Number 1H and named “Barrow Island” pursuant to that Act.
- (2) Nothing in this Act or the *Government Agreements Act 1979* shall give the force, effect or character of a written law to —
  - (a) the provisions inserted into the Barrow Island lease by the Agreement; or
  - (b) the provisions of the Agreement incorporated by reference into the Barrow Island lease by the Agreement.
- (3) The Barrow Island lease as varied and affected by the Agreement shall remain, and shall retain the character and

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incidents of, a petroleum lease under the provisions of the *Petroleum Act 1936*<sup>2</sup> as they are deemed to subsist and enure, with modifications, under sections 134 and 134A of the *Petroleum Act 1967*.

*[Part III omitted under the Reprints Act 1984 s. 7(4)(e).]*



**Schedule**

[Section 3]

THIS AGREEMENT is made the 8th day of November 1985,  
BETWEEN

THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the first part

AND

WEST AUSTRALIAN PETROLEUM PTY. LIMITED a company incorporated in the State of Western Australia and having its principal place of business in the State of Western Australia at 233 Adelaide Terrace, Perth (hereinafter called "the Lessee") of the other part

WHEREAS:

- (a) The Lessee is the holder of a petroleum lease granted under the former provisions of the *Petroleum Act 1936* registered as Petroleum Lease Number 1H (hereinafter called "the Barrow Island Lease").
- (b) The State and the Lessee have agreed to new arrangements to replace for the term of the Barrow Island Lease the royalty payable under the Barrow Island Lease (and Commonwealth excise on the production of petroleum from the Barrow Island Lease) and desire to vary Barrow Island Lease in the manner hereinafter set out.

NOW THIS AGREEMENT WITNESSETH: —

**Definitions**<sup>3</sup>

1. In this Agreement (and in the Barrow Island Lease) subject to the context: —

"advise", "apply", "approve", "approval", "consent", "certify", "direct", "notify", "request" or "require" means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

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“accumulated nett value of a petroleum commodity” in relation to the production unit, in respect of a royalty year is an amount calculated in accordance with the formula —

$$A \left( 1 + \frac{R}{100} \right) + NV$$

Where —

NV = the nett value of a petroleum commodity in the royalty year in respect of which the assessment is being made,

R = the accumulation rate,

A = the accumulated nett value at the end of the preceding royalty year,

For the 12 month period ending 30th June 1985 the accumulated nett value is deemed to be zero for the purpose of calculating the accumulated nett value in respect of all subsequent royalty years.

If the accumulated nett value in respect of the production unit at the end of a royalty year is positive, it shall be deemed to be zero for purposes of calculating the accumulated nett value in respect of subsequent royalty years;

“accumulation rate” in relation to the production unit in respect of a royalty year is a percentum per annum equal to the threshold rate defined in the Commonwealth legislation relating to the resource rent tax applying to offshore petroleum projects, or in the absence of such legislation is the maximum threshold rate determined in accordance with the “threshold rate” as defined in Schedule 1 to the *Petroleum Revenue Act 1985* of the Commonwealth but, if and at such time or times as it becomes necessary to calculate the accumulation rate for the purpose of calculating accumulated nett value of a petroleum commodity in respect of a royalty year, either party to this Agreement considers the rate as mentioned above to be inappropriate, then the accumulation rate shall be the percentum per annum as agreed between the Minister and the Lessee and failing agreement within such period as the Minister allows it shall be such percentum per annum determined by arbitration in accordance with paragraph (g) of clause 21 of the Barrow Island Lease as represents a reasonable and appropriate return on the investment to which the accumulation rate is to be applied taking into account: —

- (a) the cost of equity funds commonly applicable to investments for the exploration for and recovery of petroleum in Australia;

- (b) the cost of loan funds commonly applicable to loans for the purpose of financing investment in the exploration for and recovery of petroleum in Australia;
- (c) rates of discount commonly used to evaluate investments for the exploration for and recovery of petroleum in Australia;
- (d) the nature and size of anticipated investments for the exploration for and recovery of petroleum from the Barrow Island Lease, and the extent to which the risk associated with such investments differs from other investments for the exploration for and recovery of petroleum in Australia; and

“active operation”, in relation to the production unit means the operation of that unit for the production of a petroleum commodity from petroleum from the Barrow Island Lease;

“approved” means approved by the Minister;

“authorised person” means a person appointed by the Minister to be an authorised person;

“Barrow Island Lease” means the petroleum lease dated 27th February, 1967 granted under the former provisions and registered as Number 1H and includes any renewal, substitution or variation thereto and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

“clause” means a Clause of the Agreement;

“commencement date” means the date on which the provisions of this Agreement other than clauses 1, 2 and 3 come into operation pursuant to clause 4;

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;

“eligible administration expenditures” in relation to the production unit in respect of a royalty year, means —

- (a) expenditure paid in that royalty year which the Lessee demonstrates to the satisfaction of the Minister was reasonably and properly paid by the Lessee for administration in the State of the production unit in respect of —
  - (i) accounting and auditing fees directly and solely related to the active operation of the production unit, other than those

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directly attributable to or necessitated by the resolution of any dispute between the parties arising under the Barrow Island Lease;

- (ii) legal fees directly and solely associated with the active operation of the production unit, other than those directly attributable to royalty matters;
  - (iii) salaries, allowances, employer contributions to superannuation schemes allowed as deductions from time to time under the *Income Tax Assessment Act 1936*, or any other Act of the Parliament of the Commonwealth replacing that Act, payroll tax and wages of employees attributable to administration of the production unit but limited to the proportion of their hours of duty during which they were engaged directly and solely in the administration of the production unit; and
  - (iv) office expenses directly and solely associated with the active operation of the production unit;
- (b) other expenditures paid in that royalty year (including overhead and indirect costs of rendering services to the Lessee) which the Lessee demonstrates to the satisfaction of the Minister were reasonably and properly paid in that royalty year for the proper administration of the production unit;

