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# Welcome to the General Policy Review Bulletin # 6

# July 2007

## Policy Issues Identified During Rewrite of the PSLA

Below short paper on 13 policy issues which were identified during the rewrite of the *Petroleum Submerged Lands Act 1967 (PSLA).* We would appreciate your comments on the attached by **31 August 2007**, please do not hesitate to contact us to discuss any of the issues.

The *Offshore Petroleum Act* 2006 *(OPA)* will not be proclaimed until all the States and the Northern Territory have updated their mirror legislation. We will advise you when this has occurred.

In the mean time, we have several updates on other minor amendments we have been working on.

## Greater Sunrise Amendment Act

The *Offshore Petroleum Amendment (Greater Sunrise) Act 2007* received Royal Assent on 10 April 2007. These amendments were necessary to implement the International Unitisation Agreement (IUA) for the Greater Sunrise petroleum field under the OPA and to facilitate the development of the Greater Sunrise petroleum field.

## Minor Administrative Changes Amendment Bill

As flagged in Policy Review Bulletin #4, we are also preparing to introduce an Amendment bill in the coming Spring Sitting of Parliament. This Bill deals with minor and administrative changes as well as updating the coordinates in Schedules 1 and 2 of the OPA to the Geocentric Datum of Australia (GDA94).

For those stakeholders planning to attend the AMPLA Conference we are again going to hold a pre-conference discussion, more details to follow in the next bulletin.

## Policy Issues Paper

From the list of policy issues raised by stakeholders and circulated in the General Policy Review Bulletin #2, the Department has reviewed a further 13 issues.
This paper deals with the following sections of the *Offshore Petroleum Act* (OPA) and their *Petroleum (Submerged Lands) Act* 1967 (PSLA) counterparts [in brackets].

1. **Definition of Construct:** section 6 [s5]

2. **Definition of 'scientific investigation':** Chapter 2, Part 2.9 [s123]

3. **Cash-bidding in general**

4. **Grant of a cash-bid exploration permit:** section 90 [ss22B(5) and (7)]

5. **Nomination of blocks as a location:** section 108 [s36(6),(7),(8) and (9)]

6. **Application for a production licence by a lessee:** section 144 [s40A]

7. **Exploration permit or retention lease transferred - transferee to be treated as applicant for production licence:** section 149 [s44A]

8. **Termination of a production licence if no operations for 5 yrs:** section 140(3)[s53]

9. **Reservation of blocks-pipelines:** section 242 [s18]

10. **Access and Special Prospecting Authorities:** Parts 2.7 and 2.8 [s111 and 112]

11. **Gazettal of variations, suspensions and exemptions:** section 227 [s94 and s103]

12. **The Area to be Avoided:** Part 4.5 [s140C and 140D]

13. **Permits granted on Reconnaissance terms**

1. A stakeholder had suggested that the words "establish or locate" be inserted after "place" in the definition of construct in section 6 of the OPA. Section 15AA of the *Acts Interpretation Act* states that words in a statute are to be interpreted in accordance with their ordinary and current meaning. The Explanatory Notes to the original 1967 PSLA provide no instruction on the definition of 'construct'. However, by taking a look at each

section that the word construct appears, it seems to be a logical conclusion that the word 'place' was specifically included in the definition of construct to make it clear that anything being rested on the seabed is caught by the definition.
There does not appear to be any reason why the definition needs to be expanded to include 'establish or locate'. In fact, the Macquarie Dictionary definition of locate includes 'establish and place':
*"to set, fix, or establish in a place, situation or locality; place; settle"*
Given these factors, it does not seem necessary to further define the term construct; the words should be afforded a broad construction as possible on their natural and ordinary meaning.

2. A stakeholder had asked whether the definition of 'scientific investigation consent' (SIC) should be expanded to explain what it entails. The definition of SIC will be left deliberately broad. Its role in the Act stems from the United Nations Convention of the Law of the Sea (UNCLOS) and its predecessors. Article 246 of UNCLOS states: *"Coastal States shall, in normal circumstances, grant their consent for Marine Scientific Research projects by other states and competent international organisations in their EEZ on their continental shelf to be carried out in accordance with this convention exclusively for peaceful purposes for the benefit of all mankind"*
The provisions are designed to allow drilling in the continental shelf which would ordinarily be considered 'exploration' and an offence under section 77. There is little justification for explicitly spelling out what constitutes a scientific investigation, as in reality, anything other than commercial drilling would constitute scientific. Given that the results of Marine Scientific Research (MSR) are required to be given to the coastal state upon request and that the results of the research must be published as soon as practicably possible (UNCLOS article 249) no commercial drilling would be undertaken under an SIC.

