

## Chapter 2

### Views on the bills

2.1 This chapter summarises the views held by stakeholders on the provisions of the bills and their effects.

#### Support for the bills

2.2 The committee received five submissions in total. Of these, the area that raised the most concern related to schedule 16 of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018 (the MA bill).

2.3 The agency directly responsible in this area, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), raised no concerns about the bills and advocated that they come into force 'as soon as is reasonably practicable' and argued that 'the proposed amendments will assist NOPSEMA to drive positive safety, well integrity and environmental management outcomes for regulated operations'.<sup>1</sup>

2.4 Similarly, the Department of Industry, Innovation and Science (DIIS) was also supportive of both bills with particular emphasis on the MA bill.

2.5 With regard to the schedule 13 amendments on coastal water boundary changes and greenhouse gas titles contained in that bill, the DIIS noted that:

... with provisions similar to those progressed a few years ago for petroleum, the Miscellaneous Bill contains amendments to remove doubt that greenhouse gas titles may be renewed in the event of a change to the boundary between Commonwealth waters and state coastal waters.<sup>2</sup>

2.6 The DIIS also noted that with regard to powers of NOPSEMA inspectors—mainly covered in schedule 15—that:

The amendments in the Miscellaneous Bill will also strengthen and clarify the powers of NOPSEMA inspectors to determine whether regulated entities are compliant with their obligations under the [Offshore Petroleum and Greenhouse Gas Storage Act 2006] OPGGS Act and associated regulations.<sup>3</sup>

2.7 The DIIS was also positive about the introduction of enforceable undertakings, (schedule 16) seeing them as adding to the extensive range of compliance and enforcement responses available to Government and enabling an

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1 National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), *Submission 1*, p. 1.

2 Department of Industry, Innovation and Science (DIIS), *Submission 2*, p. 3.

3 DIIS, *Submission 2*, p. 3.

appropriately targeted and tailored enforcement response, taking specific titleholder and broader industry considerations into account.<sup>4</sup>

2.8 The DIIS concluded that, with regard to the MA bill:

... this suite of measures underscores an ongoing commitment to the maintenance and continuous improvement of a strong and effective regulatory framework for offshore petroleum and greenhouse gas storage. The measures also serve to enhance the regime's currency and alignment with international best practice.<sup>5</sup>

### **Critical comment on the bills**

2.9 The committee also received submissions from the Electrical Trades Union of Australia (ETU),<sup>6</sup> the Australian Manufacturers Workers' Union (AMWU)<sup>7</sup> and the Australian Council of Trade Unions (ACTU) all of who were critical only of the MA bill. As the ETU and AMWU submissions were brief and their comments mirrored and supported the ACTU submission, the committee has concentrated its analysis on that submission.

2.10 The ACTU focussed its critique on schedule 16 which amends the OPGGS Act to enable the Minister, the National Offshore Petroleum Titles Administrator (the Titles Administrator) and the CEO of NOPSEMA to accept and enforce undertakings in relation to compliance with provisions of the OPGGS Act and regulations, specifically with regard to work, health and safety (WHS).<sup>8</sup>

2.11 The ACTU expressed two concerns in relation to these amendments. First, in certain circumstances the ACTU argued that enforceable undertakings are not an appropriate regulatory tool and should be prohibited.<sup>9</sup> The ACTU stated:

Enforceable undertakings are an alternative to court-imposed sanctions and, when properly utilised, can achieve long-term, sustainable improvements to WHS culture and practice in workplaces and across sectors. However, when overused or misused, enforceable undertakings have the potential to undermine compliance. The ACTU is supportive of enforceable undertakings being available to WHS regulators, but only if they are subject to appropriate safeguards and strict guidelines and their usage is consistently monitored.<sup>10</sup>

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4 DIIS, *Submission*, 2, p. 4.

