

# General Policy Review Bulletin # 13

## September 2010

Dear Stakeholders,

Welcome to the General Policy Review Bulletin No. 13. The purpose of this series of bulletins is to advise interested parties on policy issues and developments related to the offshore petroleum and greenhouse gas storage regulatory regime.

The current issue covers the following topics:

- Offshore Resources Legislation and Regulations
- Petroleum Regulatory Reform
- Montara Commission of Inquiry
- Offshore Petroleum Safety Regulatory Inquiry (OPSRI)
- Update on Policy Issues Arising from the Re-write of the *Petroleum (Submerged Lands) Act 1967*

### Offshore Resources Legislation and Regulations

#### *Legislative amendments*

Prior to the election being called, there were two amendment bills before the Commonwealth Parliament - the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010 and Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010. These bills corresponded respectively to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) and *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003*. Both bills were introduced to the House of Representatives by the Minister for Resources and Energy, the Hon Martin Ferguson AM MP, in the Autumn 2010 sitting session.

The bills resulted from the Commonwealth Government's intention to implement a number of measures, including:

- progress the establishment a single National Offshore Petroleum Regulator from 1 January 2012;
- strengthen the role of the National Offshore Petroleum Safety Authority in relation to structural integrity;
- make clarifications on how titleholder provisions apply where titles are held jointly by two or more titleholders (multiple titleholders);
- clarify that a titleholder's responsibility under the occupational health and safety provisions of the OPGGSA is for wells (and not more broadly for facilities); and
- make some technical amendments to achieve a more enforceable regulatory regime and to update the OPGGSA.

The Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010 was referred to the Senate Economic Legislation Committee for inquiry, and after a period of public consultation including the receipt of

written submissions and a public hearing, the Committee's majority recommendation was for the Bill to pass through the Senate.

Stakeholders should be aware that all legislation before the Parliament when it was prorogued on 19 July 2010 lapsed and was returned to their sponsoring portfolios. Legislation that is still required will therefore need to be re-bid and re-introduced into the new Parliament when it is formed, irrespective of the stage of proceedings reached in either the House of Representatives or the Senate in the last Parliament. Therefore on this basis, both of the aforementioned amendment bills will need to be re-introduced given that they had not passed both Houses of Parliament prior to the election being called.

#### *Regulations consolidation and amendments*

In December 2009, the updated and consolidated sets of safety and environment regulations made under the OPGGSA were finalised. The environment regulations contained minor technical changes to make them dual purpose, that is covering both petroleum and greenhouse gas storage activities.

The new safety regulations consolidated, updated and repealed the previous *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996*, *Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993*, and *Petroleum (Submerged Lands)(Diving Safety) Regulations 2002*. In June 2010 the safety regulations were also made dual purpose, incorporating greenhouse gas storage activities.

Currently the third and final set of offshore petroleum regulations is being consolidated. This final consolidation project aims to bring together the remainder of outstanding regulations that relate broadly in terms of theme or objective to the resource management and administration of offshore petroleum activities into a single set of regulations. These regulations are:

- *Petroleum (Submerged Lands) Regulations 1985*
- *Petroleum (Submerged Lands) (Data Management) Regulations 2004*
- *Petroleum (Submerged Lands) (Datum) Regulations 2002*
- *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*
- *Petroleum (Submerged Lands) (Pipelines) Regulations 2001*

Once the new consolidated regulations are in place, all of the above will be repealed. Also operative, and included in the consolidation project, are parts of the *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production in Waters under Commonwealth Jurisdiction* (the Schedule), which is a set of prescriptive, standing directions made under Section 574 of the OPGGSA. There is also a further draft set of regulations, *the Petroleum (Submerged Lands) Resource Management Regulations 2006*, that will form the basis of the consolidated set.

This final consolidated set of regulations is proposed to be titled *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2010*. Industry consultation will occur over the next couple of months prior to finalisation.

Separate regulations will continue to exist for fees and levies, as is required by the Constitution.

*If you have any queries on the above please contact either Jessica Brown on 02-6276 1134 or Belinda Josey on 02-6213 7736.*

## **Petroleum Regulatory Reform**

The Productivity Commission's *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* (30 April 2009) identified significant unnecessary regulatory burdens on the upstream petroleum sector. The Commission found that these burdens could be reduced through new institutional arrangements – principally the establishment of a national offshore petroleum regulator – as well as implementation of regulatory best practice principles across all jurisdictions.

On 5 August 2009, the Commonwealth Minister for Resources and Energy, the Hon Martin Ferguson AM MP, announced his intention to set up a national regulator for petroleum, mineral and greenhouse gas storage activities in Commonwealth offshore areas by 1 January 2012.

