



Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009

Moira Coombs
Law and Bills Digest Section

Contents

Purpose	3
Background	3
Council of Australian Governments (COAG)	3
Inter-Governmental Agreement for OH&S regulatory and operational reform.	4
Review of regulatory burden on the upstream petroleum (oil and gas) sector.	5
National Offshore Petroleum Safety Authority.	6
Roles and responsibilities	6
Safety case approach.	6
Varanus Island (Western Australia) gas explosion.	7
Background information	7
Initial report.	7
Subsequent joint inquiry into the Varanus Island gas explosion.	8
Jurisdictional complexities.	9
Key OH&S issues.	10

Regulation of pipelines	10
OH&S offence provisions and absolute liability.	11
Committee consideration	11
Financial implications	12
Main provisions	12
Part 1–Access authorities.	13
Part 2 – Locations.	13
Part 3–Petroleum scientific investigation consents	14
Part 4–OH&S prosecutions	14
Part 5–Notification of discovery of petroleum	15
Part 6–Datum.	15
Part 7–Pipeline safety management plan levy	16
Part 8–Consent to operate a pipeline	17
Part 10–OH&S duties	17
Part 13–Greenhouse gas storage	19

Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009

Date introduced: 19 March 2009

House: Representatives

Portfolio: Resources and Energy

Commencement: Sections 1 to 3 - on Royal Assent

Schedule 1 Parts 1 to 6 and Parts 9 to 14 - on the day after Royal Assent

Schedule 1 Parts 7 and 8 - on 1 January 2010.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The main purpose of the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009 (the Bill) is to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act) to:

- implement policy changes that have arisen since the passing of the Act
- strengthen the offence provisions and to correct omissions and clarify certain provisions relating to greenhouse gas that came into effect in November 2008, and
- make technical amendments.¹

Background

Council of Australian Governments (COAG)

At the end of 2007, COAG's Business Regulation and Competition Working Group (the COAG Working Group) prioritised reforms proposing to benefit competitiveness, productivity growth and workforce mobility. The COAG Working Group decided on 27

1. Please note that Part 12 of the Bill proposes an amendment to the *Administrative Decisions (Judicial Review) Act 1977*.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

areas of reform to be included in the implementation program, of which two of the following key areas appear relevant to proposed amendments in the Bill:

- national harmonisation of occupational health and safety (OH&S) laws was a top priority to be reflected in an intergovernmental agreement (IGA) by May 2008:
 - COAG to consider scope for a reduced implementation timetable in July 2008, and
 - model legislation to be developed and submitted to the Workplace Relations Ministers' Council by September 2009²
- nine new areas were added to COAG's regulation work program, which included:
 - upstream petroleum (oil and gas) regulation
 - maritime safety, and
- in relation to upstream petroleum, COAG agreed that the Productivity Commission (the Commission) undertake a review on the regulation of crude oil and natural gas projects involving more than one jurisdiction and report back to COAG by April 2009.³

Inter-Governmental Agreement for OH&S regulatory and operational reform

The Inter-Governmental Agreement (the Agreement) was signed on 3 July 2008 between the Commonwealth and the States, the Australian Capital Territory and the Northern Territory. The Agreement was designed to:

1.4 ... produce the optimal model for a national approach to OHS regulation and operation which will:

- (a) enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
- (b) address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
- (c) create efficiencies for governments in the provision of OHS regulatory and support services; and

-
2. Council of Australian Governments' Business Regulation and Competition Working Group, *Commonwealth-State Implementation Plan and Forward Work Program*, Agreed Implementation Plan, Attachment B to the Communique, 26 March 2008.
 3. COAG, 26 March 2008.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

(d) achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.⁴

Review of regulatory burden on the upstream petroleum (oil and gas) sector

In 2008, COAG identified the upstream petroleum sector as an area ‘where overlapping and inconsistent regulation threatens to impede economic activity, and agreed that the Productivity Commission should undertake a review.’⁵

The Report of that review⁶ was released on 30 April 2009. According to the Chairman of the Commission:

the focus of the Commission’s report is on measures that have the potential to reduce unnecessary burdens on the upstream oil and gas sector—in other words, regulatory burdens that can be removed without compromising desirable outcomes, such as relating to resource management, the environment, heritage, development, land access and occupational health and safety.⁷

Chapter Seven of the Report deals specifically with OH&S issues in the upstream petroleum sector.

In the Report, the Commission recommended that:

- the Federal Government establish a new national offshore petroleum regulator in Commonwealth waters, with regulatory responsibility for resource management, pipelines and environmental approvals and compliance, and
- the National Offshore Petroleum Safety Authority (NOPSA) remain a separate independent statutory authority for the regulation of offshore petroleum OH&S.⁸

4. Inter-Governmental Agreement for Regulatory and operational Reform in Occupational Health and Safety, 3 July 2008, para. 1.4,
http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/docs/OHS_IGA.pdf

5. Council Of Australian Governments, ‘Council Of Australian Governments Meeting’, *Communique*, 26 March 2008, Attachment B,
http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/index.cfm,
accessed 14 May 2009.

