



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 47 2003–04

Petroleum (Submerged Lands) Amendment Bill 2003

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2003

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Petroleum (Submerged Lands) Amendment Bill 2003

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8 October 2003

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Petroleum (Submerged Lands) Amendment Bill 2003

Date Introduced: 17 September 2003

House: Representatives

Portfolio: Industry, Tourism and Resources

Commencement: Sections 1 to 3 and Schedule 1 Part 1: the day the Act receives the Royal Assent. Schedule 1 Part 2: 1 January 2005.

Schedule 2: the first day of the month after the month in which the Act receives the Royal Assent.

Schedule 3: a day to be fixed by Proclamation or, for any provision not commenced within 6 months of the Royal Assent to this Act, the day after the 6 month period.

Purpose

The Bill amends the *Petroleum (Submerged Lands) Act 1967*. Its primary purpose is to create a nationally consistent occupational health and safety regime for the offshore petroleum industry by the establishment of the National Offshore Petroleum Safety Authority ('NOPSA'). Provision is also made for the NOPSA to have jurisdiction over onshore petroleum industry sites should the relevant State or Territory agree.

Schedule 2 of the Bill corrects a minor anomaly relating to the GST component of certain fees levied on the industry while Schedule 3 establishes new industry data management practices.

Background

In 1979 the Commonwealth and the States agreed to a division of offshore powers and responsibilities known collectively as the Offshore Constitutional Settlement ('OCS').¹ A major consequence of the OCS was that, as States and the Northern Territory retained responsibility for coastal waters up to three nautical miles from the low water mark, the Occupational Health and Safety ('OH & S') legislation of those States and the Northern Territory applied to activities of the petroleum industry in those waters. This has resulted

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in significant costs and inefficiencies for companies that operate in more than one State and / or the Northern Territory.

These inefficiencies have been more pronounced since the industry has adopted the ‘safety case regime’ for risk management in the industry. This regime had its origins in the response to the 1988 Piper Alpha disaster in the North Sea, and places responsibility for safety on the operators not the regulator. A ‘safety case regime’, once developed, is approved by the regulator and establishes the basic standard upon which a facility is assessed for the effectiveness of its safety management systems. The ‘safety case regime’ sits alongside the States’ and Northern Territory OH & S legislation.

Basis of policy commitment

In 1998 the government undertook, in the *Minerals and Petroleum Resources Policy Statement*, to look for further opportunities to improve Australia’s offshore safety record by evaluating all aspects of Australia’s safety case regime. Given that the safety case regime had been in place for six years it was considered appropriate to undertake a comprehensive review. The resultant report, *Future Arrangements for the Regulation of Offshore Petroleum Safety*, was delivered to the Minister for Industry, Science and Resources in August 2001.

It was found that there were too many Acts, directions and regulations regulating offshore petroleum activities, their boundaries were unclear and application was inconsistent as between jurisdictions. In addition, State and Northern Territory safety regulators were found to lack regulatory skill, capacity and consistency and did not have a clear view of their role.²

Position of significant interest groups

The formation of a single independent national agency to regulate and oversee safety in the offshore petroleum industry is the preferred outcome of the industry peak body, APPEA, and the International Association of Drilling Contractors.³

As noted in the Regulation Impact Statement, the ACTU in their written response to the Issues Paper⁴ supports the formation of such an agency as the best means of giving the workforce confidence that decisions affecting their health and safety are not unduly impacted by industry or government perspectives.⁵

Any consequences of failure to pass

Should the Bill not be passed the offshore petroleum industry will, given the identified deficiencies in the existing regime, continue to operate at considerably less than optimal efficiency with respect to OH & S issues. This will result in the continuation of

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unnecessary costs for the industry and, conceivably, contribute to the occurrence of avoidable accidents with attendant injury or death as well as economic costs.

Main Provisions

Schedule 1

Part 1

Items 1 to 4 establish NOPSA. **Item 4** is the most significant in that it introduces **new sections 150XA to 150Z**, the machinery provisions for the NOPSA.

The **new section 150XE** reflects the ‘safety case’ approach already adopted by the industry, which is subject to policy principles enunciated by the Commonwealth Minister (**new section 150XF**). The NOPSA is subject to direction by the Commonwealth Minister or State or Northern Territory Minister via a request directed to the Commonwealth Minister (**new section 150YX**). Ministerial directions can be given as to the performance of NOPSA’s functions or the exercise of its powers and must not relate to the operations of a particular facility (**new subsections 150YX(1) and (2)**). Although the Commonwealth Minister can act without consulting the relevant State or Northern Territory Minister in urgent circumstances, any directions so given lapse after 30 days unless State or Territory agreement is obtained (**new subsections 150YX(8) and (9)**). The NOPSA may operate in the jurisdiction of a State or the Northern Territory, but only if provided for by that State or Territory and only where there is an agreement with the Commonwealth as to the payment of NOPSA fees (**new section 150XI**).

