



Offshore Petroleum Amendment (Greater Sunrise) Bill 2007

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Law and Bills Digest Section

Contents

Purpose.....	2
Background.....	2
Commonwealth, State and Territory regulation of offshore petroleum operations.....	2
The Greater Sunrise petroleum resources.....	2
The Greater Sunrise Unitisation Agreement	3
Governance of the Greater Sunrise area.....	3
The new treaty on Certain Maritime Arrangements in the Timor Sea (CMATS).....	4
2004 Parliamentary debate.....	5
Position of significant interest groups/press commentary	5
ALP/Australian Democrat/Greens/Family First policy position/commitments	6
Financial implications.....	6
Main provisions	6
Administration of the Eastern Greater Sunrise area.....	6
Consultation.....	7
Licence requirements.....	7
Repeal of PSLA.....	8
Boundary areas	8
Amendments to other Acts	8
Regulations.....	9
Concluding comments	9
Endnotes.....	9

Offshore Petroleum Amendment (Greater Sunrise) Bill 2007

Date introduced: 14 February 2007

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: Sections 1 - 3 commence upon Royal Assent, Schedule 1 commences immediately after the commencement of Section 3 of the Offshore Petroleum Act 2006 (which is upon proclamation).

Purpose

To incorporate into the *Offshore Petroleum Act 2006* the Greater Sunrise Unitisation Agreement, which was signed by Australia and Timor-Leste on 6 March 2003.

Background

Commonwealth, State and Territory regulation of offshore petroleum operations

Since 1967, offshore petroleum operations in Australia have been regulated by Commonwealth / State / Territory 'mirror' legislation. The principal Commonwealth legislation is the *Petroleum (Submerged lands) Act 1967* (The PSL Act). The PSL Act will be replaced by the *Offshore Petroleum Act 2006* (the operative provisions of which are not yet in force) in the reasonably near future, but the latter shares many of the main governance and administrative features of the PSL Act.

Amongst these features are the entities known as the Joint Authority and Designated Authority respectively. There is a Joint Authority and Designated Authority for each of the State or Territory offshore adjacent areas.¹ The Joint Authority is the decision-maker in relation to the granting of exploration permits, production and pipeline licences etc. The Designated Authority has responsibility for the more day to day administrative aspects of managing the offshore petroleum regime in each offshore area. Joint Authorities consist of the relevant Commonwealth Minister and the relevant State or Territory Minister, with Designated Authorities consisting of the relevant State or Territory Minister only. However, as explained below, the governance arrangements for the Greater Sunrise offshore area are different.

The Greater Sunrise petroleum resources

The Timor Sea between northern Australia and Timor-Leste contains proven petroleum resources in the seabed and subsoil. The Sunrise and Troubadour gas fields, which are

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collectively known as 'Greater Sunrise', straddle the Australia/Timor-Leste Joint Petroleum Development Area (JPDA), which was established in the Timor Sea Treaty (2003). The Greater Sunrise field is estimated to contain an estimated 295 million barrels of condensate and 8.4 trillion cubic feet (238 billion cubic metres) of gas.² It is estimated that 20.1 per cent of Greater Sunrise field (the Western Greater Sunrise area) lies within the JPDA, while the remaining 79.9 per cent (The Eastern Greater Sunrise area) lies in Australian waters.³

The joint venture partners for development of Greater Sunrise are Woodside Energy (operator), Shell, Conoco Phillips and Osaka Gas. Woodside has stated that the project is stalled until there is legal, fiscal and regulatory certainty. Even if international treaties regarding Greater Sunrise are finalised, Woodside and its partners face further challenges in developing the field, particularly as Timor-Leste is reportedly insisting that any LNG plant built to support the Greater Sunrise field be located within its borders.⁴ Woodside has stated that while transporting gas by pipeline to Timor-Leste is technically feasible, it is commercially unattractive.⁵

The Greater Sunrise Unitisation Agreement

The Greater Sunrise Unitisation Agreement (IUA) was signed by Australia and Timor-Leste on 6 March 2003. The IUA provides a framework for the development and exploitation of the petroleum resources in the Sunrise and Troubadour fields. Note that the IUA has not yet come into force.

Under the IUA, Timor-Leste's share of the Greater Sunrise field is calculated by referencing the agreed formula that applies to the sharing of the JPDA, giving Timor-Leste a 90 per cent share of the petroleum resource. This means that Timor-Leste receives 90 per cent of the 20.1 per cent of the Greater Sunrise field that lies within the JPDA. Australia's share is the 10 per cent remainder of the 20.1 per cent from the JPDA, and the 79.9 per cent of the Greater Sunrise field outside the JPDA.⁶ In effect, this means that Timor Leste is entitled to approximately 18 per cent of the royalty revenue from the Greater Sunrise field, and Australia 82 per cent. However, should the *Certain Maritime Arrangements in the Timor Sea* (CMATS) treaty (see below) come into force, the revenue split will become 50/50.

