

OFFICIAL

PEP-11**Current issue**

- *The Federal Court of Australia has accepted consent orders proposed by the Australian Government and Asset Energy to end litigation relating to the Petroleum Export Permit 11 (PEP-11).*
- *The PEP-11 decision will be returned to the Commonwealth-New South Wales Offshore Petroleum Joint Authority for consideration.*

Brief talking points

- The Federal Court has accepted consent orders proposed by the Australian Government and Asset Energy to end litigation relating to the PEP-11 title.
- The PEP-11 decision will be returned to the Commonwealth-New South Wales Offshore Petroleum Joint Authority for consideration.
- It is not appropriate to provide ongoing commentary on future decisions that could come before the Joint Authority, whether PEP-11 or any other matter.
- Any decision made by the Joint Authority in relation to PEP-11 will be in line with the requirements of the relevant legislation.

Key facts

- *The Australian Government and Asset Energy have reached an agreement to end ongoing litigation relating to PEP-11.*
- *Asset Energy had commenced proceedings in the Federal Court to challenge former Prime Minister Scott Morrison's decision to refuse applications in relation to PEP-11.*
- *On 14 February 2023, the Federal Court accepted proposed consent orders and the PEP-11 decision will be returned to the Commonwealth-New South Wales Offshore Petroleum Joint Authority for consideration.*
 - *In the first instance, the Government of New South Wales, as the New South Wales member of the Joint Authority, will consider its position in relation to the project as a relevant*

decision maker under the Offshore Petroleum and Greenhouse Gas Storage Act (2006).

- *The Commonwealth will then consider the matter.*

s 42

- *On 3 February 2023, the NSW Premier Dominic Perrottet wrote to the Prime Minister outlining his government's opposition to any renewal of the PEP-11 title.*
- *The NSW Election will take place on Saturday 25 March 2023 and the NSW caretaker period will begin on Friday 3 March, which may impact the timing of the Joint Authority's future decisions.*
- *Media is reporting that the NSW Government will legislate new planning laws to allow the state Government to refuse the project.*

Background

- *PEP-11 is a Petroleum Exploration Permit located in Commonwealth waters, adjacent to Newcastle and Sydney. The permit covers an area of approximately 4,575 km².*
- *Asset Energy Pty Ltd is the operator and holds an 85 per cent interest in PEP-11. Bounty Oil and Gas NL hold the remaining 15 per cent interest.*
- *Former Prime Minister Morrison was appointed by the Governor-General to administer the Department of Industry, Science, Energy and Resources on 15 April 2021.*
- *DISR administers the Offshore Petroleum and Greenhouse Gas Storage Act 2006, which regulates offshore petroleum titles.*
- *On 26 March 2022, Mr Morrison wrote to the National Offshore Petroleum Titles Administrator (NOPTA) advising of the Commonwealth-NSW Joint Authority's decision to refuse the application by Asset Energy for the suspension, extension and variation of PEP-11.*
- *Consent orders made by the Federal Court to end litigation are that:*


OFFICIAL

- *The Joint Authority decision dated 26 March 2022, to refuse the Asset Energy's application for a variation and suspension of the conditions for PEP-11 is quashed.*
- *Asset Energy's application is remitted to the Joint Authority to be determined in accordance with law.*
- *The Commonwealth must pay Asset Energy's costs, as agreed or assessed.*
- *The proceeding is otherwise dismissed.*
- *Decision-making on petroleum titles is the responsibility of the 'Joint Authority'. The Joint Authority is a body constituted by the responsible Commonwealth Minister and the responsible State Minister (or their respective delegates).*
- *The New South Wales member of the Joint Authority will first make their decision, with the final decision made by the Commonwealth.*