Provided That the provisions of paragraphs (g) and (gb) of Clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the Minister pursuant to this definition, but this provision shall not limit the other rights and remedies of the parties;

“eligible capital expenditures” in relation to the production unit in respect of a royalty year, means expenditures paid in that royalty year which were reasonably and properly paid by the Lessee directly and solely for the production of a petroleum commodity solely from petroleum from the Barrow Island Lease in respect of —

- (a) feasibility studies;
- (b) studies and investigations required by or under a law in force in Western Australia to be carried out;

- (c) drilling and equipment of production, injection, disposal, water source and observation wells;
- (d) design, acquisition, installation and construction of —
  - (i) plant for stabilisation of crude oil and separation of gas liquids;
  - (ii) storage facilities;
  - (iii) water storage and supply;
  - (iv) electricity generation and reticulation;
  - (v) communication facilities;
  - (vi) transport and pipeline facilities;
  - (vii) accommodation and welfare facilities at the production unit;
  - (viii) enhanced recovery facilities; and
  - (ix) other facilities which the Lessee demonstrates to the satisfaction of the Minister are reasonably and properly required for the operation of the production unit;

together with the value of any capital assets, including plant and equipment, purchased by the Lessee after 30th June 1985 and transferred to the production unit and used directly and solely in relation to the production unit (where the value is the amount as agreed between the Minister and the Lessee to be the value of the capital assets, or in the absence of such an agreement is such an amount determined by the Minister taking account of those criteria numbered 1 to 8 inclusive set out in paragraph (i) of the definition of “eligible deduction” which may be relevant) less the amount of any other deductions allowed by the State in respect thereof, whether under this Agreement or in assessing any other royalty paid to the State;

“eligible deduction” in relation to the production unit in respect of a royalty year, means an amount equal to the sum of the following eligible expenditures in that royalty year, where an amount claimed may not include expenditure deducted in a previous royalty year —

- (a) eligible enhanced recovery research expenditure;

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- (b) eligible exploration expenditure;
- (c) eligible operating expenditure;
- (d) eligible capital expenditure;
- (e) eligible administration expenditure;
- (f) eligible rehabilitation and well abandonment expenditure;
- (g) such other expenditure as the Minister may allow as an eligible deduction pursuant to paragraphs (c) and (d) of subclause 2(6) of the Barrow Island Lease or which the lessee demonstrates to the satisfaction of the Minister was reasonably and properly paid directly and solely in respect of the production of a petroleum commodity solely from petroleum from the Barrow Island Lease, Provided That the provisions of paragraphs (g) and (gb) of clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the Minister pursuant to paragraph (g) of this definition, but this provision shall not limit the other rights or remedies of the parties;

less the sum of —

- (i) value of capital assets, including plant and equipment, sold or removed without sale from the production unit in that royalty year (other than capital assets included in and as part of a bona fide sale or transfer of the Barrow Island Lease or a direct or indirect interest in that Lease) for a purpose other than repair and maintenance, where the value is the amount as agreed between the Minister and the Lessee to be the market value of the asset, or in the absence of such an agreement is such an amount as determined by the Minister to be the market value, taking account of, where relevant —
  - 1. the gross proceeds from the sale or disposal of the capital asset;
  - 2. the age and condition of the capital asset;
  - 3. the characteristics of the market in which it was sold or disposed of;
  - 4. the terms of relevant contracts or sales agreements;

5. prices received elsewhere in comparable arms length transactions;
6. the point of sale;
7. the cost of transporting the capital asset to the point of sale; and
8. such other relevant matters as the Minister thinks fit;

but excludes the value of those capital assets which were in place on the production unit as at 30th June 1985 and were so sold or removed without sale from the production unit at a later date except to the extent that such value has resulted from expenditure on extensions, improvements and refurbishment of such assets after 30th June 1985 and except to the extent that expenditures on such assets have been deducted under the former clause 2 of the Barrow Island Lease, with such value limited as determined above calculated as agreed between the Lessee and the Minister or, in the absence of agreement within such period as the Minister allows, as determined by the Minister;

- (ii) value of services provided by the production unit in that royalty year not directly connected with the active operation of the production unit for the production of petroleum from the Barrow Island Lease, including the lease or hire of plant and equipment and other capital assets and the provision of accommodation and catering, transportation and petroleum storage services, where the value is the amount as agreed between the Minister and the Lessee to be the value of the services provided, or in the absence of agreement, is such amount as determined by the Minister;
- (iii) any amount received by the Lessee in that royalty year by way of compensation, insurance or indemnity for or in respect of any loss or destruction of capital assets used in the operation of the production unit, including plant and equipment other than an amount by way of compensation, insurance or indemnity taken into account elsewhere in the calculation of nett value of a petroleum commodity;
- (iv) the value of any information sold by the Lessee relating to the production unit, (other than information included in and as part of a bona fide sale or transfer of the Barrow Island Lease or a direct or

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indirect interest in that Lease) where the value is the amount as agreed between the Minister and the Lessee to be the value of the information, or in the absence of agreement is such amount as determined by the Minister;

- (v) any amount received by the Lessee as a refund of any category of eligible expenditures mentioned in paragraphs (a) to (g) inclusive of this definition;
- (vi) any other like charge or payment received by the Lessee in respect of the production unit;

