

Westernport (Crib Point Terminal) Bill

EXPLANATORY MEMORANDUM

Outline

A petroleum terminal is planned to be constructed by Crib Point Terminal Pty Ltd at Crib Point at Western Port for the purpose of receiving, storing and distributing petroleum.

To facilitate the development and operation of the terminal which will be located on the site of an oil refinery facility previously owned by BP Australia Ltd which has been demolished, it is necessary to make provision in relation to certain existing and new easements and to clarify the status of the pipeline running from the site of the proposed terminal and certain agreements relating to it. The Bill also vests Crown land at Crib Point in the Port of Melbourne Authority and provides for other related matters.

Clause 1 provides for the purposes of the Bill.

Clause 2 is the commencement provision.

Clause 3 identifies the **Westernport (Oil Refinery) Act 1963** as the Principal Act for the purposes of the Bill.

Clause 3 substitutes section 2 of the Principal Act to provide for definitions of “authorised pipeline”, “Central Plan Office”, “Company”, “petroleum”, “pipeline”, “Port of Melbourne Authority”, “route”, “specified day”, “statutory covenant” and “statutory easement”. The substituted section also sets out other matters to aid in the interpretation of the Bill. The clause also inserts new section 2A into the Principal Act to specify the objects of the Principal Act which necessarily alter due to the Bill primarily providing for matters relating to the petroleum terminal of Crib Point Terminal Pty Ltd in substitution for the redundant oil refinery operation of BP Australia Ltd.

Clause 5 substitutes new sections 4–6N for sections 4, 5 and 6 of the Principal Act.

New section 4 provides for land and improvements (including port facilities) identified by that section to vest in fee simple in the Port of Melbourne Authority subject to the qualifications set out in sub-section (2).

New section 5 provides that on vesting of the land referred to in new section 4 (1) in the Port of Melbourne Authority any licence under section 138 of the **Land Act 1958** and referred to in section 4 (1) of the **Westernport (Oil Refinery) Land Act 1990** is extinguished. This does not affect any property or right in the authorised pipeline existing immediately before the commencement of the section.

New section 6 provides that the **Pipelines Act 1967** applies and, since its commencement, is taken to have always applied to the authorised pipeline. The section also provides that the authorised pipeline is not part of the land through which it runs and is personal property.

New section 6A provides for the construction of instruments relating to pipeline easements. Sub-section (1) converts references to an instrument listed in column 2 of an item in Schedule 2 so that—

- (a) a reference to the **Westernport (Oil Refinery) Act 1963** or to the Schedule to that Act is taken to be a reference to the **Westernport (Crib Point Terminal) Act 1963**; and
- (b) a reference to any agreement pursuant to the **Westernport (Oil Refinery) Act 1963** is taken to be omitted from the instrument; and
- (c) a reference to the company (if a reference is also not made to its successors or transferees) is taken to include a reference to the owner for the time being of the authorised pipeline.

Sub-section (2) continues any consents given by the previous easement beneficiaries so that they will apply to Crib Point Terminal Pty Ltd (“CPT”).

Sub-section (3) ensures that the section has effect despite anything to the contrary in an easement instrument listed in Schedule 2 or arising out of the operation or application of either the **Transfer of Land Act 1958** or the **Property Law Act 1958**.

New section 6B provides for the interpretation of the plans which show the route of the authorised pipeline both in general and detailed fashion. The interpretation of the detailed plans as they relate to Crown land that is part of or adjoining the route of the authorised pipeline is also provided for.

New section 6C provides for the documents to be lodged before the creation of a statutory easement. CPT must prepare a written statement specifying rights of the beneficiary of the easement, obligations to be imposed on owners whose land is to be affected by the easement, obligations of the person who benefits from the easement, that a statutory easement is created for access and pipeline purposes on specified land, that a statutory easement and statutory covenant for the purposes of the authorised pipeline is to be created over the land referred to in section 6B (3) (i.e. certain Crown land), part of the land listed in Schedule 3 and any other land specified in the statement which is part of or adjoining the route of the authorised pipeline but is not land listed in Schedule 2. The new section provides for further details to be included in the statement and states that in specifying land under sub-section (1) (e), the statement must specify land with a width that corresponds as nearly as practicable to the width of the easements created by the instruments listed in column 2 of Schedule 2 with the route of the pipeline located in the approximate centre of the easement. The statement must also say that the statutory easements and covenants are for the benefit of the land which comprises the terminal site. The new section also specifies lodgement requirements and provides for an evidentiary matter.