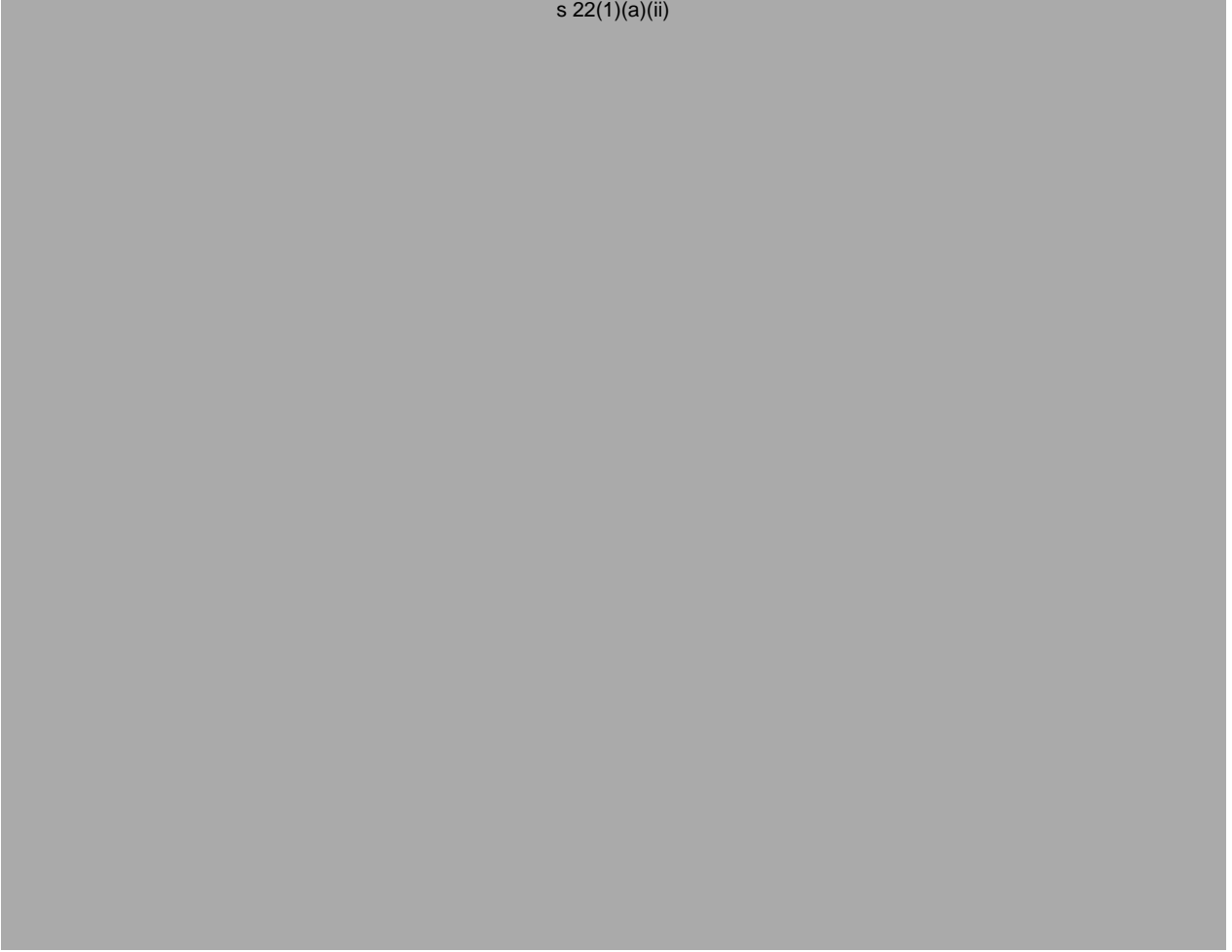
~~PROTECTED: Cabinet~~

NEW SOUTH WALES BRIEF

s 22(1)(a)(ii)

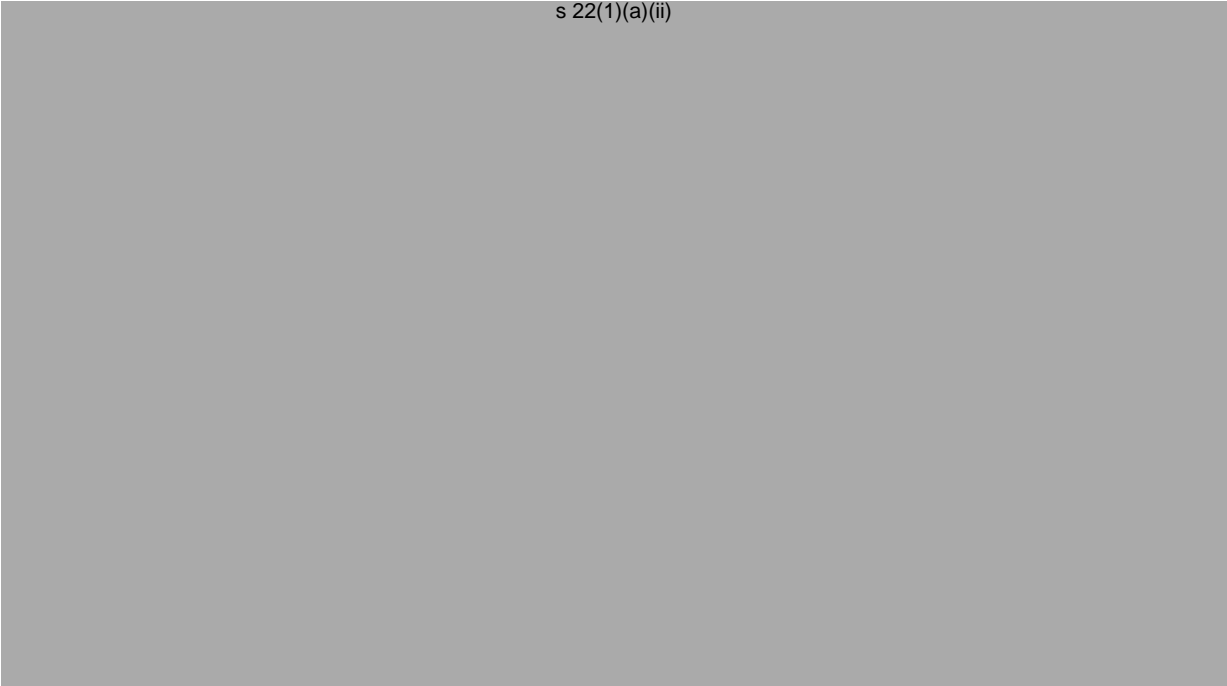


s 22(1)(a)(ii)

