OFFSHORE OIL UPDATES

By Nathan Evans*

OFFSHORE OIL POLICY AND UNCLOS

An article in this journal last year described the response of Australia to the Law of the Sea Convention (LOS Convention) coming into force.[1] To briefly recapitulate, it was described in that article that Australia had moved to avail itself of provisions pertaining to the territorial sea, continental shelf and exclusive economic zone (EEZ) by enacting the *Maritime Legislation Amendment Act* 1994 (Cth). The effect of this statute was to append to the *Seas and Submerged Lands Act* 1973 (Cth) the relevant Parts of the LOS Convention, being Pts II, V and VI. Formula are explicated in Art 76 of Pt VI pursuant to which coastal States may claim continental shelves that exceed in width their EEZs. Relying upon Art 76, the *Maritime Legislation Amendment Act* enlarged Australia's continental shelf considerably beyond 200 miles in areas of likely petroleum prospectivity adjacent to the mainland, such as the Exmouth Plateau and the Tasman Ridge. A number of Australian mid-ocean territories also generate their own continental shelves, the jurisdiction over which is vested in Australia. These include Heard and McDonald Islands, and the Kerguelen Plateau located in the Southern Ocean proximate to the Australian Antartic Territory.

Inspired by the exploitable mineral potential located in offshore waters, the Commonwealth in December 1995 released its oceans policy "Australia's Ocean Age: Science and Technology for Managing our Ocean Territory". Fundamental to this policy was the establishment of the Australian Ocean Territory (AOT), being the combined area of ocean space covered by Australia's EEZ and the extended continental shelf, territorial EEZs and continental shelves, and waters adjacent to the Australian Antartic Territory. In total, the AOT covers an area of 16.1 million square km. The AOT is not the product of legislation and therefore has no formal legal basis such as is accorded other oceanic zones. However, the annunciation of the AOT by the Commonwealth represents a move to develop resources policy for the entire ocean area which Australia may claim under the LOS Convention.

"Australia's Ocean Age" predicted near total Australian oil self-sufficiency for 14 years into the future, observing that 90 per cent of reserves lie offshore. To maintain this sufficiency the policy emphasises the need to explore further offshore and in deeper water. The Gippsland Basin is described as the only "well explored" area adjacent to the Australian mainland. Estimates of the prospectivity of the AOT in areas beyond the 200 nautical mile EEZ range between 1 and 10 billion barrels of oil (Table 1).

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1. Pat Brazil, "UNCLOS Comes into Force — Implications for Mining" (1995) 14 *AMPLA Bulletin* 1-3.

TABLE 1
Australia's Deep Seabed Petroleum Potential Beyond 200 Nautical Miles

	Estimate (in millions barrels)	
Region	*Minimum*	*Best*
Lord Howe Rise	1000	4500
Norfolk Ridge	30	340
South Tasman Rise	280	2000
NW Exmouth Plateau	160	860
Kerguelen Plateau	260	6000

ENVIRONMENTAL IMPACT ASSESSMENT AND OFFSHORE OIL

A proposal to explore for petroleum in Commonwealth waters adjacent to Western Australia is currently undergoing environmental impact assessment under the *Environment Protection (Impact of Proposals) Act* 1974 (Cth). The Wandoo Full Field Development EIA is significant because it is the first time in relation to federal waters that a proponent has been designated under the administrative procedures of the *Impact of Proposals Act*.[2] Statutory environmental requirements are routinely attached as conditions to tenements issued under the *Petroleum (Submerged Lands) Act* 1967 (Cth) to ensure that environmental standards are maintained. However, the formal EIA process exposes proposals to external environmental review and public scrutiny beyond Ministerial discretion.

The *Impact of Proposals Act* is currently being reviewed by the Commonwealth, and changes to either the parent statute or the administrative procedures are likely. One proposed amendment seeks to give to the Environment Minister the responsibility for triggering the statute, currently a prerogative of the Action (development) Minister. The *Gunns* case of early last year has complicated the review process by examining aspects of EIA previously unreviewed by the courts.[3] The effect of *Gunns* was to widen the procedural application of the *Impact of Proposals Act* to now bring within the purview of Commonwealth EIA most federal government decisions, including decisions which previously have been subject to assessment.

In response to the difficulties presented by the *Gunns* decision, the Commonwealth acted to exempt a number of decisions from the *Impact of Proposals Act*.[4] Although the Wandoo proposal was not directly implicated by *Gunns*, the current assessment appears to have been motivated at least in part by the administrative adjustments flowing from that decision. Further policy developments in the area of Commonwealth EIA are likely in 1996. These amendments will go some way towards clarifying the uncertainty with respect to the application of the *Impact of Proposals Act* to offshore oil proposals.[5]

2. Commonwealth of Australia, *Gazette* No GN 46, 22 November 1995.
3. *Tasmanian Conservation Trust v Minister for Resources and Gunns Ltd*, unreported, Federal Court of Australia, NG 536 of 1994, 10 January 1995.
4. Commonwealth of Australia, *Gazette* No GN 25, 28 June 1995.
5. Department of Primary Industries and Energy, *Annual Report 1994-1995* (AGPS).