Provided That expenditures on capital assets, services or other items referred to in paragraphs (i) to (vi) inclusive of this definition are allowable, have been allowed or would have been allowed if expended after this Agreement came into effect, under one of the categories of eligible expenditures mentioned in paragraphs (a) to (g) of this definition,

but eligible deduction does not include

- A interest or an amount in lieu of interest, and loan service fees paid on funds borrowed to finance the operation of the production unit and repayments of principal of such borrowings,
- B dividends, bonus share issues or equity capital payments or repayments,
- C depreciation and amortisation allowances,
- D petroleum royalty paid under the Barrow Island Lease,
- E taxes on profit or income,
- F Commonwealth duties of customs and excise or other like levies on the production or export of petroleum from the Barrow Island Lease, and
- G payments in the nature of a royalty, override royalty or any other payment considered by the Minister to be a levy on petroleum output or value, other than those levied by or payable to the Commonwealth or the State;

“eligible enhanced recovery research expenditure” in relation to the production unit in respect of a royalty year means expenditure paid in that royalty year directly and



solely in relation to the production unit which in the opinion of the Minister was reasonably and properly paid by the Lessee for research into methods designed directly to improve the rate and amount of recovery of petroleum from the Barrow Island Lease, Provided That the provisions of paragraphs (g) and (gb) of clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the Minister pursuant to this definition, but this provision shall not limit the other rights and remedies of the parties;

“eligible exploration expenditure” in relation to the production unit in respect of a royalty year means expenditure paid in that royalty year which was reasonably and properly paid by the Lessee directly and solely in respect of the exploration for or the determining of the existence, location, extent, quality or occurrence of petroleum in the Barrow Island Lease, and includes geological and geophysical surveys and exploration, development and appraisal drilling, and for the 1985-86 royalty year only, includes expenditure paid in the financial year ended 30th June 1985 in respect of exploration, development and appraisal drilling programmes for “new” oil and “substantial new development” oil and for the equipment of production wells drilled in accordance with those programmes;

“eligible operating expenditure” in relation to the production unit in respect of a royalty year means expenditure paid in that royalty year which was reasonably and properly paid by the Lessee and is directly and solely attributed to the production or the maintenance of production of a petroleum commodity from the production unit;

“eligible rehabilitation and well abandonment expenditure” in relation to the production unit in respect of a royalty year means expenditure paid in that royalty year which was reasonably and properly paid by the Lessee directly for rehabilitation of the land, water or environment comprised in or contiguous to the production unit, or in closing and making safe or removing for the purposes of rehabilitation, facilities reasonably and properly required for the production

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of a saleable petroleum commodity solely from petroleum from the Barrow Island Lease and, in the case only of final abandonment of active operations on the Barrow Island Lease in accordance with programmes approved in advance by the Minister, Provided That the provisions of paragraphs (g) and (gb) of clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the Minister pursuant to this definition, but this provision shall not limit the other rights and remedies of the parties;

“former provisions” means the provisions of the *Petroleum Act 1936* which, by force of section 134 of the Petroleum Act are deemed to subsist and enure in their application to or in relation to the Barrow Island Lease;

“f.o.b. valuation and measurement point” for any petroleum commodity sold or removed without sale from the production unit means such valve station or other point as is agreed between the Lessee and the Minister, or in the absence of agreement within such period as the Minister allows, such a valve station or other point as is determined by the Minister as being that f.o.b. valuation and measurement point;

“Lessee” includes the Lessee and its successors and permitted assigns and appointees. Where there is more than one Lessee their liability shall be several;

“Minister” means the Minister for the time being charged with the administration of the Petroleum Act, acting for and on behalf of the State;

“month” means calendar month;

“nett value of a petroleum commodity” in relation to the production unit in respect of a royalty year means the amount (which may be a negative amount) in that royalty year that is the sum of —

- (a) the value of all petroleum commodities produced solely from petroleum from the Barrow Island Lease

and sold or removed without sale from the production unit in that royalty year, but excluding the value of any petroleum commodity which is flared or vented with the approval of the Minister or which is used by the Lessee for the purposes of active operations of the production unit or which is otherwise lost,

- (b) the value of that proportion of all petroleum commodities produced partly from petroleum from the Barrow Island Lease and partly from other petroleum which is agreed between the Lessee and the Minister to be attributable to petroleum from the Barrow Island Lease or, in the absence of agreement within such period as the Minister allows, the value reasonably attributed to petroleum from the Barrow Island Lease by the Minister, taking account of the quantity of petroleum entering the production unit, as measured at a measurement point or points approved by the Minister, and
- (c) any amount received by way of insurance or indemnity for or in respect of any loss of a petroleum commodity produced from the production unit from petroleum from the Barrow Island Lease, which, if the loss had not occurred, would have been taken into account in calculating the value of that production commodity,

as reduced by the sum of “eligible deductions”;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“petroleum” means: —

- (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid

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state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide,

and includes any petroleum as defined by paragraphs (a), (b) or (c) of this definition that has been returned to a natural reservoir but excludes oil shale;

“Petroleum Act” means the *Petroleum Act 1967*;

“petroleum commodity” means petroleum or a substance derived from petroleum at any stage of treatment of that petroleum up to the time that it has first become a saleable petroleum commodity, and includes a saleable petroleum commodity;

“production unit” means the Barrow Island Lease together with those facilities reasonably and properly required for the production of a saleable petroleum commodity from petroleum from the Barrow Island Lease, including without limitation the tanker-loading pipeline from the Barrow Island Lease and the associated mooring facilities;

“quantity of a petroleum commodity sold or removed without sale” from the production unit, in respect of a royalty year means —

- (a) the quantity measured during that royalty year by a measuring procedure approved by the Minister and performed at the f.o.b. valuation and measurement point or such other places as the Minister approves; or
- (b) where no such measuring procedure is so performed, or the Minister is not satisfied that the quantity of a petroleum commodity removed by the Lessee as been properly and accurately measured, the quantity determined by the Minister;

“records” include —

- (a) production statistics, accounts, account books or accounting records;
- (b) contracts;