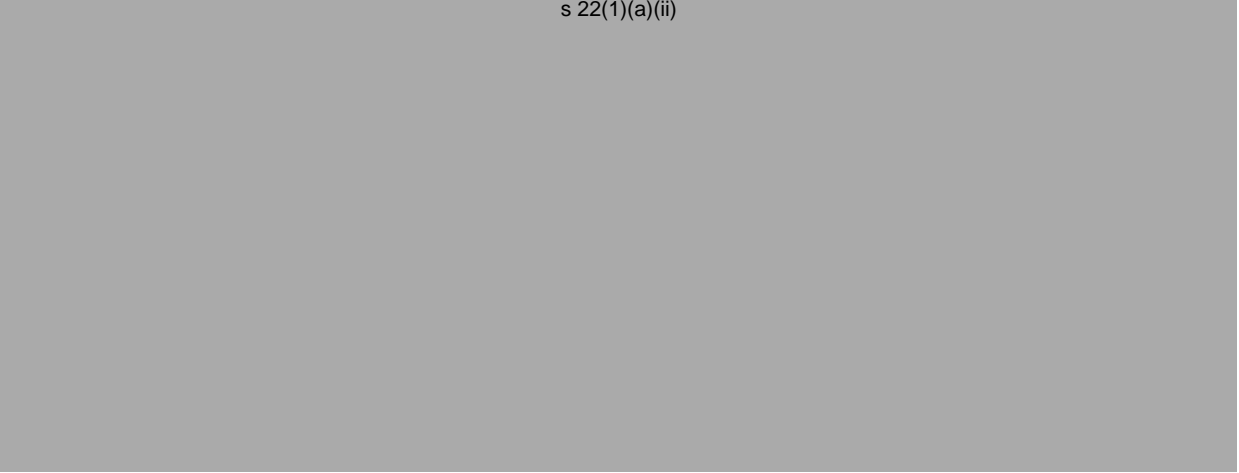


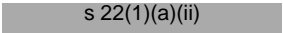
- Former Premier Perrottet wrote to the Prime Minister on 3 February 2023 reaffirming the NSW Government's determination to oppose the extension of PEP-11.

s 22(1)(a)(ii)



s 22(1)(a)(ii)



Contact Officer:  s 22(1)(a)(ii), Commonwealth State Relations Branch
SES Officer: Hope Peisley, Assistant Secretary – Commonwealth State Relations Branch

OFFICIAL: Sensitive Legal privilege

PDR: MS22-000886

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
 Secretary
 Mr Duggan
 Mr Chisholm
 Mr Reid
 Ms Gartmann
 Mr Trease
 Mr Rush
 Mr Strapp
 Mr Martin
 Mr Lange

To: Prime Minister

s 42, s 47C

s 42, s 47C

PEP-11 LEGAL PROCEEDINGS –

s 42, s 47C

s 42, s 47C

PMO
 CoS
 s 22(1)
 (a)(ii)

Recommendations - that you:

s 42, s 47C

s 22(1)(a)(ii)

ANTHONY ALBANESE

Date:

17/7/22

Comments:


Key Points:

1. On 26 March 2022 the Commonwealth-New South Wales Offshore Petroleum Joint Authority determined to refuse an application by Asset Energy Pty Ltd (Asset) to suspend and vary conditions attached to Asset's exploration permit PEP-11.
 - a. The Joint Authority is comprised of the Commonwealth Minister with responsibility for the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) and the NSW Minister with responsibility for resources (Deputy Premier Paul Toole). Under your Government, the Minister for Resources, the Hon Madeleine King MP, is responsible for administering the OPGGS Act.

OFFICIAL: Sensitive Legal privilege

2. On 15 April 2021, the then Prime Minister was appointed by the Governor-General to administer the Department of Industry, Science, Energy and Resources portfolio. The then Prime Minister subsequently made the decision as the responsible Commonwealth Minister under the Joint Authority to refuse Asset's application on PEP-11.
3. On 1 June 2022 solicitors for Asset filed an application in the Federal Court of Australia seeking a judicial review of the decision of the Joint Authority decision to refuse PEP-11.
 - a. The application for judicial review names the "Prime Minister" as respondent for the Commonwealth, in recognition of the fact that the refusal decision for PEP-11 was made by the then-Prime Minister on 26 March 2022.

s 42, s 47C



Consultation:

AGS; Department of Industry, Science & Resources; PM&C Government Division

Roland Trease
First Assistant Secretary (A/g)
Industry, Infrastructure & Environment Division
14 July 2022

Policy Officer: s 22(1)(a)(ii)
Phone no: s 22(1)(a)(ii)