3. A stakeholder asked whether the cash bidding provisions of the OPA should be removed to reflect current Government policy. Provisions for cash-bidding were inserted into the PSLA in 1985 to promote a more efficient allocation of acreage in highly prospective areas, particularly where there was strong industry interest and a high probability of a discovery being made.
Tendering under work-program bidding has been the normal way which companies have obtained exploration permits with the last cash-bid exploration permit awarded in 1992. While it is not current Government policy to cash-bid for exploration permits it is possible that, in the future, circumstances may arise that could justify consideration of using the cash bidding provisions. For this reason, it is proposed that the provisions for cash-bidding remain.

4. Section 90(3) of the OPA provides that the Joint Authority 'may' grant a cash-bid exploration permit where there are two or more applicants who have not been excluded from the ranking.
When the cash-bidding provisions were introduced, the explanatory notes made it clear that the Joint Authority was to have the power to reject bids:
*"Bids will be rejected if they are considered inadequate on account of insufficient competition, if there is evidence of collusive bidding, if the bidder does not have the technical or financial resources to carry out the operations offshore effectively, or if any conditions made known prior to the bidding round are not met".*
For example, it is conceivable that a block may be released for cash-bidding where it is considered highly prospective. If the block attracted bids for very low sums, the Joint

Authority may decide not to grant the cash-bid permit and release it at a later date as a work-bid permit.
Section 84(2) provides, similarly, that "the Joint Authority may give an offer document under section 83 to whichever applicant, in the Joint Authority's opinion, is most deserving of the grant". Given these factors, the discretion for the Joint Authority to reject a cash-bid exploration permit application will remain.

5. A stakeholder commented during the rewrite that: '…a declaration sets the clock ticking for the permittee to apply for a production licence. If the matter were overlooked by the company because of a clerical omission, the block could be lost'.
Section 108 of the OPA entitles the Designated Authority to nominate blocks as a location. It seems unlikely that a permittee would not know that the Designated Authority had nominated the blocks as a location for two reasons:

- Before nominating the blocks as a location, the DA must give written notice to the permittee requiring them to nominate the blocks as a location within 90 days (s 108(1)(c));

- If the permittee does not nominate the blocks as a location and the DA exercises the discretion to do so, the DA must publish a notice in the *Gazette* to the effect that the block/s have been declared as a location.

With that in mind, failing to apply for a production licence or a retention lease within the specified period due to a clerical omission is no different to the situation where the permittee themselves nominates the block/s as a location.
A stakeholder also commented that the Joint Authority should look at resuming a role in the location process given that the criteria for declaring a location 'that the blocks specified in the application' contain petroleum are the same as for the granting of a production licence. The Department's view is that there is scope to amend the Act. This issue will be further addressed via the Upstream Petroleum and Geothermal Subcommittee.

6. Section 144 of the OPA provides that when a retention lessee applies for a production licence, the application must be accompanied by the details of the applicant's proposals for work and expenditure in relation to the area comprised in the block or blocks specified in the application. A stakeholder had asked if the wording should be changed in order to add more rigour to the process since original production licences granted after 30 July 1998 are indefinite.

The Joint Authority must grant a production licence if they are satisfied that the blocks specified in the licence application contain petroleum. The details of an applicant's proposals for work and expenditure in respect of the application area are not intended to effect whether the applicant is offered a licence or not. The details are submitted so that the Joint Authority can formulate appropriate licence conditions.
It is preferred that applications for a production licence be accompanied by a field development plan (FDP) (current Guidelines for Grant of Production or Infrastructure Licences). This is designed to outline the type of information required by the Joint Authority. Under section 222, the Designated Authority can also require the applicant to supply additional information if necessary. More specific wording in the OPA is not required. The requirement for FDPs as the applicant's proposal for 'work and expenditure' will be formalised in the Resource Management Regulations.

However, the Department is considering making clear the role of the 'proposal for work and expenditure' by including words to the effect (for example in s145(b)) that the Joint Authority is satisfied with the applicant's proposal for work and expenditure in addition to the fact that they are satisfied that the blocks specified in the application contain petroleum.

7. A stakeholder raised the question whether a new entity, transferring into a title where an application for a production licence has been submitted, is locked into the pre-existing development proposal. In short, this will depend on what stage in the process the application is at.
Where a new entity has transferred into the title before an offer document has been issued the new entity may vary the application (in relation to the number of blocks specified) without paying another fee (sections 42(3), (4) and (5)) or alternatively withdraw the application (section 222(9)).
If an offer has already been made, the only option is the acceptance or non-acceptance of the offer. If the offer is accepted the titleholder can apply to vary the conditions under section 227(1). Such a variation is not an automatic right.
It is not proposed that any amendments be made to the OPA to address this issue. A new entity transferring into a title where an application for a production licence is proceeding would be likely to have access to the relevant information relating to the production licence application. The transferee also has the ability at the early stages of negotiations to raise any issues with the current titleholders and to consult with the relevant Designated Authority.