- (c) sales and exchange agreements; and
- (d) petroleum reserve estimates and production projections;  
however compiled, recorded or stored;

“royalty year” means initially, the six-month period from 1st July 1985 to 31st December 1985, and thereafter the twelve month period from 1st January in one calendar year to 31st December of the same calendar year, unless otherwise agreed;

“saleable petroleum commodity” means petroleum treated to an extent that is, in the opinion of the Minister, the minimum treatment necessary to enable that petroleum to be sold commercially, having regard to the nature and location of the petroleum, the production unit and the market;

“sold” means that title to the subject matter of the sale has passed from the seller to the buyer and payment has been received;

“State” means the State of Western Australia;

“the Agreement”, “this Agreement”, “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to, varied or amended;

“value of a petroleum commodity” means —

- (a) the gross proceeds realised upon sale of that petroleum commodity, less any costs paid for the transportation of that commodity from the f.o.b. valuation and measurement point to the point of sale if, in the opinion of the Minister, the resulting amount represents the fair and reasonable market value of the petroleum commodity when sold on an arm’s length basis; or
- (b) in any case not covered by paragraph (a) of this definition, the market value agreed between the Lessee and the Minister for that petroleum commodity at the f.o.b. valuation and measurement point or, in the absence of agreement within such period as the Minister allows, the market value as determined by the Minister at the f.o.b. valuation and measurement point, taking account of —
  - (i) the gross proceeds from the sale or disposal of the petroleum commodity;

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- (ii) the quality and quantity of the petroleum commodity;
- (iii) the characteristics of the market;
- (iv) the terms of similar relevant contracts or sales agreements and the quantities specified therein;
- (v) the state of the petroleum market at the time the prices in the contract or sales agreement were set;
- (vi) the provisions of the contract or sales agreement relating to variation or renegotiations of prices;
- (vii) prices received by producers elsewhere in arm's length transactions;
- (viii) the point of sale;
- (ix) the cost of transporting the petroleum commodity from the f.o.b. valuation and measurement point to the point of sale;
- (x) petroleum transportation costs incurred in other similar arms length transactions
- (xi) any prevailing petroleum commodity pricing policy or law of the Commonwealth or the State (including the policy of the Commonwealth on import parity pricing of crude oil recovered in Australia); and
- (xii) such other relevant matters as the Minister thinks fit;

Provided That the provisions of paragraphs (g) and (gb) of clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the Minister pursuant to this definition, but this provision shall not limit the other rights and remedies of the parties.

**Interpretation**<sup>3</sup>

2. In this Agreement: —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;

- (b) marginal notes do not affect the interpretation or construction<sup>3</sup>;
- (c) reference to an Act unless otherwise specifically expressed includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time in force thereunder; and
- (d) where any provision of the Barrow Island Lease is inconsistent with any provision of this Agreement, this Agreement shall prevail and the Barrow Island Lease shall to the extent of the inconsistency be invalid.

**State to Sponsor Bill<sup>3</sup>**

- 3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage and coming into operation as an Act prior to 31st December 1985.

**Operation of Agreement<sup>3</sup>**

- 4. The provisions of this Agreement other than Clauses 1, 2 and 3 shall not come into operation unless and until —
  - (a) the Bill mentioned in Clause 3 comes into operation as an Act;
  - (b) the Lessee certifies to the State not later than 30th June 1986 that:
    - (i) Commonwealth legislation which is satisfactory to the Lessee has come into operation and all of the necessary acts, matters, and things have been done under that legislation to exempt petroleum commodities produced from the production unit from petroleum from the Barrow Island Lease from duties of excise of the Commonwealth with effect from 1st July 1985;
    - (ii) the Lessee has made arrangements satisfactory to it with the Commonwealth for a refund of any duties of excise paid on petroleum produced from the production unit from petroleum from the Barrow Island Lease on or after 1st July 1985; and
    - (iii) The agreement, arrangement or understanding between the State and the Commonwealth mentioned in Clause 9, so far as it affects the Lessee, is satisfactory to it; and

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- (c) the State certifies to the Lessee not later than 30th June 1986 that:
  - (i) it has entered into an agreement with the Commonwealth for the sharing with the Commonwealth of the royalty payable under the Barrow Island Lease; and
  - (ii) Commonwealth legislation which is satisfactory to the State has come into operation for the exemption of petroleum commodities produced from the production unit from petroleum from the Barrow Island Lease from duties of excise of the Commonwealth with effect from 1st July 1985.

**Transitional Arrangements**<sup>3</sup>

- 5. (a) All petroleum commodities produced from the production unit from petroleum from the Barrow Island Lease and held in stock on the production unit as at midnight on 30th June 1985 shall be subject to the provisions of the former Clause 2 of the Barrow Island Lease as though that Clause was still in force. For the purpose of paragraph (b) of this clause 5 the interim royalty payable with respect to that petroleum in stock shall be the royalty paid by the Lessee to the State with respect to that petroleum upon its sale or removal without sale from the Barrow Island Lease, as agreed between the Minister and the Lessee or, in default of agreement within such period as the Minister allows, as determined by the Minister. Within 3 months after the commencement date the Lessee shall file with the Minister an audited royalty return for the period from 1st January 1985 to 30th June 1985 in accordance with the provisions of the former Clause 2 of the Barrow Island Lease and the Minister shall within 3 months after the receipt of that return determine the amount of the royalty actually payable with respect to that petroleum in stock. Any amount of royalty found to be overpaid or owing shall be refunded or paid, as the case may be within one month of that determination. Any determination by the Minister of the royalty payable on gross value of all petroleum commodities held in stock on the production unit as at midnight on 30th June 1985 shall be deemed to be a decision made under the Barrow Island Lease and shall be subject to the provisions of paragraphs (g), (ga) and (gb) of clause 21;
- (b) Within 14 days of the commencement date, the State shall refund to the Lessee an amount equivalent to the sum of all those



payments made by the Lessee prior to the commencement date which were made on account of royalty in respect of petroleum recovered from the Barrow Island Lease and sold or removed without sale from the production unit between 30th June 1985 and the commencement date, less the amount of interim royalty payable by the Lessee under paragraph (a) of this Clause 5.