An all-of-governments' response to the Productivity Commission Review is being developed through the Ministerial Council on Mineral and Petroleum Resources (MCMPR). On 15 December 2009 the MCMPR agreed to implement 25 of the Productivity Commission's 30 recommendations and forwarded them to the Council of Australian Governments (COAG).

On 23 February 2010, COAG agreed to amend the *National Partnership Agreement to Deliver a Seamless National Economy* Implementation Plan to reflect the milestones agreed by MCMPR in order to implement the 25 recommendations.

On 26 February 2010 and 28 May 2010, MCMPR agreed that consideration of the remaining five recommendations, relating to the establishment of a national offshore petroleum regulator, be suspended until the outcome of the Montara Commission of Inquiry. The Inquiry into the Montara well head platform hydrocarbon leak is likely to be an important consideration in institutional reform of the regulation of the upstream petroleum sector. The Commission reported to the Minister for Resources and Energy on 18 June 2010, and a response is being considered (see below).

On 17 May 2010 the Minister for Resources and Energy stated that his preferred model for a national regulator was to integrate the safety of people, integrity of facilities, protection of the environment, and day to day operations. Under this model, resource management would be regulated separately. However, the Minister will take into account the findings and recommendations Montara inquiry before finalising his view.

*If you have any queries on the above please contact either Peter Livingston on 02-6213 7974 or Jessica Brown on 02-6276 1134.*

## **Montara Commission of Inquiry**

On 18 June 2010 the Commissioner for the Montara Commission of Inquiry, Mr David Borthwick AO PSM, presented the *Report of the Montara Commission of Inquiry* to the Minister for Resources and Energy. The Minister intends to act promptly and appropriately on the report once full consideration has been given to its findings and recommendations.

In March 2010, the Australian Maritime Safety Authority (AMSA) completed a report on the response to the uncontrolled release of oil and gas from the Montara Wellhead Platform located in the Timor Sea.

The Report, *Montara Wellhead Platform Incident - Incident Analysis Team Report March 2010*, was prepared under the auspice of Australia's National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances and provides recommendations for improvements to the National Plan arrangements and identifies lessons learned to improve future major incident responses. In general the Report concluded that the response effort was highly effective – with excellent support not only by the company (PTTEP Australasia Limited), but the broader petroleum industry through the Australian Marine Oil Spill Centre as well as port authorities and government agencies. The report is available from the AMSA website at:

[www.amsa.gov.au/Marine\\_Environment\\_Protection/National\\_plan/Incident\\_and\\_Exercise\\_Reports/index.asp](http://www.amsa.gov.au/Marine_Environment_Protection/National_plan/Incident_and_Exercise_Reports/index.asp)

*If you have any queries on the above please contact Kristina Anastasi on 02-6276 1490.*

### **Offshore Petroleum Safety Regulatory Inquiry (OPSRI)**

On 28 May 2010, the Minister for Resources and Energy, the Hon Martin Ferguson AM MP, released, for consultation, the draft Government Response to the OPSRI reports (*Better Practice and the Effectiveness of NOPSA and Marine Issues*) and the *2008 Review into the Operational Activities of NOPSA*.

The aim of the consultation process is to obtain the views of stakeholders on the practical implications of the recommendations, including the Government's subsequent response, and to understand any concerns with respect to implementation.

Written submissions were invited and due to RET by 25 June 2010. The submissions are currently being considered and a final Government Response is forthcoming.

*If you have any queries on the above please contact Kristina Anastasi on 02-6276 1490.*

### **Update on Policy Issues Arising from the Re-write of the *Petroleum (Submerged Lands) Act 1967***

During the re-write of the *Petroleum (Submerged Lands) Act 1967* (PSLA), government and industry stakeholders raised 48 issues that have been progressively reviewed over time and where appropriate progressed further. The majority of issues have been resolved with advice on the finalisation of these issues circulated to stakeholders via previous General Policy Review Bulletins. A full list of the original issues raised is attached at the end of this bulletin.

Issues have been progressed through discussions within the Upstream Petroleum and Geothermal Subcommittee (UPGS), which last met on 20 May 2010. UPGS is a subcommittee of officials formed under the Ministerial Council on Minerals and Petroleum Resources. The subcommittee meets several times a year as well as progressing matters out of session as necessary.

Three issues have been progressed since June 2009. These issues are 'Multiple Titleholders' (Issue 7), 'Registrations and Dealings' (Issue 36) and 'Unitisation' (Issue 8). A brief summary of the resolution of these three issues as well as the final issues outstanding is provided below.

***Issue 7 - Nature of rights and obligations of multiple titleholders under the OPGGSA***

*Issue*

Identified need to clarify the nature of rights and obligations of multiple titleholders.