5 DIIS, *Submission* 2, p. 4.

6 Electrical Trades Union of Australia (ETU), *Submission* 3

7 Australian Manufacturing Workers' Union (AMWU), *Submission* 5.

8 Australian Council of Trade Unions (ACTU), *Submission* 4, p. 1.

9 ACTU, *Submission* 4, p. 1.

10 ACTU, *Submission* 4, p. 2.

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2.12 The ACTU recommended an amendment to the bill to address these concerns:<sup>11</sup>

- Enforceable undertakings are prohibited in the following circumstances, except where exceptional circumstances exist:
  - the contravention is connected to a fatality;
  - the contravention involves reckless conduct;
  - the applicant has a recent prior conviction connected to a work-related fatality; or
  - the applicant has more than two prior convictions arising from separate investigations.<sup>12</sup>

2.13 Second, NOPSEMA is, in the ACTU's view, a regulator that has demonstrated 'an overreliance on the lower levels of the regulatory pyramid' and 'an unwillingness to sensibly penalise or prosecute repeat offenders'.<sup>13</sup> The ACTU argued that 'this problem could be exacerbated if the NOPSEMA is given this additional enforcement tool without appropriate legislative safeguards'.<sup>14</sup>

2.14 The ACTU argued that NOPSEMA needed to improve its strategic enforcement activity and argued that prosecution at 'the top of the regulatory pyramid' is necessary to maximise cooperative compliance at the bottom.<sup>15</sup> The ACTU further expressed its concern that:

...given NOPSEMA's failure to properly exercise its enforcement powers, and given the inherently dangerous nature of the offshore petroleum industries, that appropriate limitations on the use of enforceable undertakings need to be provided for in legislation and not in policy, which is developed and enforced by the regulator.<sup>16</sup>

2.15 Further critical comments of the current regulatory regime that governs the oil and gas industry and its regulator in the three union submissions were not strictly related to the schedules and clauses contained in the bills.

2.16 The committee received no negative comments regarding the Offshore Petroleum and Greenhouse Gas Storage Amendment (Regulatory Levies) Bill 2018.

### **Committee view**

2.17 As stated in chapter 1, the amendments proposed within these bills include: to transfer regulatory responsibility for offshore greenhouse gas wells and environmental management from the Minister to NOPSEMA; strengthen and clarify the powers of

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11 ACTU, *Submission 4*, p. 1.

12 ACTU, *Submission 4*, p. 2.

13 ACTU, *Submission 4*, p. 1, and p. 3.

14 ACTU, *Submission 4*, p. 1.

15 ACTU, *Submission 4*, p. 4.

16 ACTU, *Submission 4*, p. 4.

NOPSEMA inspectors; ensure valid designation of certain areas as 'frontier areas', impose a well investigation levy, an annual well levy and a well activity levy in relation to greenhouse gas wells; revise provisions which impose a well activity levy; and revise provisions which impose a safety investigation levy and well investigation levy.

2.18 Apart from the two explanatory memorandums which would benefit from a revisit in terms of their structure and clarity, the committee supports the intent of the amendments in both bills and believes that the amended Acts will improve the regulation of offshore petroleum and greenhouse gas wells.

2.19 The committee is cognisant of the unions' concerns regarding enforceable undertakings. A review of enforceable undertakings after a period of two years would be of assistance in determining if the concerns expressed are justified. Accordingly, the committee recommends that a review period be added to the amendments.

### **Recommendation 1**

**2.20 That Senate Standing Committee on Economics recommends a two year review period for enforceable undertakings be inserted into the proposed amendments to ascertain if are the most suitable way of ensuring compliance with the relevant legislation.**

2.21 The other concerns raised by the three unions largely deal with broader workplace safety issues not necessarily related to the schedules and clauses contained in these two bills. The committee notes that the Senate Education and Employment References Committee will shortly complete its inquiry into the work health and safety of workers in the offshore petroleum industry and is examining many of the issues raised by these submitters. Notwithstanding these concerns, which the committee see as legitimate, the committee supports the intent and content of these bills and recommends that they be passed.

### **Recommendation 2**

**2.22 That Senate Standing Committee on Economics recommends that the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018; and the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2018 be passed.**

**Senator Jane Hume**

**Chair**