**Amendments of Lease <sup>3</sup>**

6. The Barrow Island Lease is hereby varied with effect from 1st July 1985 as follows: —

(1) by deleting Clause 2 and substituting the following Clauses: —

“ **2. IMPOSITION AND ASSESSMENT OF ROYALTY**

**2(1) DEFINITIONS**

For the purpose of Clauses 2 and 2A of this lease, and subject to the context, the terms and expressions set out in Clause 1 of the Agreement shall have the meanings therein ascribed.

**2(2) OBLIGATION TO PAY ROYALTY**

The Lessee shall with effect from 1st July 1985 and during the continuance of this lease pay to the State a royalty in respect of petroleum recovered by the Lessee from the Barrow Island Lease.

**2(3) BASIS OF CALCULATION OF ROYALTY**

The royalty shall be calculated by reference to all petroleum commodities produced from the production unit in a royalty year from petroleum from the Barrow Island Lease.

**2(4) AMOUNT OF ROYALTY**

The royalty payable under subclause 2(2) is 40% of the accumulated nett value of a petroleum commodity sold or removed without sale from the production unit in a royalty year in respect of the production unit, Provided That if this calculation yields a negative number the royalty payable is nil, but no royalty shall be payable under this Subclause 2(4) in respect of those petroleum commodities held in stock on the production unit as at midnight on 30th June 1985 and on which interim royalty has been paid under paragraph (a) of Clause 5 of the Agreement and the nett value of

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those petroleum commodities shall be as agreed between the Minister and the Lessee or, in default of agreement within such period as the Minister allows, as determined by the Minister.

**2(5) ROYALTY RETURN**

- (a) The Lessee shall, within three months after the expiration of a royalty year or such longer period as the Minister in writing allows, deliver to the Minister or to such other person as the Minister may direct a detailed statement relating to the production unit, containing or indicating —
- (i) the name and description of the production unit;
  - (ii) the name and address, of each Lessee in respect of the production unit;
  - (iii) the quantity of a petroleum commodity sold or removed without sale from the production unit during the royalty year;
  - (iv) the name and address of the refinery or person to which a petroleum commodity recovered was sent;
  - (v) the name and address of any person with an interest in the production unit;
  - (vi) the value and the basis of valuation of a petroleum commodity sold or removed without sale from the production unit;
  - (vii) details of all sales or shipments of a petroleum commodity from the production unit;
  - (viii) details of all contracts and sale or exchange agreements relating to a petroleum commodity obtained from the production unit; and
  - (ix) such other relevant information as the Minister requires.
- (b) A statement referred to in paragraph (a) of this subclause 2(5) shall, in addition to the matters required under that paragraph to be contained or indicated, contain —
- (i) details of all expenditure claimed as eligible deductions in calculating nett value;

- (ii) by way of summary, a calculation of nett value;
  - (iii) by way of summary, a calculation of accumulated nett value; and
  - (iv) an estimate of the royalty payable.
- (c) The statement required under paragraph (a) of this subclause 2(5) shall —
- (i) be in an approved form and signed by the Lessee or a person given full representative authority by the Lessee; and
  - (ii) be supported by statutory declaration given by a duly authorised officer of the Lessee and accompanied by written advice by an auditor approved by the Minister certifying that in his opinion, the statement has been correctly completed in accordance with the provisions of this lease, and expressing an opinion, on grounds to be stated by him, as to whether all expenditures have been reasonably and properly paid for the purposes mentioned in this lease, and stating all interpretations of the provisions of this lease by the Lessee that materially affect the amount of royalty payable.
- (d) If a statement is delivered after the date provided in paragraph (a) of this subclause 2(5), the Lessee shall be liable to pay an amount of royalty additional to that specified in a notice of assessment under subclause 2(15) with such additional amount to be calculated by applying an annual rate of interest equal to the accumulation rate to the amount specified in such notice as being the balance of royalty due to the State for the period for which the statement is overdue.
- (e) The provisions of paragraphs (g) and (gb) of clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the Minister pursuant to this subclause 2(5), but this paragraph shall not limit the other rights and remedies of the parties.

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2(6) ALLOCATION OF EXPENDITURES

- (a) A particular expenditure is not to be included in more than one category of eligible expenditure in calculating the royalty payable by the Lessee.
- (b) The Minister may determine in accordance with the provisions of this lease the extent to which a particular expenditure is to be attributed to a particular category of eligible expenditure in calculating the royalty payable by the Lessee, and upon his so determining, that particular expenditure shall be attributed accordingly.
- (c) Where any expenditure paid by the Lessee in a royalty year in respect of activities or facilities of the Lessee on or in relation to the production unit is, in the opinion of the Minister, directly but not solely related to the production of a petroleum commodity from petroleum from the Barrow Island Lease but that expenditure would otherwise be an eligible expenditure, the Minister shall, for the purpose of calculating the royalty payable by the Lessee, allow as an eligible deduction such portion of that expenditure as he thinks fit.
- (d) Where any expenditure paid by the Lessee in a royalty year in respect of activities or facilities of the Lessee on or in relation to the production unit is, in the opinion of the Minister, related to the production of a petroleum commodity not solely from petroleum from the Barrow Island Lease but that expenditure would otherwise be an eligible expenditure, the Minister shall, for the purpose of calculating the royalty payable by the Lessee, allow as an eligible deduction such portion of that expenditure as he thinks fit.
- (e) The provisions of paragraphs (g) and (gb) of clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the Minister pursuant to this subclause 2(6), but this paragraph shall not limit the other rights and remedies of the parties.