Note that some elements of the IUA will be replaced by the ratification of the *Certain Maritime Arrangements in the Timor Sea* (CMATS) treaty later this year (see below).

Governance of the Greater Sunrise area

Administration of the Western Greater Sunrise area is undertaken by the [Timor Sea Treaty Designated Authority](#), a Commonwealth/Timor Leste body. This area is not part of the offshore area for the Northern Territory under the PSL Act. Governance arrangements for the Western Greater Sunrise area were established under the *Petroleum (Timor Sea) Treaty Act 2003*.

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The Eastern Greater Sunrise area is also not part of the offshore area for the Northern Territory under the PSL Act. Accordingly, the Northern Territory government is not represented on the Designated and Joint authorities. The Greater Sunrise area was severed from the Northern Territory offshore area by the *Greater Sunrise Unitisation Agreement Implementation Act 2004*. This legislative action was part of the measures undertaken when the IUA was incorporated into the PSL Act by the *Greater Sunrise Unitisation Agreement Implementation Act 2004*. Note that while the Greater Sunrise Unitisation Agreement Implementation Act was passed by Parliament in 2004, the proclamation of commencement of Schedule 1, Items 1-86 of the Act, was made on 7 February 2007. Therefore the Commonwealth only became the Joint Authority for the Greater Sunrise offshore area on 7 February 2007.

According to the second reading speech, due to ‘unforeseen circumstances and competing priorities’ the severance of the Eastern Sunshine area was not included when the PSL Act was rewritten and renamed the *Offshore Petroleum Act* in 2006.⁷ However, as the operative provisions of the *Offshore Petroleum Act 2006* are still to come into force, the PSL Act has not yet been repealed and as such remains in operation. For background on the Offshore Petroleum Act see the Bills Digest:

<http://www.aph.gov.au/Library/pubs/bd/2005-06/06bd027.pdf>

The Offshore Petroleum Amendment (Greater Sunrise) Bill 2007 seeks to have the IUA incorporated into the *Offshore Petroleum Act 2006*, in the same way that the IUA was incorporated into the PSL Act in 2004 (see the Bills Digest for the Greater Sunrise Unitisation Agreement Implementation Bill 2004:

<http://www.aph.gov.au/library/pubs/bd/2003-04/04bd108.htm>).

In the second reading speech for this bill, the Parliamentary Secretary to the Minister for Industry, Tourism and Resources, Hon. Bob Baldwin MP, stated that the incorporation is a ‘formality’, as the matter was debated in detail by the Parliament in 2004.⁸

The new treaty on Certain Maritime Arrangements in the Timor Sea (CMATS)

A new treaty between Australia and Timor-Leste on *Certain Maritime Arrangements in the Timor Sea* (CMATS), which was signed on 12 January 2006, replaces some elements of the IUA. Under CMATS, Australia and Timor-Leste will split the royalties from the Greater Sunrise field 50:50, and set aside maritime boundary claims for 50 years. Australia estimates its share of the royalties could total \$10 billion over the life of the field.⁹

The government tabled the CMATS treaty in the Senate on 6 February 2007. A short public hearing was held by the Joint Standing Committee on Treaties on 26 February. The National Interest Analysis (NIA) tabled with CMATS can be viewed [here](#). The NIA states in part:

No legislation is required to implement the obligations of the CMATS Treaty at this stage. All of the provisions can be implemented through executive and administrative

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actions by the Government. Once production of Greater Sunrise commences, appropriation legislation will be required in order to transfer revenue to East Timor in accordance with Article 5.

The Parliament of East Timor began debating the treaty in February 2007, with ratification expected in several months, following public consultations.¹⁰

2004 Parliamentary debate

In 2004 the Parliament debated the Greater Sunrise Unitisation Agreement Implementation Bill. The House of Representatives *Debate* (10 March 2004) is available at: <http://www.aph.gov.au/hansard/reps/dailys/dr100304.pdf>. The Senate *Debates* of 25 and 29 March 2004 are available at:

<http://www.aph.gov.au/hansard/senate/dailys/ds250304.pdf>; and

<http://www.aph.gov.au/hansard/senate/dailys/ds290304.pdf>.

