OFFSHORE PETROLEUM AMENDMENT (MISCELLANEOUS MEASURES) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
GENERAL OUTLINE

This Bill has three elements. Firstly to make some technical corrections after the rewrite of the Petroleum (Submerged Lands) Act 1967 (PSLA). These are:

- Specifying the duration of certain production licences granted since 1998;
- Extending the operation of amendments to the definition of 'workforce representative', already made to the PSLA, to the Offshore Petroleum Act 2006 (OPA);
- Ensuring that sea boundaries continue to be determined on the basis agreed to in the 1979 Offshore Constitutional Settlement;
- Amending subsection 142 (6) of the OPA to ensure that this provision applies to both an unvaried application and a varied application;
- Ensuring that section 321 of the OPA is an Occupational Health and Safety (OHS) law only to the extent that section 321 relates to conduct that affects, or has the potential to affect, the health or safety of members of the workforce at a facility (within the meaning of Schedule 3 to the OPA);
- Expanding of section 48(1) to allow delegation of powers under the Regulations.

Secondly, the Bill converts the geodetic data references of the area descriptions in Schedules 1 and 2 to the current Geocentric Datum of Australia (known as GDA94) which is more compatible with the Global Positioning System and will more accurately reflect the positioning of coordinates.

A geodetic datum is a mathematical model of the world. The old Australian Geodetic Datum (AGD 66) was a mathematical model which was designed to fit well with the Australian mainland. As such, its centre was not the centre of the earth. The advent of global positioning systems, such as GPS, added justification for the adoption of an international ‘geocentric’ (earth centred) datum. This became the Geocentric Datum of Australia 1994 (GDA 94).

The change in datum means that the same point on the earth now has slightly different coordinates. The conversion, which is to the accuracy of 2 decimal places of a second of latitude and longitude, will have an almost negligible effect on the actual position of these points. We are advised that, on the seabed, this would physically represent no more than a plus or minus 0.15 of a metre shift. There will also be no impact on existing titles. Timing and other factors prevented its inclusion into the original OPA.

Finally, the Bill also implements a minor policy change and repeals section 327 which allows the Minister to exercise his emergency powers in the Area to be Avoided, offshore Victoria in the Gippsland Basin. This is because a more comprehensive and broader security regime has been implemented under Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA).
FINANCIAL IMPACT STATEMENT

The Bill will not have any financial impact on the Australian Government Budget from these purely technical amendments to the Act and the change in the conversion of the geodetic data references.

REGULATORY IMPACT STATEMENT

This bill does not impose any new regulatory burden on the petroleum industry.
NOTES ON INDIVIDUAL CLAUSES

Clause 2, Commencement

The OPA has not yet come into force and will not prior to these amendments being passed by Parliament (and receiving Royal Assent). Further, the OPA can not be proclaimed until all of the States and the Northern Territory have updated their mirror legislation. This is because the Commonwealth Legislation recognises the State or Territory Minister as having functions and powers tied to what appears in the mirror State and Territory Acts.

No provisions of this Bill will apply retrospectively.

Schedule 1, Part 1 clause 1 to 4- Duration of certain production licences

These items set out the basic provisions in regard to the duration of certain production licences. In 2001 a number of production licences due for their first renewal were renewed for a period of 21 years. However, during the course of the rewrite of the Petroleum (Submerged Lands) Act 1967 (PSLA) it was discovered that although the policy intention was that a first renewal of a production licence should be for 21 years, ambiguous drafting had resulted in an entitlement to a first renewal of indefinite duration.

Since realising this policy anomaly a further four licences came up for their first renewal and these were renewed indefinitely under the PSLA.

To ensure that licensees receive the titles under the OPA they were entitled to under the PSLA, this amendment has been made specifying that the duration of the eight licences is indefinite.

Schedule 1, Part 2 clauses 5 and 6- Workforce representatives

These clauses define a number of terms for the purposes of the schedule. This item extends, in the definition workforce representative, the meaning of a 'registered organisation' to include a 'transitionally registered organisation (within the meaning of Schedule 10 to the Workplace Relations Act 1996)'.