**2(7) INFORMATION TO BE SUPPLIED**

The Lessee shall —

- (a) within 30 days of the ratification of this Agreement notify the Minister of the name and address of the manager of the production unit or of some other person to whom notices required to be given under this lease may be given;
- (b) within 30 days after the occurrence of any of the following events notify the Minister —
  - (i) of every change in the name or address, or both, of the manager of the production unit or other person referred to in paragraph (a) of this subclause 2(7);
  - (ii) subject to Clause 9 of this Lease, of a change in the ownership of the production unit or of the Barrow Island Lease;
  - (iii) of a significant change in the level of production of a petroleum commodity by the production unit;
  - (iv) of a discontinuance of active operations; and
  - (v) of a recommencement of active operations after discontinuance;
- (c) within 30 days of a request by the Minister for further information relating to a statement under subclause 2(5), supply such information to the Minister.

**2(8) APPOINTMENT OF AUTHORISED PERSON**

The Minister may, by writing signed by him, appoint a person to be an authorised person for the purposes of this lease.

**2(9) INSPECTION OF STOCK AND RECORDS**

- (a) For the purposes of this lease, an authorised person may, at reasonable times —
  - (i) enter the production unit or part thereof;
  - (ii) enter premises occupied by the Lessee where there is stored, or where the authorised person has reasonable

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- cause to believe is stored, a petroleum commodity in respect of which royalty is or has been or, in his opinion, is likely to be payable under this lease;
- (iii) enter premises occupied by the Lessee where there are, or where he has reasonable cause to believe are kept, records relating to the recovery, processing, storage or sale or other disposal of a petroleum commodity which has been recovered under the Barrow Island Lease;
  - (iv) inspect or take stock of a petroleum commodity;
  - (v) inspect the active operation of the production unit;
  - (vi) inspect the records relating to the drilling, extraction, processing, storage or sale or other disposal of a petroleum commodity recovered from the production unit;
  - (vii) inspect the records relating to any other petroleum commodity which may have passed through the production unit; and
  - (viii) where he has reasonable cause to believe that a person in the production unit or on those premises has information relevant to the authorised person's inspection, require the person to furnish to the authorised person his name and position and to answer questions put to him relating to that information.
- (b) An authorised person may make and retain copies of, or extracts from, the records inspected by him under this subclause 2(9).
  - (c) The occupier or person in charge of a production unit or part of a production unit, or of premises referred to in subparagraphs (a)(ii) or (iii) of this subclause 2(9) shall provide an authorised person with all reasonable assistance for the effective exercise of the authorised person's powers under this subclause, other than transport to and from the production unit.

- (d) The provisions of paragraphs (g) and (gb) of clause 21 of the Barrow Island Lease shall not apply to any dispute arising out of the exercise of any discretion, whether express or implied, conferred upon the State or the Minister pursuant to this subclause 2(9), but this paragraph shall not limit the other rights and remedies of the parties.

**2(10) PROPER BOOKS AND RECORDS TO BE KEPT**

- (a) The Lessee shall keep and maintain at the production unit, or at some other place agreed between the Lessee and the Minister or, in the absence of agreement, as determined by the Minister, proper records as described in subclause 2(9) and proper books of account showing in respect of the production unit —
  - (i) the amount and particulars of each expenditure in each category of eligible deduction;
  - (ii) details of all sales, transfers and other disposals of assets, being assets the cost of which has been included in calculating eligible capital expenditure;
  - (iii) details of the quantity and quality of a petroleum commodity removed from the production unit as measured at the f.o.b. valuation and measurement point, and details of sales, shipments, transfers and other disposals of a petroleum commodity to and from the production unit, including the time, destination, value and basis of valuation and quantity and quality of each sale, shipment, transfer or other disposal; and
  - (iv) details of all assets, being assets the cost of which has been included in calculating eligible capital expenditure, eligible exploration expenditure and eligible enhanced recovery research expenditure.
- (b) A petroleum commodity shall not be sold or removed from the production unit, or treated in a processing plant not included in the production unit, until its quantity and quality have been ascertained and entered in a book of account referred to in paragraph (a) of this subclause 2(10).

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2(11) ASSESSMENT

From the statement required to be delivered under subclause 2(5) and from any other information in his possession, whether or not obtained under this lease, the Minister shall make an assessment consistent with the provisions of this lease of the accumulated nett value, and the royalty payable by the Lessee, in respect of the royalty year to which that statement relates.

In addition to the assessment of the accumulated nett value, and the royalty payable by the Lessee, the notice of assessment served on the Lessee in accordance with subclause 2(15) shall also indicate the basis of the assessment made by the Minister, the provisional royalty payments for the year made by the Lessee in accordance with paragraph (a) of subclause 2A(2) and the balance of royalty due to the State or the refund due to the Lessee for royalty over-payment.

2(12) DEFAULT ASSESSMENT

If —

- (a) the Lessee makes default in delivering a statement referred to in subclause 2(5) or
- (b) the Lessee makes default by not keeping proper books of account referred to in subclause 2(10); or
- (c) the Minister is not satisfied that a statement delivered by the Lessee is a full and accurate statement;

the Minister shall promptly make an assessment consistent with the provisions of this lease of the amount of accumulated nett value of a petroleum commodity sold or removed without sale from the production unit in respect of which, in his opinion, royalty ought to be levied, and that accumulated nett value shall be the accumulated nett value in respect of which royalty shall be payable.