*Outcome*

UPGS agreed that RET should undertake a review of the OPGGSA to identify how titleholder provisions should apply in a multiple titleholder situation and then seek to amend the OPGGSA to clarify how the rights and obligations of provisions apply to multiple titleholders, noting that a general rule may be able to apply to most provisions except where a particular section will need to provide otherwise. The multiple titleholders issue is being addressed through legislative amendments introduced to Commonwealth Government parliament in 2010 (see top item in this Bulletin).

***Issue 36 - Registration and Dealings***

*Issue*

Consideration of evidentiary provisions in relation to registration and dealings. Specifically, a comprehensive review to be undertaken of the function and purpose of the Register under clause 253 of the previous Offshore Petroleum Bill, and the process of registering dealings.

*Outcome*

A paper on this issue was presented at the UPGS meeting held on 13 October 2009. UPGS agreed at the time to expressly state in the OPGGSA the time at which a dealing comes into force. That is, it was agreed that an amendment would specify that the transfer or dealing that has been approved and registered will be deemed to have entered into legal effect at the date of registration by the Designated Authority (DA) and clarify the meaning of 'no force' to state that this expression means that the transfer or dealing is without any legal effect, including as between the parties to the transfer or dealing.

The Commonwealth did not proceed with the 'of no force' amendments to the OPGGSA on consequent advice from the Office of Parliamentary Counsel (OPC) that this meaning is already clear and no change is necessary. The OPC's advice was based on analysis of previous legal advice and other referenced sources.

***Issue 8 - Unitisation***

*Issue*

Consideration of when property rights in common petroleum pools should be triggered or the rule of capture prevail, and when the government should direct unitisation.

*Outcome*

At the 30 October 2009 UPGS meeting, the Commonwealth presented a paper providing three possible options to manage unitisation provisions in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA).

The three options presented were:

1. No changes to legislation;
2. Mandatory arbitration; or
3. Expand Commonwealth powers to allow imposing unitisation.

The issue was discussed at UPGS in both 2009 and 2010. UPGS are currently further considering options.

***Other Issues***

Defining 'commercial viability' (Issue 19) and combining adjoining retention leases or production licences (Issue 43) issues were addressed to some extent through the retention lease policy paper released in 2009. This paper is currently being considered by the Minister for Resources and Energy, and a Government response and appropriate action will be announced in due course.

Matters relating to the grant of a production licence (Issue 20) are being considered as part of the regulation consolidation exercise which is considering setting timeframes on key decisions. Some amendments to the OPGGSA may be needed to enable timeframes to be included in the regulations.

Use of an Infrastructure Licence area (Issue 27) is still under consideration.

*If you have any queries on the above please contact either Jessica Brown on 02-6276 1134 or Joanne McCarron on 02-6213 7967.*

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This occasional newsletter was prepared by Resources Division of the Department of Resources, Energy and Tourism.

### FULL LIST OF POLICY ISSUES ARISING FROM THE REWRITE OF THE PSLA

Issues Resolved		Issues recently resolved	Remaining issues
1: Definition of construct	23: Offer document	7: Multiple titleholders	35: Dealings related to existing titles
2: Definition of 'scientific investigation'	24: Termination of a production licence of no operations for 5yrs	8: Unitisation	39: Amount prescribed by RF Act
3: Administrative vs proprietary nature of the legislation	26: Direction to recover petroleum	19: Defining 'commercial viability'	41: Creation of an appropriation fund for a registration fee refund
4: Relevance from a Gas Perspective	28: Common carrier provisions	25: Grant of a production licence	
5: Cash-bidding in general	29: Ceasing to operate a pipeline without consent	27: Use of an IL area	
6: Criminal Law provisions	30: Reservation of blocks- pipelines	36: Registration and Dealings	
9: Discretion in administrative decision making	31: Seeking information about an SPA, Access Authority or SIC	43: Combining adjoining retention leases or production licences	
10: Exclusivity of Exploration permits	32: Access authority provisions		
11: Excluding an applicant for an exploration permit from the ranking	33: JA involvement in SIC's		
12: Cash-bid exploration permits	34: Registration of a series of debentures		
13: Recon-X	37: DA's discretion to approve a transfer of dealing is not restricted to a 90 day period		
14: Nomination of blocks as a location	38: Strict compliance with formalities		
15: Declaration of a location	40: DA's power to alter registration fees		
16: Application for RL by fixed-term PL	42: Variation, suspension and exemption		
17: Third party submissions	44: General power to give directions		
18: Surrender or cancellation of RL	45: Area to be avoided		
20: Application for a PL by a lessee	46: Protection of confidentiality		
21: Transferee to be treated as applicant	47: Service of documents on multiple titleholders		
22: Application for a cash-bid PL	48: Taxation regulations should commence after the disallowance period		