The OPA currently allows federal unions to serve as workforce representatives and participate in the occupational health and safety scheme established by the legislation. The Bill will amend the definition of 'workforce representative' to also allow transitionally registered associations recognised under the Schedule 10 to the Workplace Relations Act to be appointed as representatives. The amendment ensures that all unions recognised under the Workplace Relations Act can be workforce representatives.

This amendment has already been made to the PSLA.
Schedule 1, Part 3 clauses 7 to 18- Territorial Sea

These clauses correct an inadvertent technical error and ensure that sea boundaries continue to be determined on the basis agreed to in the 1979 Offshore Constitutional Settlement.

Coastal waters, as currently defined in Section 6 of the OPA, includes the area that is three nautical miles seaward of a territorial sea baseline which takes account of low tide elevations appropriate for a 12 nautical mile territorial sea. This is because it is defined by reference to 'territorial sea' within the meaning of the *Seas and Submerged Lands Act 1973*. The correct PSLA definition of coastal waters takes into account low tide elevations appropriate for a 3 nautical mile territorial sea. These items together, ensure that it is the 3 nautical mile territorial sea baseline which applies for the purposes of the OPA.

Schedule 1, Part 4 clause 19- Applications for production licences

This item corrects an inadvertent technical error in clause 142(6). The subsection currently provides that the requirement for applications to be accompanied by proposals for work and expenditure only apply "in relation to the area comprised by the block or blocks covered by the varied application".

This amendment ensures that this provision applies to an application as well as a varied application.

Schedule 1, Part 5 clauses 20 and 21- Emergency declarations

These items repeal the Commonwealth Minister's emergency powers in the area to be avoided offshore Victoria in the Gippsland Basin. The emergency powers have not been invoked since being added to the PSLA in 1984 and do not apply in other offshore petroleum areas.

In December 2004 the Prime Minister announced enhanced security arrangements for offshore oil and gas facilities that included the amendment of the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) to include offshore facilities. The 2005 amendments to the MTOFSA provide a broader and more time sensitive security framework than that provided by the offshore petroleum legislation.

Schedule 1, Part 6 clause 22- Listed OHS laws

This clause itemises the 'listed OHS laws' for the purposes of grouping these laws, providing a convenient means to refer to them in other provisions of the Act.

This item corrects an inadvertent technical error whereby the phrase 'that affects, or has the potential to affect, the health or safety of members of the workforce at the
facility (within the meaning of Schedule 3 of this Act)' was intended to apply to items (i), (ii) and (iii) of this clause but, as it currently stands, only applies to item (iii).

Schedule 1, Part 7 clause 23- Delegation by a Responsible Commonwealth Minister

This clause corrects an inadvertent technical error and ensures that the Joint Authority may delegate its powers under both the Act and the regulations.

Schedule 1, Part 8 clauses 24 to 37- Datum

Under the OPA, the offshore area over which petroleum explorers and producers have title are defined by coordinates of latitude and longitude. The Act specifies a reference frame known as the Australian Geodetic Datum (known as AGD66) by which the position on the surface of the Earth of points with given coordinates can be determined with accuracy.

However this datum dates from 1966 and it is not directly compatible with the Global Positioning System, which is increasingly being used for navigation and related purposes. To address this deficiency, the Geocentric Datum of Australia (known as GDA94) was devised. These clauses change the geographic coordinates of the area descriptions in Schedule 1 and Schedule 2 from AGD66 to GDA94.

This will have an almost negligible effect on the actual position of these points. The conversion has been performed to the accuracy of two decimal places of a second of latitude and longitude. On the seabed, this physically represents no more than a plus or minus 0.15 of a metre shift.

Schedule 1, Part 9 clause 38

This item corrects an inadvertent technical error and replaces the reference in clause 4 from lessee to permittee. It is only a permittee who would make an application for a longer period under clause 3(b).

Schedule 1, Part 9 clauses 39 and 40

Sections 122 and 128 of the Act provide that a transferee of an exploration permit or production licence shall be treated as an applicant for the purposes of certain sections and Part 2.10 of the Act. These items ensure that Part 2.10 will be read as applying to a transferee as if they were the applicant.

Schedule 1, Part 9 clause 41
This item ensures that a delegate of the Chief Executive Officer (CEO) of the National Offshore Petroleum Safety Authority must comply with a direction given by the CEO when performing functions, as well as exercising powers.