The **new Division 3, new sections 150XL to 150XW**, establishes and specifies the functions and membership of the NOPSA board, while the **new Divisions 4, 5 and 6 (new sections 150XX to 150YM)** provide for staffing of and planning by the NOPSA. Staff must be persons engaged under the *Public Service Act 1999 (Cth)* (**new section 150YH**).

The new **Division 8 (new sections 150YQ to 150YT)** authorises the NOPSA to levy a range of fees which are designed to meet the Commonwealth’s cost recovery policies. There will be no impact on Commonwealth revenue or expenditure according to the Financial Impact Statement.⁶ These fees are categorised as: service fees, safety investigation levy, safety case levy and the pipeline safety management plan levy.

The Commonwealth Minister must cause a review of the NOPSA operations for the three year period up to 1 January 2008 and for every subsequent three year period from that date. Such reviews are to be completed within six months of the end of the three year period or such other time as the Minister allows (**new section 150Z**). This permits the Commonwealth to synchronise the review with a State or Northern Territory review (**new subsection 150Z(6)**). The Commonwealth Minister must table in each House of

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Parliament a copy of a section 150Z review within 15 sitting days of the review having been made available to the Minister (**new subsection 150Z(8)**).

Part 2

Part 2 contains the substantive amendments relating to OH & S provisions. **Items 5 to 10** exclude the operation of State and Northern Territory legislation to offshore petroleum facilities.

Items 11 to 39 address the specifics of safety on and around industry facilities, including the provision of penalties (**Item 38, new clauses 2B and 3** of existing Schedule 7) and the duties of employees/contractors and employers (**Item 39, new clauses 4 and 5** of existing Schedule 7). There has been a significant increase in the penalty amount (to 1000 penalty units) for breaches of the duties in **Items 38 and 39**⁷.

Items 40 to 83 provide amendments to make more effective the machinery provisions of Schedule 7 to the current *Petroleum (Submerged Lands) Act 1967*. Schedule 7 contains the existing 'safety case' methods for the industry. Penalties associated with these amendments are either 200 or 50 penalty units.

Items 84 to 116 contain substantial amendments to the existing Schedule 7 provisions with respect to health and safety representatives. These amendments give effect to the implementation of a national and consistent approach to OH & S measures, which is complemented by a comprehensive regime for OH & S inspectors (**Items 121 to 197**)

Schedule 2

Items 1 to 4 clarify when and how the payment of GST to the States and Northern Territory occurs with respect to fees collected by the NOSPAs.

Schedule 3

Item 1, new section 122A provides for the making of regulations concerning the collection and use of data by the NOPSAs. **Items 3 to 13** repeal previous definitions of particular types of information and substitute a more workable process by prohibiting the public release of any information by the NOPSAs.

It should be noted that the **new section 150J** preserves the operation of the *Privacy Act 1988 (Cth)* and most importantly the amendments do not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988 (Cth)*. This ensures that confidential and commercially valuable industry information is properly protected.

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Concluding Comments

The Bill is supported by the industry as well as the ACTU. A comprehensive Regulation Impact Statement indicates that the NOSPAs are the best option for achieving best practice in OH & S measures in the offshore petroleum industry. The amendments represent the conclusion of an extensive process of consultation within the industry which has included state and territory representation.

Additionally the Bill provides a structure within which the NOPSAs can operate on a full cost recovery basis while promoting a significantly higher standard of safety within the offshore petroleum industry than is currently achieved. The imposition of the various levies will be via a new Act – see the Offshore Petroleum (Safety Levies) Bill 2003 which is the subject of a separate Bills Digest.

Endnotes

- 1 Petroleum (Submerged Lands) Amendment Bill 2003 *Explanatory Memorandum*, p. 3.
- 2 *Regulation Impact Statement: Formation of a National Statutory Authority to Regulate Safety in the Offshore Petroleum Industry*, paragraph 11.
- 3 *ibid.*, paragraph 99.
- 4 Refer to *Australian Offshore Petroleum Safety Case Review – Report of the Independent Review Team* which can be located at: www.industry.gov.au/
- 5 *ibid.*, paragraph 102.
- 6 Petroleum (Submerged Lands) Amendment Bill 2003 *Explanatory Memorandum*, p. 41.
- 7 It should be noted that pursuant to the *Crimes Act 1914 (Cth)* subsection 4B(3) a court may, where it thinks fit, impose a penalty up to five times greater where a body corporate is convicted of an offence against these provisions.

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