



Offshore Petroleum Bill 2005

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Offshore Petroleum Bill 2005

Date Introduced: 23 June 2005

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: The Bill commences on Royal Assent. However, the great majority of its operative provisions only commence on Proclamation. The reason for this is to allow relevant States and Territories to make any necessary changes to their equivalent offshore petroleum legislation.

Purpose

The purpose of the Offshore Petroleum Bill 2005 is to replace the *Petroleum (Submerged Lands) Act 1967*, which is the main existing Commonwealth legislation dealing with offshore petroleum exploration and production. The Bill is not intended to introduce any major policy or legal changes to current regulatory arrangements.

Background

The Offshore Petroleum Bill 2005 (the Bill) is a revamp of the long standing *Petroleum (Submerged Lands) Act 1967* (PSLA). The PSLA has been the primary legislation for the administration of Australia's offshore petroleum resources for almost 40 years and through age and many amendments it has become complex and unwieldy. The PSLA is actually repealed by the Offshore Petroleum (Repeals and Consequential Amendments) Bill 2005.

The PSLA and associated Acts¹ provide the legal framework within which petroleum exploration, development and production activity takes place in Australia beyond State coastal waters – from beyond the three nautical mile limit extending out to Australia's maritime seabed boundaries. Within this legal framework, the Commonwealth, the States and the Northern Territory administer and supervise industry activities through what are called Joint Authorities. There is a Joint Authority for each of the areas offshore every State and the Northern Territory – seven in total. Each Joint Authority comprises the Commonwealth Minister and the relevant State/Territory Minister. In addition, the relevant State/Territory Minister administers some of the more day-to-day operations in the relevant offshore area. In this capacity, the relevant Minister is called the Designated Authority.

The legislation provides for orderly exploration and development of petroleum resources, and sets out a basic framework of rights, entitlements and responsibilities of government and industry.

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The more important matters covered in the legislation are:

- issuing of invitations to apply for exploration permits;
- granting of permits and determination of conditions of the title;
- granting of retention leases over current non-commercial discoveries;
- granting of production and pipeline licences to successful explorers;
- granting of infrastructure licences;
- renewal of titles (where appropriate);
- approval and registration of legal transactions, including transfer of titles, preparation and issue of special prospecting authorities, access authorities, authorities for scientific investigations, variations of title conditions, exemptions from title commitments, cancellation of titles for non-compliance with conditions of title; and
- issuing of regulations and directions.²

Whilst the new Bill proposes conspicuous changes to the structure and style of the former Act, it seeks to implement only a modest number of minor policy adjustments from the framework that previously existed. Given the length of the Bill (over 600 pages), only a few of these technical changes and policy adjustments highlighted by the second reading speech are covered in the Main Provisions section of the Digest. Note that the second reading speech actually given in Parliament was substantially shorter than the version tabled with the Bill and Explanatory Memorandum. In some cases, this Digest quotes from the tabled version as it contains useful information.

The Government canvassed the proposed Bill with various stakeholders whose focus in part revolved around ensuring that major rewordings in the new Bill intended to simplify and streamline previous text did not amount to any major changes in meaning as compared to the PSLA.

Main Provisions

New section 7 primarily makes some changes to terminology in defining ‘offshore areas’ to which the Bill applies. In general, the outer limit of such areas is the continental shelf. However, there a number of areas in which neighbouring countries may have continental shelf claims that overlap Australia’s. **New subsection 7(4)** clarifies that an area over which Australia does not ‘exercise sovereign rights’ pursuant to an agreement with another country is not to be taken as part of the continental shelf for the purposes of the above definition.

The tabled version of the second reading speech notes that the Bill replaces the PSLA phrase ‘special circumstances’ with ‘sufficient grounds’ in a number of cases. This amendment relates to the power of the Joint and Designated Authorities to renew various

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types of permits. The PSLA generally provides guidance as to whether a permit should or should not be renewed, but sometimes may provide for exceptions in ‘special circumstances’. The stated rationale for the change is that the decision-maker’s statutory ability to make an exception should not depend on a situation being ‘unusual, abnormal, exceptional or uncommon’³ – rather that the decision-maker need only be satisfied there are ‘sufficient grounds’ to warrant the exception. It is not possible to readily estimate the potential effect of this amendment as the re-drafting of the legislation has changed its overall structure and the ‘sufficient grounds’ phrase appears four times⁴ whereas the former ‘special circumstances’ appears over ten times in the PSLA.

New section 138 deals with conditions imposed by a Joint Authority in granting a production licence. One of the matters raised in the second reading speech given to Parliament appears to relate to it. The relevant part of the speech states:⁵

The next issue is not about a policy change in an administrative sense; rather, it is a proposal to make explicit in the act a policy that has been adhered to by governments for some time.

It is proposed to make clear that the conditions imposed by the joint authority on the holder of a production licence are not to be prescriptive to the point of requiring the holder to drill a well, to carry out a survey or to spend a specific amount of money on exploration activities.

