

Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Bill 2013

Introduced into the House of Representatives on 20 March 2013

Portfolio: Resources and Energy

Overview

1.79 The bill seeks to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act) to strengthen the offshore petroleum regulatory regime, and to streamline administration of the Act. The principal amendments will:

- impose a statutory duty on petroleum titleholders, in the event of an escape of petroleum arising from operations in the titleholder's title area, to stop, control and clean-up the escape of petroleum, remediate damage to the environment caused by the escape, and undertake environmental monitoring of the impacts of the escape; and
- provide the offshore petroleum regulator, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), and the courts with an increased range of enforcement tools.

1.80 The bill provides for additional enforcement options in the form of infringement notices, daily penalties for continuing offences or contraventions of continuing civil penalty provisions, injunctions, and adverse publicity orders.

1.81 The bill will also enable a NOPSEMA inspector to give an environmental prohibition notice or an environmental improvement notice to a titleholder requiring action to remove significant threats to the environment and will enable NOPSEMA to publish on its website improvement notices and prohibition notices issued by NOPSEMA inspectors.

Compatibility with human rights

1.82 The bill is accompanied by a self-contained statement of compatibility which provides a detailed analysis of how the bill engages with the rights to work and rights in work, the right to privacy, the right to a fair and public hearing and the right to minimum guarantees in criminal proceedings.¹

1 Right to work: article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); right to privacy: article 17 of the International Covenant on Civil and Political Rights (ICCPR); fair hearing/minimum criminal guarantees: article 14 of the ICCPR.

Right to just and favourable conditions of work

1.83 The statement of compatibility notes that the right to just and favourable conditions of work includes a right to safe and healthy working conditions and that:

The introduction of measures such as injunctions and daily penalties for continuing offences or contraventions of continuing civil penalty provisions encourages persons to comply with their obligations under the Act, or return to a position of compliance if the person is in breach, including obligations relating to occupational health and safety.²

1.84 The statement of compatibility includes a detailed discussion of the provisions that will be enforceable by injunction and the manner in which the enforcement of those provisions would contribute to the achievement of safe working conditions for employees at an offshore petroleum facility. The statement of compatibility also argues that the introduction of daily penalties 'will encourage persons in breach of their obligations under the Act in relation to health and safety to quickly remedy the non-compliance'.³

Right to privacy

1.85 The bill provides for NOPSEMA to publish prohibition notices and improvement notices given by a NOPSEMA inspector. The statement of compatibility notes that this may have an impact on the right to privacy and reputation. The statement of compatibility states that the purpose of these amendments is 'to enable lessons learned from inspections to be shared with other members of the offshore petroleum industry, which will in turn assist those companies to comply with regulatory requirements, and will also help to increase the transparency of NOPSEMA's operations'.⁴ The end result is aimed at contributing to the prevention of threats to workplace health and safety and the environment.⁵

1.86 The statement of compatibility notes that the bill requires that if any notice that is to be published contains personal information, NOPSEMA must ensure that the information is de-identified before the notice is published. The statement of compatibility also notes that the disclosure of any information is subject to the *Privacy Act 1988*.

1.87 The committee considers that the publication of prohibition notices and infringement notices is aimed at achieving a legitimate objective and has sufficient

2 Statement of compatibility, p 6.

3 Statement of compatibility, p 6.

4 Statement of compatibility, p 7.

5 Statement of compatibility, p 7.

safeguards and limitations to be compatible with the right to privacy under article 17 of the ICCPR.

Infringement notices and the right to a fair hearing

1.88 The bill provides for infringement notices under the Act to be issued and enforced in accordance with Part 5 of the proposed *Regulatory Powers (Standard Provisions) Act 2013* (the Regulatory Powers Act), still currently before the Parliament. Under the Regulatory Powers Act, an infringement officer will be able to issue an infringement notice for contraventions of strict liability offences that are made enforceable under that Act by the provisions in this bill.

1.89 The bill provides for the use of infringement notices in relation to minor offences with strict liability only. The statement of compatibility states that '[i]n order to determine the provisions in the Act that would be enforceable by an infringement notice, each strict liability offence provision was therefore examined to determine whether it would be appropriate to apply an infringement notice in relation to a breach'.⁶ In addition, the statement noted that in determining whether to make an offence subject to an infringement notice, consideration was given to whether an enforcement officer could easily make an assessment of innocence or guilt based on straightforward and objective criteria, for example where there were clear-cut physical elements of the offence.

1.90 The statement of compatibility includes a table listing the offences in respect of which it is proposed that infringement notices may be issued.⁷ The overwhelming majority of these offences relate to a failure to provide information or a report, to keep records in the appropriate format.

1.91 A person served with an infringement notice has two options. The first is to pay the amount specified in the notice. If the person pays the amount, then clause 111 of the Regulatory Powers (Standard Provisions) Bill provides that a number of consequences follow, including that any liability of the person for the alleged contravention is discharged; the person may not be prosecuted nor may proceedings be taken for a civil penalty in relation to the contravention; the person is not regarded as having admitted guilt or liability for the alleged contravention; and the person is not regarded as having been convicted of the alleged offence.

1.92 The second option is to contest the notice before a court, which would observe all the guarantees provided for by article 14 of the ICCPR in relation to the determination of a criminal charge.

6 Statement of compatibility, p. 9.

7 Statement of compatibility, pp 9-10.

1.93 In light of the above and the other safeguards mentioned in the statement of compatibility, the committee considers that the bill does not appear to give rise concerns about the right to a fair hearing.

Right to cross-examine witnesses against oneself

1.94 Proposed new section 611G of the Act will enable a relevant chief executive⁸ to issue a signed certificate stating that they did not allow further time for a person to pay a penalty stated in an infringement notice, and that the penalty has not been paid within 28 days after the notice was given, or by any extended deadline they have allowed. The relevant chief executive may also issue a signed certificate stating that a specified infringement notice was withdrawn on a day specified in the certificate. For the purposes of all proceedings, including criminal proceedings, a document purporting to be a certificate must, unless the contrary is established, be taken to be such a certificate and to have been properly given. In addition, a certificate is taken to be prima facie evidence of the matters stated in the certificate.

1.95 The statement of compatibility raises the issue that article 14(3) entitles a person to cross-examine witnesses but that this right may be subjected to reasonable limitations. It argues that this provision, which provides only that the certificate is prima facie rather than conclusive evidence, is a reasonable limitation on the right.

1.96 The committee considers that the provision relating to certificates provided by the relevant chief executive officers and constituting prima facie evidence in criminal and civil proceedings does not give rise to issues of incompatibility with article 14 of the ICCPR.

8 That is, the CEO of NOPSEMA or the Secretary of the relevant Department.