



Offshore Petroleum Amendment (Datum) Bill 2008

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Law and Bills Digest Section

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Offshore Petroleum Amendment (Datum) Bill 2008

Date introduced: 27 August 2008

House: House of Representatives

Portfolio: Resources, Energy and Tourism

Commencement: The formal parts of the Bill commence on Royal Assent. Schedule 1 commenced on 1 July 2008.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill amends the *Offshore Petroleum Act 2006* (Cth) (the Act), largely to correct a technical error that occurred as a result of the passage of the *Offshore Petroleum Amendment (Miscellaneous Measures) Act 2008* (Cth) (the Miscellaneous Measures Act).

Background

The Act was amended earlier this year by the Miscellaneous Measures Act. The purposes of the Miscellaneous Measures Act were to:

- correct technical errors in the *Offshore Petroleum Act 2006* (the Offshore Petroleum Act)
- implement a policy change by repealing section 327 of the Offshore Petroleum Act, which relates to declarations of emergency by the Commonwealth Minister, and
- convert geodetic data references of area descriptions in Schedules 1 and 2 of the Bill to the Geocentric Datum of Australia (GDA 94).¹

The Bills Digest for the Bill which became the Miscellaneous Measures Act explained the term ‘geodetic datum’ as follows (footnotes omitted):

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1. Sharon Scully, ‘Offshore Petroleum Amendment (Miscellaneous Measures) Bill 2008’, *Bills Digest*, no. 70, 2007–08. An electronic copy is available at <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd070.pdf>, accessed on 1 September 2008.

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According to the explanatory memorandum, a ‘geodetic datum’ is a mathematical model of the world.

The previous geodetic datum was designed for the mainland and its centre was not the centre of the earth.

However, new global positioning systems are more suited to an earth centred or *geocentric* datum.

The conversion to the geocentric datum means that the same point on the earth now has different coordinates. These are built into the amendments.

Unfortunately, as the Hon. Martin Ferguson MP, Minister for Resources and Energy and Minister for Tourism, explained in his second reading speech for the Bill on 27 August 2008, it was an error to convert all geodetic data references of area to the Geocentric Datum of Australia (GDA 94). Mr Ferguson stated:

This bill will correct an error resulting from a technical oversight in the *Offshore Petroleum Amendment (Miscellaneous Measures) Act 2008* which inadvertently replaced all references to the AGD66 with the GDA94. Although the advent of global positioning systems justifies the adoption of an international ‘geocentric’ (earth centred) datum, the Offshore Petroleum Act still needs to refer to the AGD66 for the purposes of determining the position of graticular sections or blocks and refer to GDA94 for certain other purposes, including describing coordinates of a point in a title.

If graticular sections or blocks are determined by reference to GDA94, as currently required by the Offshore Petroleum Act, the grid used to determine the position of the titles will move approximately 200 metres in a north-easterly direction from a grid that refers to AGD66. This outcome was not the policy intention of the *Offshore Petroleum (Miscellaneous Measures) Act 2008* and would cause concern and uncertainty for industry if not corrected. This bill will correct the technical error.²

The adjective ‘geodetic’ comes from the noun ‘geodesy’, which is defined as ‘that branch of applied mathematics which determines the shape and area of large tracts of country, the exact position of geographical points, and the curvature, shape, and dimensions of the earth’.³

The adjective ‘graticular’ comes from the noun ‘graticule’, which is defined as ‘a grid of meridians of longitude and parallels of latitude drawn on a particular map projection; the

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2. The Hon. Martin Ferguson MP, Minister for Resources and Energy and Minister for Tourism, ‘Second reading speech: Offshore Petroleum Amendment (Datum) Bill 2008’, House of Representatives, *Debates*, 27 August 2008, p. 3. See <http://www.aph.gov.au/hansard/reps/dailys/dr270808.pdf>, accessed on 1 September 2008.
 3. *Macquarie Dictionary* (electronic), licensed to the Parliament of Australia by WordGenius.