There will also be a provision that recognises that the production of petroleum involves a substantial and long-term financial commitment by licensees and that, accordingly, continuity and predictability are important features of the regime as it relates to production licences and the conditions applicable to them, particularly when licences come up for renewal.

The prohibition on prescriptive conditions appears to be a reference to **new subsection 138(7)** which provides:

Despite subsection (1), a production licence must not be granted subject to specific conditions requiring the licensee to:

- (a) make a well in the licence area; or
- (b) carry out a seismic survey, or any other kind of survey, in, or in relation to, the licence area; or
- (c) spend particular amounts on the carrying out of work in, or in relation to, the licence area.

Currently, the equivalent provision in the PSLA, subsection 56(1), states that the Joint Authority may grant a production licence ‘subject to conditions such as [it] thinks fit and are specified in the licence’.

The ‘continuity and predictability’ issue referred to above in the extract of the second reading speech appears to be reflected in **new subsection 138(9)**.

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With respect to safety zone offences, the second reading speech states that:⁶

The bill also includes some changes to the provisions seeking to ensure the safety of offshore petroleum facilities from incidents such as vessel impact. One amendment is to the definition of ‘owner of a vessel’. In most parts of Australia’s marine jurisdiction, if a vessel is involved in a violation of a safety zone and the vessel is leased, the lessee could avoid prosecution but the owner, who could be isolated from the action, could face 10 years imprisonment. This anomaly is considered unacceptable and the equivalent provision in the bill ensures that an uninvolved owner of a leased vessel would not be guilty of an infringement.

The above is given effect through **new section 326** – the actual owner of the vessel will not be liable for safety zone offences if the person operating the vessel also has ‘whole control and possession of the vessel’. **New section 329** contains a graduated scale of safety zone offences with varying penalties according to the degree of fault by the ships’ master, owner, or person controlling the vessel. For example, when the owner or ships’ master *intentionally* enters a prohibited safety zone, the maximum penalty is 15 years imprisonment. There also is a strict liability (no fault) offence carrying imprisonment for up to five years: **new subsection 329(9)**. In relation to the **new subsection 329(9)** offence, the tabled second reading speech comments:

While an imprisonment penalty under strict liability is not a common provision in Commonwealth Acts, it is justified in these instances because of the serious consequences of a breach of the provisions. Members need to bear in mind the isolation, vulnerability and physical defencelessness of offshore petroleum facilities, the possible attractiveness as terrorist targets and the potentially serious consequences of damage to, or interference with, facilities or operations. When considering alleged offences that have occurred in an offshore area, legislators need to be realistic about the viability of conducting a successful prosecution if that can be achieved only with proof of intention, recklessness or negligence. It follows that there should also be a strict liability offence.

The current occupational health and safety provisions of the PSLA allow for authorised ‘investigators’⁷ to enter premises ‘at any reasonable time’ to carry out investigations to ascertain any breach of the PSLA or in relation to any accident or dangerous incident. These investigators can compel assistance in their searches and seize and remove things related to the investigation. However, **Part 4 of Schedule 3** of the Bill contains wider search and seizure powers where there are reasonable grounds to suspect that things that are evidence of an offence are present on relevant premises. Warrants can be also be obtained from Magistrates to exercise various powers. According to the second reading speech given in Parliament, the expansion of these powers ‘has been recommended by the Director of Public Prosecutions ... and draw extensively on relevant model provisions in the Crimes Act 1914.’⁸

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Concluding Comments

As mentioned in the background to this digest, the Bill is exceptionally long at over 600 pages. This digest does not attempt to examine the Bill in detail. A more comprehensive review of the legal and policy framework of offshore petroleum regulation may be done should the Government choose to undertake a more far-reaching modification of the framework:⁹

The fact that the rewriting process...[of the PSLA]...has been an editorially-focused exercise rather than a policy-focused one has meant that a number of other policy issues have been reserved for later consideration and to be possibly the subject of an amendment bill at a future date.

Endnotes

- 1 For example, the *Petroleum (Submerged Lands) Fees Act 1994*.
- 2 Department of Industry, Tourism and Resources, Mineral and Petroleum Exploration and Development in Australia, a Guide for Investors: [*Information Sheet 11 Petroleum Legislation*](#).
- 3 Tabled second reading speech.
- 4 See **new sections 233(5), 259(2), 273(2) and 284(2)**.
- 5 Hon. Warren Entsch MP, Parliamentary Secretary to the Minister for Industry, Tourism and Resources, 'Second Reading Speech: Offshore Petroleum Bill 2005' House of Representatives *Debates*, 23 June 2005, p. 19.
- 6 *ibid.*
- 7 Currently these investigators are persons that are appointed as inspectors by the relevant Designated Authority. See sections 125 and clause 29 of Schedule 7 of the PSLA. Under the Bill, such persons are simply termed inspectors and are appointed by the National Offshore Petroleum Safety Authority – see **new section 390**.
- 8 Hon. Warren Entsch MP, *op. cit.*, p. 19.
- 9 *ibid.*, p. 20.

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