New section 6D provides for the Surveyor-General to arrange preparation of and sign substitute plans for those referred to in Schedule 1 if the Surveyor-General considers this necessary to correct boundary or description defects or to better identify the route of the authorised pipeline. The provision also provides for initiation of such substitute plans, consultation, other procedural matters and a consequential matter.

New section 6E provides that on the Minister’s recommendation, the Governor in Council, by Order published in the Government Gazette, may approve a statement lodged under new section 6C. Such an Order commences operation on the date if is so published or on any prospective date specified in the Order.

New section 6F details the effect on an Order which is to—

- (a) extinguish easements, rights or privileges for petroleum pipeline purposes; and
- (b) discharge restrictive covenants—

which exist before the Order commences, which are in favour of CPT or land owned or vested in CPT and which, in the case of an easement, right or privilege relate to the land to be burdened by a statutory easement and in the case of a restrictive covenant, relate to an easement which is extinguished under the provision.

The effect of the Order is also to—

- create an easement for access and pipeline purposes over land specified in the statement under section 6c (1) (d); and
- create an easement for the purposes of the authorised pipeline over the land specified in the statement under section 6c (1) (e); and
- ensure the owner for the time being of the CPT pipeline is entitled to the benefit of a statutory easement; and
- ensure the creation of a statutory easement gives the beneficiary of that easement the relevant rights specified in the statement lodged under new section 6c; and
- ensures the creation of a statutory easement imposes on the beneficiary the obligations specified in the section 6c statement which may be enforced by relevant individual land owners as if separate agreements containing those obligations has been entered into; and
- ensures the burden of any obligation on an owner of land specified in the section 6c statement runs with the land, can be enforced against the owner's successor in title and can be enforced by the person for the time being entitled to the benefit of the statutory easement.

New section 6G provides that the discharge of a restrictive covenant by new section 6F where that covenant is also a term of a contract means that that contract term ceases to have effect. This does not affect the previous operation of a covenant.

New section 6H makes provision for a statutory easement and a statutory covenant to have effect in the circumstances described in that provision where certain rules may usually prevent their effect.

New section 6I provides that the authorised route of the authorised pipeline which is specified in a permit or licence under the **Pipelines Act 1967** is not able to be varied under that Act unless a statutory easement is varied, an easement is created under another provision of the Act or an easement created by an instrument listed in column 2 of Schedule 2 is varied.

New section 6J provides for the variation of a statutory easement or covenant and relevant procedures for such variation.

New section 6K provides that the creation of a statutory easement or statutory covenant does not affect other easements, rights and so on.

New section 6L provides for the amendment of records relating to title and the procedures which apply in those circumstances.

New section 6M provides that the extinguishment by the Bill of an easement, right, privilege or covenant, the creation or variation by the Bill of a statutory easement or statutory covenant, and the exercise of rights attaching to a statutory easement created by the Bill is not a breach of an agreement, arrangement or understanding existing immediately before the specified day in relation to an Order under new section 6F between a person entitled to the benefit of the easement, right, privilege or covenant so extinguished or created and a person whose land is burdened by it.

Clause 6 repeals sections 7 to 10 of the Principal Act.

Clause 7 inserts new sections 15 and 16 in the Principal Act.

New section 15 provides that no compensation is payable by the Crown or CPT in respect of the extinguishment, creation or variation by the Bill of an interest, right, privilege or obligation over land.

New section 16 provides that it is the intention of the section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court entertaining actions for compensation in circumstances in which no compensation is payable by virtue of section 15.

Clause 8 substitutes 3 new Schedules to the Principal Act for the existing Schedule.

New Schedule 1 provides for the route of the authorised pipeline which is marked on the plans referred to in the Schedule which are lodged at the Central Plan office.

New Schedule 2 sets out authorised pipeline easements for the purposes of the Bill and specifies the title particulars of the land burdened by easements and lists the instrument number of the relevant easements relating to that land.

New Schedule 3 specified the freehold land to be burdened by the statutory easement.

Clause 9 repeals both the **Westernport (Oil Refinery) (Further Agreement) Act 1985** and the **Westernport (Oil Refinery) Land Act 1990** which are redundant.

Clause 10 is a transitional provision. On the commencement of the section a “listed agreement”, which is defined in sub-clause (1), and any rights or obligations under such an agreement, cease to have effect. However, this does not affect the previous operation of such an agreement or affect proprietary interests or liabilities, etc. already accrued or incurred and affect or revive other specified matters. The clause also provides for other miscellaneous transitional matters.

Clause 11 changes the short title of the Principal Act and provides for the consequences of that change in relation to subordinate instruments and other documents.