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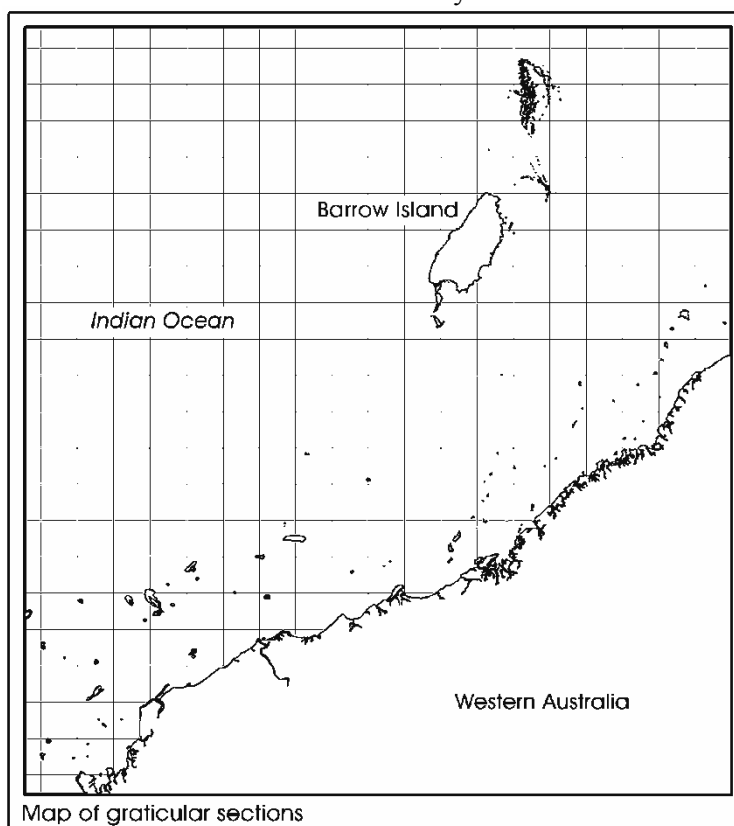
basis on which a map or chart is plotted'.⁴ The term 'graticular section' is defined in section 6 of the Act as having the meaning given by section 16 of that Act. Section 16 provides:

Graticular sections

- (1) For the purposes of this Act, the surface of the Earth is taken to be divided:
- (a) by the meridian of Greenwich and by meridians that are at an angular distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude; and
 - (b) by the equator and by parallels of latitude that are at an angular distance from the equator of 5 minutes, or a multiple of 5 minutes, of latitude;
- into sections called *graticular sections*, each of which is bounded:
- (c) by portions of 2 of those meridians that are at an angular distance from each other of 5 minutes of longitude; and
 - (d) by portions of 2 of those parallels of latitude that are at an angular distance from each other of 5 minutes of latitude.

Simplified map

- (2) This subsection sets out a simplified map illustrating graticular sections off the coast of Western Australia in the vicinity of Barrow Island:



4. *ibid.*

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Blocks

- (3) For the purposes of this Act:
- (a) a graticular section that is wholly within an offshore area constitutes a **block**; and
 - (b) if a part only of a graticular section is, or parts only of a graticular section are, within an offshore area, the area of that part, or of those parts, constitutes a **block**.

Note: See also section 245 (certain portions of blocks to be blocks).

Block that is constituted by a graticular section

- (4) A reference in this Act to a **block that is constituted by a graticular section** includes a reference to a block that is constituted by the area of a part only, or by the areas of parts only, of a graticular section.

Graticular section that constitutes a block

- (5) A reference in this Act to a **graticular section that constitutes a block** includes a reference to:
- (a) a graticular section only part of which constitutes a block; or
 - (b) a graticular section only parts of which constitute a block.

Note: For datum, see section 22.

Section 16 was not amended by the Miscellaneous Measures Act.

Financial implications

The Bill has no financial impact on the Government budget because it makes ‘purely technical amendments’.⁵

According to the Regulatory Impact Statement contained in the Explanatory Memorandum for the Bill, the Bill ‘does not impose any regulatory burden on the petroleum industry’.⁶

Main provisions

Schedule 1 to the Bill contains only six items.

Item 1 amends the note following subsection 16(5) of the Act (quoted above) to replace the reference to section 22 of the Act with a reference to **proposed section 21A** (see **item 4** below).

