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Offshore Petroleum (Safety Levies) Bill 2003

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Offshore Petroleum (Safety Levies) Bill 2003

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10 October 2003

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Offshore Petroleum (Safety Levies) Bill 2003

Date Introduced: 17 September 2003

House: Representatives

Portfolio: Industry, Tourism and Resources

Commencement: Sections 1 and 2 and unless otherwise specified for other sections: the day on which this Act receives Royal Assent. Sections 3 to 11, on 1 January 2005.

Purpose

The Commonwealth, the States and the Northern Territory have, by agreement, decided to create the National Offshore Petroleum Safety Authority ('NOPSA') for the purposes of regulating, in a nationally consistent manner, safety in the offshore petroleum industry. NOPSA is the subject of a separate Bill currently before the House – the *Petroleum (Submerged Lands) Amendment Bill 2003*. This Bill gives effect to the agreement to create NOPSA as a full cost recovery agency.

Cost recovery pursuant to this Bill will be by industry levies the level of which will be set by regulation before the NOPSA commences activities in 2005.

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 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

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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

The Government has announced a formal cost recovery policy with the aim of heightening the transparency, consistency and accountability of cost recovery by government agencies.² This Bill is consistent with that policy which reflects the Government's response to the Productivity Commission Report no. 15 *Cost Recovery by Government Agencies*.

Position of significant interest groups

State and Northern Territory Governments have supported the formation of NOPSA and that the agency will operate on a full cost recovery basis.³

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.⁴

As noted in the Regulation Impact Statement, the ACTU in their written response to the Issues Paper⁵ 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.⁶

Neither the industry employers nor employee representatives have registered disagreement with the principle of NOPSA operating on a full cost recovery basis.

Any consequences of failure to pass

Should the Bill not be passed the NOPSA will not be able to function which will negate the purpose of the *Petroleum (Submerged Lands) Amendment Bill 2003*. Should the NOPSA not be established and made functional the current identified inefficiencies and concomitant risks associated with existing OH & S regimes will continue, to the detriment of the industry and those working in it.

Significant technical flaws

The Bill contains no provisions with respect to reviewing the operations of the levy process and how it is administered.

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Main Provisions

Part 2 deals with the safety investigation levy, **Part 3** the safety case levy and **Part 4** the pipeline safety management plan levy. The safety case levy is projected to meet the bulk of the NOPSAs operating costs,⁷ projected at \$6.1 million for the first year of operation.⁸

For each of the three types of levies, the amount of the relevant levy is to be specified in, or worked out under, regulations. Regulations may also provide that the amount of the relevant levy varies according to the particular circumstances of the accident, facility or pipeline. This capacity to vary the amount of levy is designed to ensure equity as between industry participants.

Each of the levies may be imposed in relation to accidents, facilities or pipelines in Commonwealth waters or State / Territory coastal waters.

The various levies are imposed when the conditions set out in the **new subsection (1)** of each of the **new sections 5 to 10** occur. Note that in the case of the safety investigation levy, some of these conditions are still to be specified in regulations: **new paragraphs 5(1)(c) and 6(1)(c)**.

Concluding Comments

The effectiveness of this Bill relies on continuing the process of consultation already commenced with the industry. Without such consultation with and input from the industry, the regulations yet to be drafted pertaining to identifying levy triggering events will not be sufficiently targeted to maximise the benefits to be achieved by a single, national regulator. Continued effective consultation will also be required to ensure that the quantum of levies is set equitably.

Endnotes

- 1 Petroleum (Submerged Lands) Amendment Bill 2003, *Explanatory Memorandum*, p. 3.
- 2 *Media Release: Senator Nick Minchin, Commonwealth Cost Recovery Policy 44/2002* 4 December 2002. See also the Guidelines for Commonwealth Agencies at: <http://www.finance.gov.au/finframework/cost%5Frecovery.html>
- 3 *Media Release: Hon Ian Macfarlane, Minister for Industry, Tourism and Resources, New Authority to Improve Petroleum Industry Safety 03/181*, 17 September 2003.
- 4 *Regulation Impact Statement: Formation of a National Statutory Authority to Regulate Safety in the Offshore Petroleum Industry*, paragraph 99.

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- 5 Refer to *Australian Offshore Petroleum Safety Case Review – Report of the Independent Review Team* which can be located at:
http://www.industry.gov.au/content/controlfiles/display_details.cfm?ObjectID=3203C03E-CD21-4829-A6CA882FA73F4CD0
- 6 *Regulation Impact Statement: Formation of a National Statutory Authority to Regulate Safety in the Offshore Petroleum Industry*, paragraph 102.
- 7 Offshore Petroleum (Safety Levies) Bill 2003 Second Reading Speech, *House Hansard* 17 September 2003 p. 19499 the Hon Mr Entsch, Parliamentary Secretary to the Minister for Industry, Tourism and Resources.
- 8 *Media Release: Hon Ian Macfarlane, Minister for Industry, Tourism and Resources*, op. cit.

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