THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (NATIONAL REGULATOR) BILL 2011

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
AMENDMENTS TO THE OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (NATIONAL REGULATOR) BILL 2011

GENERAL OUTLINE

The purpose of these Government Amendments is to remove a provision in the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011 (the National Regulator Amendment Bill) that would enable the responsible Commonwealth Minister to incorporate a code of practice or standard as existing from time to time in a direction given to a petroleum titleholder. The Government Amendments also remove existing provisions in the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) that give the relevant regulator the same ability to incorporate material as existing from time to time in directions given to petroleum or greenhouse gas titleholders.

The amendments are in response to concerns raised by the Senate Standing Committee for the Scrutiny of Bills in relation to the applicable provision in the National Regulator Amendment Bill in its Alert Digest No. 5 of 2011.

The OPGGS Act currently provides the Designated Authority (i.e. the relevant State Minister) with a broad general power to give directions to petroleum titleholders. The National Regulator Amendment Bill will abolish the Designated Authority and give this power to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

In addition, item 333 of the National Regulator Amendment Bill proposes to insert a new section 574A into the OPGGS Act to provide the responsible Commonwealth Minister with a general power to give a direction to a petroleum titleholder relating to resource management, resource security or data management. Subsection 574A(7) would enable a direction to apply, adopt or incorporate a code of practice or standard contained in an instrument as in force when the direction takes effect, or as existing from time to time. Several existing provisions in the OPGGS Act provide the same power for a direction issued by the applicable regulator to incorporate codes or standards, either as in force when the direction takes effect or as existing from time to time, including the broad general power to give directions that will be transferred from the Designated Authority to NOPSEMA.

The Senate Standing Committee for the Scrutiny of Bills has expressed concerns in relation to proposed subsection 574A(7) to the effect that incorporating a code of practice or standard as existing from time to time may create uncertainty in the law, and those obliged to obey the law may have inadequate access to its terms. The Senate Committee also noted that, although subsection 574A(10) requires the text of the relevant code or standard to be made available on the Department’s website, this is subject to copyright restrictions.

On further consideration, the Government agrees that the Senate Committee has raised a substantive concern about incorporating material as existing from time to time, in a direction by reference. These Government Amendments therefore remove from proposed subsection 574A(7) the ability to incorporate in a direction material as "existing from time to time".
The rationale for removing the ability to incorporate material as in force from time to time from subsection 574A(7) applies equally to the existing provisions of the OPGGS Act that provide the same ability. Therefore, these Government Amendments will also remove those existing provisions from the OPGGS Act.

These Government Amendments will increase regulatory certainty for petroleum and greenhouse gas titleholders, by ensuring those titleholders will not be subject to requirements included in codes of practice or standards that may change from time to time. If the responsible Commonwealth Minister or NOPSEMA, as applicable, elects to incorporate codes or standards in a direction, that material will be incorporated as in force when adopted in the direction.

FINANCIAL IMPACT STATEMENT

Nil financial impact on the Australian Government Budget.

REGULATORY IMPACT STATEMENT

These Government Amendments do not impose any new regulatory burden on the offshore petroleum industry.
NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Amendment to Clause 2 of the National Regulator Amendment Bill

This clause adds a new item 9 to the table in the existing Clause 2 (Commencement) of the National Regulator Amendment Bill to provide that a new Schedule 6, introduced through these amendments (see clause 3), will commence on the day after the National Regulator Amendment Bill receives Royal Assent.

Clause 2 – Amendment to proposed subsection 574A(7) contained in item 333 of Schedule 2 to the National Regulator Amendment Bill

This clause omits the proposed subsection 574A(7) contained in item 333 of Schedule 2 to the National Regulator Amendment Bill, and replaces it with a substitute subsection 574A(7) that allows the application, adoption or incorporation (with or without modification) of a code of practice or standard contained in an instrument as in force or existing at the time when the direction takes effect. The amendment omits the ability to adopt or incorporate such material as existing from time to time. Instead it will be the case that if the responsible Commonwealth Minister elects to incorporate codes or standards in a direction, that material will be incorporated as in force when adopted in the direction.

Clause 3 – Amendment adding a new Schedule 6 to the National Regulator Amendment Bill

This clause adds a new Schedule 6 “Amendments relating to directions” to the National Regulator Amendment Bill.

Items 1 to 7 – Subsection 316(3); Subsection 351(3); Subsection 376(5); Subsection 380(7); Subsection 383(7); Subsection 574(7); Subsection 580(6)

These items repeal existing subsections 316(3); 351(3); 376(5); 380(7); 383(7); 574(7); and 580(6) in the OPGGS Act, and insert new subsections 316(3); 351(3); 376(5); 380(7); 383(7); 574(7); and 580(6), that allow the adoption or incorporation (with or without modification), into a direction, of a code of practice or standard contained in an instrument as in force or existing at the time when the direction takes effect. The items repeal the ability to adopt or incorporate such material as existing from time to time. This is to ensure a consistent approach to all future directions and the incorporation of extrinsic material.

Item 8 – Application – directions

This item provides that the amendments made by items 1 to 7 apply only to directions issued after the commencement of this item; in other words the amendments will not apply retrospectively.