8. It had been suggested that consideration should be given to whether the reference at the end of subsection 140(3) of the OPA concerning termination of a production licence should be amended to *"…circumstances beyond the licensee's **reasonable** control"* rather than the current *"…circumstances beyond the licensee's control"*.
The explanatory memorandum describes the situation as follows:
*"The circumstances could include events such as failure of the manufacturer of vital plant or equipment to deliver on time under contract. However, it is not intended that commercial factors related to the price of petroleum should qualify under this heading"*
It is considered that the current provision provides enough scope for the Joint Authority to consider situations on a case by case basis. It is not automatic that the production licence will be cancelled if operations have ceased for 5 years, it is at the Joint Authorities' discretion (section 140(1)).

9. Under section 242, if a pipeline licence is in force and no construction has yet occurred but the approved route of the pipeline transects a block which is then reserved under this section, the reservation would not prevent the pipeline from being built in that block. It was questioned whether this policy should be reviewed.

No change in policy is envisaged. The provision gives a pipeline licence holder investment certainty. Any change in the status quo has the potential to seriously hold up the construction of the pipeline and cause delays to the associated development project. It should be noted that this only applies to a pipeline route already approved by the Joint Authority.

10. A stakeholder has questioned why a Special Prospecting Authority (SPA) holder is consulted regarding an Access Authority over their SPA title, when the Designated Authority can grant another SPA over their SPA title without consultation.

An SPA is a title given for a short period of time (no more than 6 months) to allow for all exploration operations short of actual drilling. An access authority is an authority to enable an existing title holder (permit, lease, licence or SPA) to gain limited access to nearby areas which are outside the title holder's area.
Given that a SPA is a short term title no formal consultation is required when other SPA's are granted (as is the case with other titles such as permits, leases and licences). However under section 201 a Designated Authority must by writing inform a SPA holder if they have granted another SPA including the operations proposed. This is primarily to ensure that timing of any exploration activity does not cause unexpected consequences between the two SPA holders.
Section 206 (1) & (2) and 211 outline consultation procedures for approval of access authorities within the same offshore jurisdiction. These procedures can be expedited if the titleholder, over which the access authority is sought, has already consented in writing (section 208 (1)).
Sections 206 (3) and 209 set out the requirements and consultation procedures for access authorities when the title to be accessed is within an adjoining jurisdiction. Consultations must be carried out by the Designated Authority in which access is being sought and cannot be avoided by the access authority applicant obtaining written consent direct from the titleholder in the other offshore area. This is for reasons of administrative completeness given that two Designated Authorities and two different Registers are involved.
The Department's view is that there may be scope to simplify the procedures provided there is ample notification to both the DA's concerned. This issue will be further addressed via the Upstream Petroleum and Geothermal Subcommittee.

11. Section 227 of the OPA requires that a variation of a production, infrastructure or pipeline licence be notified in the Gazette. A stakeholder has questioned whether gazettals should also apply to suspensions or exemptions.
The variation of a production, infrastructure or pipeline licence is published in the Gazette because it is a significant change for a long period of time, for example, the variation of pipeline route.
The justification for not gazetting suspensions and exemptions of exploration permits and retention leases is administrative efficiency. Permits and leases are more numerous and have a shorter duration than do the licences. Gazettal of suspensions and exemptions would increase the administrative burden on Government will little obvious gain. This information is currently available on the title register.

12. The Bass Strait Offshore Oil fields lie across the main shipping track. Damage to a single structure or pipeline could endanger many lives and seriously disrupt oil production. The Area to be Avoided is designed to protect the offshore petroleum installations and ensure safety of shipping and the arrangements put in place (like the traffic separation scheme) have been adopted by the International Maritime Organisation (IMO). A stakeholder asked if there was a continuing need for the area to be avoided provisions under Part 4.5 of the OPA.

Due to safety implications the Department's view is to keep the arrangements in place for the foreseeable future. Any changes to the current arrangements would also have to go through the full IMO approval process. Also the 'Area to be Avoided' is quoted in safety cases for each of the manned facilities in the Bass Strait as a means of controlling the vessel collision risk. To remove that area and allow free navigation would increase that risk and partially invalidate each of the Safety Cases.

13. Stakeholders have commented on the potential benefits of introducing a reconnaissance licence for frontier areas. Features could include phased work programs and the ability to convert a percentage of the area to an exploration permit after an initial screening phase.

This proposal is being examined as part of the joint Government and industry *Australian Upstream Oil and Gas Strategy*, released in April 2007. An Implementation Group has been put together to pursue this, and other options, for increasing exploration in frontier areas. If any amendments are necessary they will be pursued at that time.

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