5. Offshore Petroleum Amendment (Datum) Bill 2008, Explanatory Memorandum, p. 2.

6. *ibid.*

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Item 2 amends section 20 of the Act, by repealing paragraphs 20(a) and (b) and replacing them with **proposed paragraphs 20(a), (b) and (c)**. Section 20 contains the objects of ‘Subdivision A’, which sets out datum for ascertaining the position of points etc. (Subdivision A is located in Division 2 of Part 1.2 of the Act, which deals with interpretation.) The amendments are largely consequential upon the introduction of **proposed section 21A** into the Act (see **item 4** below), but also involve minor revision of the language used in section 20.

Item 3 inserts a definition of the term ‘Australian Geodetic Datum’ into section 21. The definition refers to the definition of that term in *Gazette* No. 84 of 6 October 1966 (AGD66 geodetic data set). That definition is a technical one, with the *Gazette* notice stating:

At the twenty-fourth meeting of the National Mapping Council held in Melbourne the Council, on the 21st April, 1966, adopted the following datum for Australian Geodetic Surveys:

Designation.—The Australian Geodetic Datum.

Reference Spheroid.—The Australian National Spheroid with a major (equatorial) radius of 6,378,160 metres and a flattening of 1/298.25.

Origin.—The Johnston Geodetic Station situated in the Northern Territory at East Longitude 133° 12' 30.0771" and south latitude 25° 56' 54.5515" and with a ground level elevation of 571.2 metres above the Spheroid.⁷

Item 4 inserts **proposed section 21A** into the Act. **Proposed subsection 21A(1)** states that for the purposes of the Act, ‘the position on the surface of the Earth of a graticular section or block’ is to be determined by reference to the Australian Geodetic Datum, as defined in the proposed amendment to section 21 set out above. However, **proposed subsection 21A(2)** limits the application of **proposed subsection 21A(1)** by stating that it does not apply ‘for the purposes of describing, in a title or other instrument under this Act, the position on the surface of the Earth of a point, line or area’. In this way, the application of the definition of ‘Australian Geocentric Datum’ is confined to graticular sections or blocks.

As stated in the Explanatory Memorandum for the Bill:

This amendment will remove uncertainty about title boundaries for petroleum titles, ensure alignment between existing and future titles, and facilitate the award of new exploration permits and the release of new exploration acreage.⁸

7. *Commonwealth Gazette* No. 84, 6 October 1966, p. 4984.

8. Offshore Petroleum Amendment (Datum) Bill 2008, Explanatory Memorandum, p. 3.

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Item 5 repeals paragraph 22(1)(a), which refers to the position on the surface of the Earth of ‘a graticular section or block’ being determined by reference to the Geocentric Datum of Australia. The term ‘Geocentric Datum of Australia’ is defined in section 21 of the OP Act by reference to the ‘GDA94 geocentric data set’ (being one of the key subjects of the amendments in the Miscellaneous Measures Act mentioned at the beginning of this Digest). Such amendment is consequential upon the introduction of **proposed section 21A** (see **item 4** above). The effect of the amendment is that while the position on the surface of the Earth of ‘a graticular section or block’ will be determined by reference to the Australian Geodetic Datum, the position on the surface of the Earth of the parallel of latitude described in subsection 7(2) of the Act (the Coral Sea area), and areas such as scheduled areas for the states and territories, and the Greater Sunrise offshore area (being matters mentioned in section 22), will continue to be determined by reference to the GDA94 (ie by earth-centred data used by global positioning systems). The reason for the distinct treatment of graticular sections or blocks is stated in the Explanatory Memorandum for the Bill:

If graticular sections or blocks are determined by reference to GDA94, the grid used to determine the position of title boundaries will move approximately 200 metres in a north-easterly direction from a grid that refers to AGD 66. This is not the policy intention and would cause concern and uncertainty for industry if not corrected.⁹

Concluding comments

As mentioned above, the Bill corrects a technical error made by the Miscellaneous Measures Act which could ‘cause concern and uncertainty for industry’ [particularly the petroleum industry] if not corrected.¹⁰

The Bill operates retrospectively. In some circumstances, retrospective operation of legislation may be problematic, particularly in the areas of criminal law or property law where an amendment affects a substantive legal right. Here, however, the Bill makes only minor technical amendments to the Act and returns the method of determining the position on the surface of the Earth of ‘a graticular section or block’ to the way it was before the commencement of the Miscellaneous Measures Act on 1 July 2008 (just two months ago).

9. *ibid.*

10. *ibid.*

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