THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (PETROLEUM POOLS AND OTHER MEASURES) BILL 2016

ADDENDUM TO THE
EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Northern Australia, Senator the Honourable Matthew Canavan)
BACKGROUND TO THE ADDENDUM

This addendum responds to consideration of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Bill 2016 (Bill) by the Senate Standing Committee for the Scrutiny of Bills (Committee).

In its Alert Digest No. 7 of 2016 the Committee sought advice from the Minister regarding:

- whether the application of subsections 54(1A) and (1E) of the OPGGS Act to agreements made before the commencement of the provisions in this bill could cause detriment to any parties to those agreements.

In its Eighth Report of 2016, released on 9 November 2016, the Committee requested that the information provided by the Minister in response to its request be included in the explanatory memorandum to the Bill.

NOTES ON CLAUSES

Schedule 1 – Petroleum Pools
Part 1 – Amendments

**Offshore Petroleum and Greenhouse Gas Storage Act 2006**

**Item 1: After subsection 54(1)**

After the sentence (top of page 7):

“If they are not included, the default position is that subsection 54(1) of the OPGGS Act is the applicable provision.”

Insert new paragraphs:

*Parties are not required to take up these new preservation arrangements provided by new subsections 54(1A) or 54(1E) of the OPGGS Act, and would need to deliberately opt into them by adopting appropriate provisions as part of an apportionment agreement.*

*For new subsections 54(1A) or 54(1E) of the OPGGS Act to apply, the agreement must contain the specific terms required under those subsections (the apportionment provisions). If these terms are not included, existing subsection 54(1) of the OPGGS Act will continue to apply to an apportionment agreement. Subsection 54(1) contemplates that an apportionment agreement relates to a single discrete petroleum pool. If it subsequently becomes apparent that the area specified in the apportionment agreement contains multiple petroleum pools, as may be the case when fuller technical information is obtained as the resource is developed, the apportionment agreement would therefore fail and a new apportionment agreement would need to be reached. This would negate the revenue certainty for both Commonwealth and State/Northern Territory governments, as well as commercial certainty for the titleholder.*
After the sentence (second paragraph on page 10):

“Subsection 54(1G) provides that the question of whether paragraph 54(1E)(g) applies is to be determined on the basis of information known at the time of commencement of the apportionment provision.”

Insert new heading and paragraphs:

Retrospective application

With respect to the retrospective application of the amendments, the Torosa apportionment Deed of Agreement (the Agreement) is currently the only apportionment agreement under section 54 of the OPGGS Act. All parties to the Agreement voluntarily agreed to the inclusion of specific terms in the agreement, that reflect the requirements of proposed subsection 54(1A). This was to ensure that the Agreement will remain valid if it becomes apparent that the Torosa resource comprises, or is likely to comprise, multiple petroleum pools. The parties also included a specific condition precedent for the commencement of the Agreement, linked to the commencement of the amendments to both Commonwealth and State legislation.

There is no detriment caused to any party to the Agreement by virtue of retrospective application of the amendments. Indeed, the amendments will benefit the parties to the Agreement, by providing ongoing certainty as to the apportionment of petroleum recovered from the Torosa field. All parties to the Agreement were consulted regarding the proposed amendments to ensure they were satisfied with the form and application/effect.

The proposed amendments will give effect to any other agreement that may be negotiated and entered into before the commencement of Schedule 1 to this Bill which relies, for its ongoing effectiveness, on the provisions of subsection 54(1A) or 54(1E) of the OPGGS Act. As noted above, there are no other such agreements at this time. However, if any such agreement is made prior to passage and commencement of the Bill, retrospective application will only occur through deliberate inclusion by the parties of the specific terms as required under proposed subsections 54(1A) or 54(1E) of the OPGGS Act. It would therefore be up to the parties to elect to so incorporate such terms in their apportionment agreement, in order to achieve ongoing certainty. Retrospective application would not result in any detriment to such parties – noting that they would have taken positive steps to voluntarily opt into the new preservation arrangements.