FURTHER SUPPLEMENTARY EXPLANATORY MEMORANDUM

New Clauses to be moved on Behalf of the Government

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

The Government amendments to the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009 (the Bill) add a new Part 13A to the Bill and a new Part 9.10A to the Offshore Petroleum and Greenhouse Gas Storage Act 2006 ('the Act'). These amendments provide for a standing power enabling the responsible Minister to appoint a Commissioner to undertake a Commission of inquiry into the operational, human and regulatory matters specific or incidental to a significant offshore petroleum or greenhouse gas storage incident, from time to time as required. This power is limited to where a significant offshore petroleum or greenhouse gas incident has occurred, and where it would be appropriate to consider operational, human and/or regulatory issues related to that incident.

The purpose of the amendments is to correct an administrative gap in the provisions of the Act for the investigation of these matters. Currently, the responsible Minister may initiate two types of investigation under the Act, each limited in nature: an investigation by the National Offshore Petroleum Safety Authority (NOPSA) which would be limited to occupational health and safety matters pertaining to an incident; and an investigation by the Minister as Designated Authority for the offshore area which would be limited to considering the appropriateness of existing statutory powers under the Act.

Recent incidents involving uncontrolled release of hydrocarbons jeopardising human and environmental health, have demonstrated that the existing investigatory powers are insufficient. An inquiry for the purposes of determining operational, human and regulatory factors would inform regulators and operators of causal factors contributing to significant incidents relating to offshore oil and gas exploration, development, production, greenhouse gas storage and/or decommissioning. This power will enable the Government and industry to learn from incidents, and be better prepared to prevent similar incidents occurring in the future.

It is intended that the findings of any such Commission of inquiry will be made public, subject to the disclosure and privacy provisions of other legislation. This will enable lessons learned from the incident to be considered and understood by the widest possible range of stakeholders both in Australia and overseas.

The only statutory mechanism currently available to the responsible Minister for a comprehensive investigation would be a Royal Commission appointed by the Governor-General under the Royal Commissions Act 1902 (Cth). This mechanism is not always appropriate, timely or cost effective. A specific investigatory mechanism, within the offshore oil and gas context of the Act, is a more appropriate, timely and cost effective avenue to investigate significant incidents such as uncontrolled hydrocarbon releases. This amendment does not override the ability for a Royal Commission to be called if warranted by the severity and impact of an incident.
In summary, these amendments:

- enable the responsible Minister, where a significant offshore petroleum or greenhouse gas incident has occurred or where a particular occurrence may have led to a such an incident, to appoint a Commissioner to undertake a Commission of inquiry with the necessary powers of a Royal Commission, within the offshore oil and gas specific context of the Act;

- define the permissions of the Commissioner and underpin the Commissioner’s powers by reference to powers and offences in the Royal Commissions Act. These powers include, but are not limited to:
  
  - the power to compel witnesses and evidence;
  
  - the relevant enforcement and penalty provisions relating to powers under the Act; and
  
  - the provision of the same protection and immunity as a Justice of the High Court to the Commissioner, those assisting the Commissioner, witnesses and others.

- include provisions for the Secretary of the responsible Commonwealth Department to assign portfolio officers to the Commissioner for the duration of the inquiry, as appropriate;

- include provisions for the Secretary of the responsible Commonwealth Department to confer upon a person the functions and powers of a petroleum project inspector, a Greater Sunrise visiting inspector, a greenhouse gas project inspector, and an OHS inspector, as defined in the Offshore Petroleum and Greenhouse Gas Storage Act 2006;

- require the Commissioner to report, and make recommendations if appropriate, to the responsible Commonwealth Minister on matters relevant to the Commission of Inquiry, but do not bind the Commonwealth to implement such recommendations;

- focus on determining the causal factors contributing to a significant offshore incident, rather than on seeking evidentiary material for prosecution;

- require the results of an inquiry commissioned under these powers to be made public, consistent with the Royal Commissions Act 1902;

FINANCIAL IMPACT STATEMENT

These government amendments will not have any financial impact on the Australian Government Budget.
NOTES ON INDIVIDUAL CLAUSES

Part 13A – Inquiries into significant offshore incidents

Item 62A – 62C: Part 1.2, Division 1, Section 7

These items pertain to definitions and clarifications to the Act, relating to the Commission of inquiry.