2(13) AMENDMENT OF ASSESSMENT

- (a) Where the Lessee has not made to the Minister a full and true disclosure of all the material facts necessary for the Minister's assessment and, in the Minister's opinion, there has been an avoidance of royalty, the Minister may —
  - (i) where he is of the opinion that the avoidance of royalty is due to fraud or evasion — at any time; and



- (ii) in any other case — within 7 years after the date upon which the royalty became due and payable under the assessment,

amend the assessment by making such alterations or additions as he thinks fit to correct an error in calculation or a mistake of fact, or to prevent avoidance of royalty, as the case may be.

- (b) Where the Lessee has made to the Minister a full and true disclosure of all the material facts necessary for the Minister's assessment, and an assessment is made after that disclosure, any consequential amendment of the assessment varying the liability of the Lessee in any particular shall be made to correct an error in calculation or a mistake of fact, and no such amendment shall be made after the expiration of 7 years from the date upon which the royalty became due and payable under that assessment.
- (c) Notwithstanding paragraphs (a) and (b) of this subclause 2(13), where the assessment of nett value in respect of a royalty year includes an estimate of a category of nett value of a petroleum commodity, the value of which was not ascertainable at the end of that year, the Minister may, at any time within 7 years after ascertaining the nett value of the petroleum commodity, amend the assessment so as to ensure its completeness and accuracy on the basis of that nett value and where an estimate of a category of nett value of a petroleum commodity has been used, the Lessee shall provide final figures with his next royalty return, after the figures have been finalised.

**2(14) AMENDED ASSESSMENT TO BE ASSESSMENT**

An assessment amended under subclause 2(13) shall be an assessment for the purposes of this lease.

**2(15) NOTICE OF ASSESSMENT**

Within three months of receipt of the statement referred to in subclause 2(5) the Minister shall serve a written notice of assessment on the Lessee or a person given full representative authority by the Lessee.

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2(16) **VALIDITY OF ASSESSMENT**

The validity of an assessment made under this lease shall not be affected by reason that a provision of this lease has not been complied with by the Lessee.

2(17) **EVIDENCE**

The production of a notice of assessment, or of a document under the hand of the Minister that purports to be a copy of a notice of assessment, shall be conclusive evidence of the making of the assessment and prima facie evidence that the amount and all the particulars of the assessment are correct.

**2A COLLECTION AND RECOVERY OF ROYALTY**

2A(1) **WHEN ROYALTY PAYABLE**

Subject to this Clause 2A royalty assessed by the Minister shall be due and payable by the Lessee on the date specified in the notice of assessment under subclause 2(15) as the date on which royalty is due and payable, being not less than 30 days after service of the notice or, if no date is so specified, on the thirtieth day after service of the notice.

2A(2) **PAYMENT ON ACCOUNT OF ROYALTY**

The Lessee shall pay on account of royalty —

- (a) four provisional royalty payments in respect of royalty payable under subclause 2(4) for the three month periods ending 31st March, 30th June, 30th September and 31st December in each royalty year, each of which payments shall be made no later than 23rd March, 23rd May, 23rd September and 23rd December respectively in each royalty year, the amount of each payment being equal to the royalty as estimated by the Lessee to be payable under subclause 2(4) for the preceding three month periods ending 31st December, 31st March, 30th June and 30th September respectively. In the 1985 royalty year the first provisional royalty payment shall be paid no later than 14 days after the commencement date. Each of the first four provisional payments shall be \$22.7 million;

- (b) where the sum of the four provisional payments referred to in paragraph (a) of this subclause 2A(2) in respect of the royalty year is less than 90% of the assessment under subclauses 2(11), 2(12) and 2(13) of royalty payable, additional royalty shall be paid of an amount calculated by applying a rate of interest equal to the accumulation rate to the difference between the sum of the four provisional royalty payments in respect of the royalty year and the assessment under subclauses 2(11), 2(12) and 2(13) of royalty payable in respect of the royalty year, and this lease shall apply to and in relation to that additional royalty (except for the purpose of making a calculation under this subclause 2A(2)) as if the additional royalty was assessed under subclauses 2(11), 2(12) and 2(13), but such additional royalty shall not be payable in respect of the 1985 royalty year. For the purpose of the 1986 royalty year the relevant comparison shall be between the sum of the two provisional payments due no later than 23rd September and 23rd December 1986 and 45% of the assessment of royalty payable under subclauses 2(11), 2(12) and 2(13);
- (c) the Minister may, in his discretion, if he is satisfied that the liability to pay additional royalty under paragraph (b) of this subclause 2A(2) was not brought about by an attempt on the part of the Lessee to avoid the payment of royalty, remit additional royalty payable under that subparagraph, or any part of that additional royalty, and on his so doing the liability to pay the additional royalty or part of the additional royalty, as the case may be, shall cease; and
- (d) at the time of making a statement under subclause 2(5) in respect of a royalty year, the balance of royalty payable for that royalty year as estimated in the statement.

**2A(3) EXTENSION OF TIME**

The Minister may without prejudice to his rights hereunder grant such extension of time for payment of royalty or an amount on account of royalty as he considers the circumstances warrant but in such a case, the royalty shall be due and payable, or the liability to make the payment on account of royalty shall accrue, accordingly.

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**2A(4) UNPAID ROYALTY**

- (a) Subject to paragraphs (b) and (c) of this subclause 2A(4) if any royalty remains unpaid after the time it becomes due and payable, or a payment on account of royalty remains unpaid after the liability to make the payment accrues, the Lessee shall be liable to pay an amount of additional royalty calculated by applying an annual rate of interest equal to the accumulation rate to the amount of royalty outstanding for the period of time it is outstanding.
- (b) Where an extension of time for the payment of royalty or on account of royalty has been granted under subclause 2A(3), the additional royalty payable under this subclause 2A(4) shall be computed from such date as the Minister determines, being not earlier than the date on which the royalty would have been due and payable or the liability to make the payment on account of royalty accrued, had that extension of time not been granted.
- (c) If any royalty remains unpaid for more than three (3) months after the time it becomes due and payable or a payment on account of royalty remains unpaid for more than one (1) month after the liability to make the payment accrues, then in either case the Lessee shall be deemed to have breached this lease and the provisions of paragraphs (a) and (b) of Clause 21 of this lease shall apply.