The bill was supported by the ALP. In the House of Representatives, independents Mr Andren, Mr Katter and Mr Windsor, and the Greens' Mr Organ, voted against the bill.¹¹ In the Senate, the Australian Democrats, the Greens and Senator Harris (One Nation) voted against the bill.¹²

The Senate Economics Legislation Committee tabled a report on the bill on 24 March 2004. Rather than commenting on technical aspects of the bill, the Committee's report canvassed concerns raised by some interest groups regarding the content of the Greater Sunrise Unitisation Agreement and the means by which it was negotiated.¹³

Position of significant interest groups/press commentary

Timor-Leste organisation La'õ Hamutuk, also known as the Timor-Leste Institute for Reconstruction Monitoring and Analysis, is urging the Timor Parliament to reject the CMATS treaty. La'õ Hamutuk argues that Timor-Leste should continue to push for Australia to renegotiate the maritime boundaries in the Timor Sea, giving Timor-Leste greater control over the area and therefore a larger share of any upstream revenues from the gas fields. La'õ Humutuk made a submission to the Senate Economics Committee inquiry on the 2004 bill. See: <http://www.laohamutuk.org/Oil/curse/06Oilwatch.htm>

The East Timor Action Network (ETAN) opposed the IUA but has given qualified support for the CMATS treaty, stating that it may be the best deal available to Timor-Leste at the current time. See <http://www.etan.org>.

The Timor Sea Justice campaign argued against implementation of the IUA in 2004. A background paper is available at: <http://members.pcug.org.au/~wildwood/05jul28tsjbriefing.html>

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Oxfam Australia ran a campaign against the IUA in 2004 but to date it appears has not commented on the new CMATS treaty. See:

http://www.oxfam.org.au/campaigns/polliewatch/east_timorsea.html.

ALP/Australian Democrat/Greens/Family First policy position/commitments

As noted above, when the 2004 bill which incorporated the IUA into the PSLA was debated, the ALP supported the bill. The Greens and Australian Democrats did not support the bill. There have been no recent statements from the Greens, Australian Democrats or independent members about this proposed bill or the new CMATS.

Financial implications

The Explanatory Memorandum states that the development of the Greater Sunrise field is expected to yield Australia round \$10 billion in upstream revenue over the life of the project.

Main provisions

The bill amends the *Offshore Petroleum Act 2006* (the Act) to give effect to the Greater Sunrise Unitisation Agreement (IUA).

Administration of the Eastern Greater Sunrise area

The bill refers to the Eastern Greater Sunrise area, which as mentioned earlier, falls outside the Joint Petroleum Development Area (JPDA), and the Western Greater Sunrise area, which falls inside the JPDA. The JPDA is administered by the Timor Sea Treaty Designated Authority, under the Timor Sea Treaty 2002.

Prior to the implementation of the *Greater Sunrise Unitisation Agreement Implementation Act 2004* (which occurred on 7 February 2007), the Eastern Greater Sunrise area was jointly administered by the Northern Territory and Commonwealth Governments as it falls under the Northern Territory Offshore Area. Mirroring the 2004 legislation, this bill redefines the Northern Territory Offshore Area, and makes the administration of the Eastern Greater Sunrise area the sole responsibility of the Commonwealth. The Commonwealth Minister alone will discharge the duties of the Joint Authority for the Eastern Greater Sunrise area. Usually, a Joint Authority comprises both Commonwealth and a counterpart State or Territory Minister.¹⁴

Item 10 replaces the existing definition of ‘offshore area’, making a new Principal Northern Territory offshore area (to be jointly administered by the Commonwealth and NT governments); and the new Eastern Greater Sunrise offshore area, to be solely

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administered by the Commonwealth (as explained above). **Items 3 and 11** provide further clarification about the boundaries of these offshore areas.

Item 20 creates the new Greater Sunrise Offshore Petroleum Joint Authority and ensures that the Commonwealth-Northern Territory Offshore Petroleum Joint Authority continues as the Joint Authority for the smaller Principal Northern Territory offshore area. The Explanatory Memorandum states that although the Greater Sunrise authority is called a ‘Joint Authority’, all powers are to be vested in the responsible Commonwealth Minister. The use of the term ‘Joint Authority’ is merely a legislative drafting device adopted to avoid the proliferation of terms for entities which have essentially identical functions.¹⁵ In his second reading speech, Parliamentary Secretary Baldwin stated that despite the separation of Commonwealth and Northern Territory administration, ‘in practice, the Australian Government will work with the Northern Territory Government on the day to day administration of the Greater Sunrise resource’.¹⁶

Item 26 amends existing subsection 48(1) of the Act to clarify who may be a delegate of a Joint Authority. Under current subsection. 48(1), a Joint Authority may delegate any or all of its functions to ‘2 persons together’. **Item 26** replaces ‘2 persons together’ with the requirement that the 2 persons must comprise (a) an APS employee at SES level; and (b) an employee of a State or of the Northern Territory. **Items 27 and 28** ensure that delegations may continue if there is a change in the identity of the holder of the office of Joint Authority (ie the Minister), or a vacancy in the office.

Items 61 to 66 ensure that project inspectors for the Greater Sunrise area have all the standard powers of inspectors under the Act.

