

Additional Comments

1.1 Labor Senators are broadly supportive of the intent of this legislation but wish to make some brief remarks, particularly about Schedule 16, which 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.¹

The use of enforceable undertakings

1.2 Labor Senators agree with the Australian Council of Trade Unions (ACTU) that offshore petroleum should be held to the highest levels of workplace health and safety standards.

In considering the ACTU's recommendation, the industry context must be taken into account. Offshore petroleum is one of Australia's most dangerous industries. It is dangerous because the nature of the work performed is inherently high risk, and because it is performed in remote locations where medical assistance is not at hand. In this context our WHS laws ought to be at their most rigorous.²

1.3 Labor Senators also note that the same submission highlights that the use of enforceable undertakings in the case of fatalities at workplaces and other related circumstances was not considered best practice during the *Best Practice Review of Workplace Health and Safety Queensland*.

WHS regulation ought to be best practice in the offshore petroleum industry given its inherently dangerous nature. The Best Practice Review of Workplace Health and Safety Queensland Final Report (Best Practice Review) considered in detail the use of enforceable undertakings in WHS regulation and recommended that, among other things, in relation to the enforceable undertakings framework:

- a. The Work Health Safety Act 2011 be amended to expressly prohibit enforceable undertakings being accepted for contraventions or alleged contraventions of the WHS Act 2011 that relate to circumstances involving a fatality.
- b. The Guidelines for the acceptance of an enforceable undertaking be amended to provide a general exception (unless exceptional circumstances exist) where the applicant has a recent prior conviction connected to a work-related fatality; the applicant has more than two prior convictions arising from separate investigations, or the application relates to an incident involving a very serious injury.

1 Explanatory Memorandum, p. 9.

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

- c. For consistency, 'very serious injury' should be defined as stated in the WorkCover New South Wales Enforceable undertakings: Guidelines for proposing an enforceable undertaking.³

1.4 Labor Senators also note the work of Senator Marshall in establishing and chairing an inquiry into work health and safety impacts of workers in the offshore petroleum industry. Work such as this highlights that Labor takes issues relating to workplace health and safety very seriously.

Environmental Management

1.5 Labor Senators note this bill transfers regulatory responsibility for environmental management of offshore greenhouse gas storage from the Minister to NOPSEMA, strengthens and clarifies the role of NOPSEMA inspectors and modifies related levies.

1.6 Labor Senators further note that the Bill seeks to improve administrative regulatory compliance arrangements.

Recommendations in the Chair's report

1.7 Labor Senators note Recommendations 1 and 2 in the Chair's report. Labor Senators also note the work of the Shadow Minister, who is in discussions with the Minister with the purpose of drafting amendments that can provide suitable arrangements governing the use of enforceable undertakings.

1.8 Labor Senators reserve their final judgment on this bill until the discussions between the Minister and Shadow Minister are concluded.

Recommendation 1

1.9 That the Government continue to work with the Opposition to find amendments to this legislation that would limit the use of enforceable undertakings to where it is appropriate.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

3 ACTU, *Submission 4*, p. 5.