**2A(5) AMOUNTS OVERPAID**

- (a) Where, by reason of an assessment or an amendment of an assessment of his liability to pay royalty, or for any other reason, the Lessee has paid an amount for royalty in excess of his liability to pay, the Minister: —
  - (i) may, where he is satisfied that the Lessee will have, within 30 days after the Minister becomes aware of the overpayment, a liability to pay a further amount of or on account of royalty, retain that overpayment, or so much of it as he thinks necessary to meet that further liability, on account of that further liability, which liability shall be reduced by the amount so retained; and

- (ii) shall, in any other case, refund to the Lessee within 30 days of a claim for repayment being made by the Lessee in writing the amount of royalty overpaid.
  - (b) Where eligible rehabilitation and well abandonment expenditure paid by the Lessee immediately prior to or after ceasing of active operation of the production unit has resulted in negative nett value in the royalty year in which the production unit ceases active operation or in the subsequent three royalty years the Minister shall refund an amount of royalty equal to 40 per cent of the nett value in those royalty years, with an upper limit equal to the total value of previous royalty payments by the Lessee under this Lease.”
- (2) Clause 21 — by inserting after paragraph (g) the following paragraphs: —
- “(ga) In any case where the State, the Minister or any other Minister in the Government of the State is by this lease given a discretionary power including without limitation a power to form an opinion, make a determination, give consideration, reach a conclusion, make a grant, give an approval, make a requirement or be satisfied as to any matter, then in the exercise of such discretionary power the State or Minister shall act reasonably and shall have due regard to the circumstances enumerated in this Lease in relation to which the discretion is to be exercised as they exist in fact independently of the exercise of such discretion or the formation of such opinion.
  - (gb) If the Lessee considers that the State or the Minister has exercised any discretionary power otherwise than in accordance with paragraph (ga) of clause 21 it may, except as otherwise provided in this lease, within 42 days after becoming aware of the exercise of that discretionary power, give notice in writing to the State or the Minister stating the reasons why it considers that discretionary power has not been exercised in accordance with paragraph (ga) of clause 21 and requiring the exercise of that discretionary power to be referred to arbitration in accordance with paragraph (g) of clause 21. An arbitrator acting in

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accordance with paragraph (g) of clause 21 shall, in reviewing the exercise of a discretionary power by the State or the Minister, be empowered to determine the decision which should have been made upon the proper exercise of that discretionary power in accordance with paragraph (ga) of clause 21 and that determination by the arbitrator shall bind the State and the Minister and the Lessee. This paragraph shall not, however, limit the other rights and remedies of the parties. ”

- (3) by adding after Clause 21 the following Clause: —

“22. NOTICES

Any notice, consent or other writing authorised or required by this lease to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid registered post or handed to the Lessee at its nominated office for the time being in the State and by the Lessee if signed on its behalf by any person or persons authorised by the Lessee or by its solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice, consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post. ”.

**Variation**<sup>3</sup>

7. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of the Barrow Island Lease for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement, including but without limitation the object of providing for the payment of royalty in a way that does not render uneconomic eligible capital expenditures to enhance recovery of petroleum in the Barrow Island Lease.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause 7, in respect of any addition

substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

**Facilitation**<sup>3</sup>

8. The Minister or the Premier for the time being of the State may from time to time make, execute and do or cause to be made executed or done all necessary incidental instruments and acts which may be necessary or convenient to protect, secure or otherwise ensure compliance by the Lessee with the terms of the Barrow Island Lease.

**Commonwealth State arrangements**<sup>3</sup>

9. The State and the Lessee acknowledge and record that this Agreement has been entered into in pursuance of an agreement, arrangement or understanding between the State and the Commonwealth and that the State and the Commonwealth have entered or will enter into an agreement under which the State will pay a proportion of the royalty payable under the Barrow Island Lease to the Commonwealth and the Commonwealth will exempt petroleum commodities produced from petroleum from the Barrow Island Lease from duties of excise with effect from 1st July 1985.

**Modification**<sup>3</sup>

10. Save as modified and varied by this Agreement, the Barrow Island Lease shall continue in full force and effect.

**Applicable Law**<sup>3</sup>

11. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

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IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE )  
HONOURABLE BRIAN THOMAS ) BRIAN BURKE  
BURKE, M.L.A. in the presence of: — )

DAVID PARKER  
MINISTER FOR MINERALS AND ENERGY

THE COMMON SEAL of WEST )  
AUSTRALIAN PETROLEUM PTY. )  
LIMITED was hereunto affixed by ) (C.S.)  
authority of the Directors in the presence )  
of: — )

D.E. HURST  
MANAGING DIRECTOR

H.P. WILLIAMS  
ASSISTANT SECRETARY



### **Notes**

- <sup>1</sup> This is a reprint as at 3 January 2003 of the *Barrow Island Royalty Variation Agreement Act 1985*. The following table contains information about this Act.

#### **Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Barrow Island Royalty Variation Agreement Act 1985</i>	113 of 1985	7 Jan 1986	7 Jan 1986 (see s. 2)

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- <sup>2</sup> Though repealed by No. 72 of 1967, the *Petroleum Act 1936* continues to apply to the Barrow Island lease and renewals of it (see No. 72 of 1967 s. 134).

- <sup>3</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.