- Item 62A introduces the concept of a ‘Commissioner’ for the purposes of a Commission of inquiry under the Act.
- Item 62B defines a ‘Commission of inquiry’ for the purposes of the Act.
- Item 62C ensures that the term ‘Royal Commission’ is the same as used in the Royal Commissions Act 1902.

Item 62D: New Part 9.10A

These items form a new Part 13A to the Bill, headed 'Inquiries into significant offshore incidents'. All amendments in Part 16 of the Bill are to the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

These amendments form a new Part 9.10A to the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to govern Commonwealth inquiries into significant offshore incidents, in relation to petroleum activities and greenhouse gas activities under the Act.

New sections

Section 780A – provides for the responsible Commonwealth Minister to appoint a person as a Commissioner, to conduct a Commission of inquiry, as well as the matters which the Commission may address. An appointment must be notified in the Gazette.

This section also confines the inquiry to incidents regarded as significant, and identifies the offshore operations that are within the scope of this section. This section should be interpreted broadly, and may include, for example, such specific matters as those listed in s782 of the Act.

Section 780B enables the Commissioner to conduct hearings for the purposes of the Commission of inquiry. Hearings may be conducted within or outside Australia, using procedures decided by the Commissioner.

Section 780C states that the Commissioner is not bound by the rules of evidence. This provision allows the Commissioner to seek and obtain a wide variety of information as necessary and relevant to the inquiry, without the strictures of judicial
evidence rules. This will fulfil the purposes of this Part to determine the operational, human and regulatory factors contributing to a significant offshore incident, and apply this understanding to the prevention of such incidents in future.

Section 780D provides for the Secretary of the responsible Commonwealth Department to assign officers of the Department to assist the Commissioner in the conduct of a Commission of inquiry. It also specifies that once assigned, such officers will be solely under the direction of the Commissioner. This removes the possibility of conflicting directions and interests. By implication, the Department may contract other independent persons with relevant skills and expertise as required to assist in the inquiry and confer on them the powers of inspectors under section 780F.

Section S780E outlines the application of the *Royal Commissions Act 1902* and provides the Commissioner with powers as outlined in the *Royal Commissions Act 1902* for the purposes of the Commission of inquiry. These powers include, but are not limited to:

- the power to compel witnesses and evidence, even where legal professional privilege, self-incrimination or other issues may be of concern to the witness;

- the relevant enforcement and penalty provisions relating to powers under the *Royal Commissions Act 1902*; and

- the provision of the same protection and immunity as a Justice of the High Court to the Commissioner, those assisting the Commissioner, witnesses and others.

These powers specifically exclude those powers outlined in parts 4 and 5 of the *Royal Commissions Act 1902* (relating to warrants and searches).

This section also outlines the application of s9, s10 and s16 of the *Royal Commissions Act 1902* (relating to regulations and legal proceedings) to this section.

Section 780F allows the Secretary of the Department to confer inspection powers under the Act upon persons assisting the Commissioner of inquiry. The Secretary may determine that such persons have any or all of the functions and powers of a petroleum project inspector, a Greater Sunrise visiting inspector, a greenhouse gas project inspector, and an OHS inspector. These powers are defined in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. These persons

- are subject only to the direction of the Commissioner, to preclude conflicting directions and interests;
• are required to carry an identity card issued by the Secretary of the Department, and return the card at the conclusion of their work for the Commission of inquiry; and,

• have all of the powers and functions of all of the inspectors under the Act, as well as those conferred by the Royal Commissions Act 1902.

Section 780G specifies that laws of the Commonwealth relating the disclosure of information for Royal Commissions also apply to a Commission of inquiry.

**Division 2 – Other amendments**

**Items 62E – 62H: Amendments to the Archives Act 1983**

These items introduce the concept of a Commission of inquiry under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to the Archives Act 1983 to ensure appropriate and lawful record keeping and archival of information relating to a Commission of inquiry.


These items introduce the concept of a Commission of inquiry under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to the Freedom of Information Act 1982. This is to ensure that a Commission of inquiry is exempt from the provisions of the Freedom of Information Act as per the amendments to the Quarantine Act 1908 for the Inquiry into Equine Influenza in 2007.

**Items 62M – 62N: Amendments to the Privacy Act 1988**

These items introduce the concept of a Commission of inquiry under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to the Privacy Act 1988. This is to ensure that a Commission of inquiry is exempt from the provisions of the Privacy Act as per the amendments to the Quarantine Act 1908 for the Inquiry into Equine Influenza in 2007.