Consultation

Item 29 inserts **new section 49A** to the Act:

The Greater Sunrise Offshore Petroleum Joint Authority may consult with the Timor Sea Treaty Designated Authority before exercising any power, or performing any function, that is conferred on the Joint Authority under this Act or the regulations.

This will enable adherence to the terms of the IUA, which requires Australia and Timor-Leste to act in concert on matters to do with the development of the Greater Sunrise unit area.¹⁷ **Item 37** inserts a similar clause relating to the Designated Authority for the Eastern Greater Sunrise offshore area.

Licence requirements

Under the Act, a person is not permitted to recover petroleum unless they have a licence issued under the Act. Royalty payments are also applied.

The bill inserts some new requirements for licence applicants, to ensure consistency in the application processes for the Australian jurisdiction and that overseen by the Timor Sea

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Designated Authority, which is responsible for administration of the JPDA. **Items 45 and 46** insert the additional requirements for licence applicants.

Item 49 inserts **new section 145A**, outlining consultation requirements before the Greater Sunrise Offshore Petroleum Joint Authority may issue an offer document for the grant of a production licence. Under new section 145A, the Greater Sunrise Offshore Petroleum Joint Authority must:

- a) give notice to the Timor Sea Treaty Designated Authority that it is considering granting a licence, together with copies of the Joint Venturers' Agreement and Development Plan which accompanies the licence application
- b) approve a unit operator, the Joint Venturer's Agreement and the Development Plan, and
- c) be satisfied that the Timor Sea Treaty Development Authority has approved the same unit operator, Joint Venturer's Agreement and Development Plan for the development.

If the Joint Authority is not satisfied that the Timor Sea Treaty Designated Authority has given the approvals mentioned above, the Joint Authority must refuse to grant the licence to the applicant (**item 50**).

Repeal of PSLA

The PSLA is to be repealed at the same time as Chapter 2 of the new *Offshore Petroleum Act 2006* comes into effect – on a date to be fixed by proclamation. The delayed implementation of the Offshore Petroleum Act was to enable the States and Territories to implement mirror legislation to administer their offshore areas. **Items 76 to 86** ensure the smooth operation of the Joint Authorities after the repeal of the PSLA. Documents, Designated Authorities, project inspectors etc. will continue to function under the Offshore Petroleum Act.

Boundary areas

Item 87 adds **new Schedule 7** to the Act, which gives the latitude and longitude coordinates to identify the Greater Sunrise areas.

Amendments to other Acts

Items 88 to 96 make minor technical amendments to the *Petroleum Resource Rent Tax Assessment Act 1987* and the *Radiocommunications Act 1992*.

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Regulations

Item 97 provides that the Governor-General may make regulations in relation to transitional and consequential matters. Item 97 (3) provides a broader power for regulations to be made that, in the Minister's opinion, are necessary or convenient for giving effect to any provision of the IUA, so long as they are not inconsistent with any amendments made by the bill.

Concluding comments

As noted by the government, the main provisions of this bill were debated in the Parliament in 2004. However since that debate the relationship between Australia and Timor-Leste has changed, given events in 2006 and the new CMATS treaty now in the process of ratification.

Endnotes

1. The offshore adjacent area is the area that extends from 3 nautical miles seawards of each of the State or Territory's low water mark out to a defined boundary on the continental shelf.
2. National Interest Analysis: Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea, done at Sydney on 12 January 2006, p. 3.
3. John Hartwell, evidence to the Joint Standing Committee on Treaties, 23 June 2003, p. 72.
4. Nigel Wilson, 'Sunrise for Woodside in Timor', the *Australian*, 14 February 2007, p. 31.
5. *ibid.*
6. Senate Economics Legislation Committee, [*Provisions of the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment \(Greater Sunrise\) Bill 2004*](#), Commonwealth of Australia, 23 March 2004, p. 3.
7. Hon. Bob Baldwin MP, 'Second Reading Speech: Offshore Petroleum Amendment (Greater Sunrise) Bill 2007', House of Representatives, *Debates*, 14 February 2007, p. 6
8. *ibid.*
9. *ibid.*
10. Karen Michelmore, 'E. Timor MPS to debate gas deal', the *Canberra Times*, 19 February 2007, p. 7.
11. House of Representatives, *Votes and Proceedings*, No. 157 – 10 March 2004, p. 1498.
12. *Journals of the Senate*, No. 140, 29 March 2004, p. 3241.

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13. Senate Economics Legislation Committee, op. cit.
14. Explanatory Memorandum: Offshore Petroleum Amendment (Greater Sunrise) Bill 2007, 14 February 2007, p. 2.
15. *ibid*, p. 6.
16. Second reading speech, op. cit, p. 7.
17. Explanatory Memorandum, op. cit, p. 8.

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