6. Productivity Commission, ‘Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector’, *Research Report*, April 2009 (the Report).

7. Productivity Commission, ‘Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector’.

8. Productivity Commission, ‘Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector’, 10.7, p. xlvi, 2009.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

National Offshore Petroleum Safety Authority

Roles and responsibilities

NOPSA was established in 2003 as a Commonwealth statutory authority to regulate safety on offshore petroleum facilities on behalf of the Commonwealth, the States and the Northern Territory, under the *Petroleum (Submerged Lands) Amendment Act 2003* (PSL Amendment Act) (the relevant provisions now form part of the Act).⁹

When NOPSA undertakes its regulatory activities in Commonwealth waters, it acts under powers conferred by the Act. Whereas in the coastal waters of States or the Northern Territory, it acts under ‘mirror’ powers conferred by the relevant State or Northern Territory legislation.¹⁰

The primary functions of NOPSA are to promote the OH&S of persons engaged in offshore petroleum operations. NOPSA monitors and enforces OH&S obligations in Commonwealth, State and Northern Territory legislation. In addition, it has the power to investigate accidents or circumstances that could increase the risk of accidents and to report the results of these investigations to the Commonwealth, States and Northern Territory Ministers.¹¹

Safety case approach

NOPSA uses the safety case approach, also used in other jurisdictions such as the United Kingdom and Norway. According to NOPSA:

The safety case is the chief health and safety document for a facility. It documents the operator’s commitments to reducing risks to a level that is as low as reasonably practicable. The safety case describes arrangements for health and safety that are used by managers, supervisors and the workforce to understand health and safety issues and their controls. The safety case is a regulatory requirement that forms part of the duty of care regime. This regime supports high standards of health and safety behaviour within the offshore industry by requiring operators of facilities to take all practicable steps to ensure the facility is safe and that activities at the facility are carried out safely and without risk to health. Safety cases have proved effective in regulating safety in many complex, high risk activities, such as nuclear power plants. Australian law now requires that each offshore facility must have a safety case which has been accepted by NOPSA, the National Offshore Petroleum Safety Authority.

-
9. *Offshore Petroleum and Greenhouse Gas Storage Act 2006* section 645. As to the establishment, powers and functions of NOPSA, see Part 6.9 Division 2.
 10. I Macfarlane (Minister for Industry, Tourism and Resources), ‘Second reading speech: Petroleum (Submerged Lands) Amendment Bill 2003’, House of Representatives, *Debates*, 17 September 2003, p. 20234.
 11. I Macfarlane, p. 20234.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Under this framework, responsibility for the health and safety of persons working on offshore facilities rests with the operators, employers, employees and others. The safety case must include a description of the facility, a detailed description of the formal safety assessment and a detailed description of the safety management system (SMS) for a facility. The regulations specify the required contents of the safety case.¹² (emphasis added)

The safety case approach involves operators of offshore facilities:

- assessing all risks to the facility
- undertaking formal hazard and risk studies, and
- describing the management systems for safe running of the facility.

Once accepted, the safety case is ‘in force’ and provides the basis for safe facility operations.¹³

Varanus Island (Western Australia) gas explosion

Background information

Initial report

The Varanus Island gas explosion occurred on 3 June 2008 at Apache Energy’s gas operation in the northwest of Western Australia (WA) approximately 116 kilometres west of Dampier. No-one was injured in the explosion and the 152 employees were evacuated. The incident cut WA’s gas supply by 30 per cent.¹⁴ The incident resulted in a report prepared by NOPSA for the Western Australian Department of Industry and Resources (DoIR), which investigated the immediate causes of the explosion. The Western Australian Minister for Mines and Petroleum (the WA Minister), however, stated the ‘investigation’s limited terms of reference meant that it had not addressed issues relating

12. National Offshore Petroleum Safety Authority, <http://www.nopsa.gov.au/>, Health and Safety under the Offshore Petroleum Act, What operators and workers need to know—what is a safety case?, <http://www.nopsa.gov.au/document/QandA%20-%20What%20is%20a%20Safety%20Case.pdf>

13. I Macfarlane (Minister for Industry, Tourism and Resources), ‘Second reading speech: Petroleum (Submerged Lands) Amendment Bill 2003’, p. 20234.

14. Western Australia, Department of Industry and Resources, ‘*Background on Varanus Island and the incident*’, viewed on 21 May 2009, http://www.dmp.wa.gov.au/documents/081786_Background2.pdf

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

to regulatory oversight of the safety regime on the Varanus Island facility' and considered that a full and independent investigation into this issue should have been ordered.¹⁵

Subsequent joint inquiry into the Varanus Island gas explosion

A joint inquiry was announced in January 2009 by both the Commonwealth Minister for Resources and Energy (the Commonwealth Minister) and the WA Minister. The terms of reference of that joint inquiry included the following:

- review safety-related documentation that existed in the lead-up to the incident including that related to activity undertaken by the operator in accordance with 'safety case' commitments and requirements outlined in the relevant licences for operation,
- examine the effectiveness of NOPSA and DoIR, as well as the arrangements underpinning the operating regime,
- assess the adequacy of the responses from the owners/operators of the operations and facilities including an assessment of the adequacy of pipeline licence (PL12) safety obligations, safety case documentation and implementation, and
- consider options and make recommendations (if required) to improve the regulatory regime and the safety and integrity of petroleum operations and facilities, particularly integrated onshore/offshore operations and facilities in Commonwealth and Western Australian jurisdictions.¹⁶

The Commonwealth Minister also stated that if shortcomings are found in the regulatory regime and its administration, then he is committed to taking the steps necessary to protect Australian workers and Australian energy supplies and exports.¹⁷

As reported on the West Australian news' website¹⁸, there has been a delay in submitting the joint inquiry report to the respective Ministers. Apache Energy's request to see a draft

-
15. Norman Moore (Minister for Mines and Petroleum), 'Minister releases full report into Varanus Island gas pipeline explosion', *media release*, 10 October 2008, <http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemID=130727>, viewed 13 May 2009.
 16. M Ferguson (Minister for Resources and Energy), 'Inquiry to ensure Australia's offshore safety regulation is World's best practice', *media release*, 9 January 2009, <http://minister.ret.gov.au/TheHonMartinFergusonMP/Pages/INQUIRYTOENSUREAUSTRALIA'SOFFSHOREPETROLEUMSAFETYREGULATIONISWORLD'SBESTPRACTICE.aspx>, viewed 13 May 2009.
 17. M Ferguson (Minister for Resources and Energy), 'Inquiry to ensure Australia's offshore safety regulation is World's best practice'.
 18. AAP 'Apache wins battle to view Varanus blast report', *West Australian*, 17 April 2009, <http://www.thewest.com.au/default.aspx?MenuId=32&ContentID=136623>, viewed 21 May 2009.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

copy of the report was upheld in the Federal Court on 8 April 2009.¹⁹ It was reported that David Parker, Apache government and public affairs manager commented:

Apache sought and obtained an agreement to have access to the draft report of the Offshore Petroleum Regulation Inquiry and comment on it before it is submitted to the ministers.²⁰

It is also reported that Apache have been given until 1 May 2009 to comment on the report, which would not be submitted to the Ministers until 15 May 2009.²¹

In addition, it was reported that Apache was seeking to stop confidential papers being handed over to the joint inquiry. Proceedings commenced by Apache were scheduled to be heard on 14 and 15 May 2009.²²

Jurisdictional complexities

The Varanus Island gas explosion illustrates the jurisdictional complexities that exist in the offshore petroleum industry and the Commission had summarised these complexities in its report:

At the time of this incident, Apache's operations on Varanus Island were regulated under the *WA Pipelines Act 1969*, with regulatory responsibility for OHS and integrity issues lying with the then WA Department of Industry and Resources (DoIR) (which was restructured in January 2009 and its regulatory responsibilities moved to the Department of Mines and Petroleum). NOPSA provided technical advice and contractor services to DoIR under a service contract.

Under the *Offshore Petroleum Act 2006* (Cth) and the *WA Petroleum (Submerged Lands) Act 1982*, NOPSA had OHS regulatory responsibilities for offshore platforms and pipelines feeding into the Varanus Island hub in Commonwealth waters, and in designated coastal waters where power was conferred on it.

-
19. AAP 'Apache wins battle to view Varanus blast report', *West Australian*, 17 April 2009, <http://www.thewest.com.au/default.aspx?MenuId=32&ContentID=136623>, viewed 12 May 2009.
 20. 'Apache wins battle to view Varanus blast report', *West Australian*
 21. 'Apache wins battle to view Varanus blast report', *West Australian*
 22. Roy Gibson, 'Apache bid to block secret gas blast papers', *West Australian*, 5 May 2009, p. 11, <http://www.thewest.com.au/default.aspx?MenuId=32&ContentID=139803>, accessed on 12 May 2009.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The OHS and integrity issues relating to the mainland onshore operations of the pipelines were the responsibility of DoIR, with the WA Department of Consumer and Employment Protection providing regulatory services to DoIR for these pipelines under a memorandum of understanding (RET 2008d).

While the Commission is not suggesting these arrangements played any part in the Varanus Island incident, the arrangements do highlight that despite the formation of NOPSA, offshore regulatory arrangements can be quite complicated. Indeed, anecdotal evidence provided to the Commission has suggested projects could be subject to a number of OHS regulators (and alternate between regulators) if they went, for example, from Commonwealth waters, to onshore islands, to designated coastal waters, to State and Territory internal waters, to the mainland onshore.

The OPGGSA (and mirror legislation in the States and Territories) allows jurisdictions to confer powers on NOPSA in designated coastal areas and (subject to necessary laws being passed and funding arrangements being agreed with the Commonwealth) in State and Territory internal waters. It appears there would be a reduction in the unnecessary regulatory burden faced by the upstream petroleum sector if these powers were conferred on NOPSA more widely.

There would potentially be further benefits from giving NOPSA OHS regulatory responsibilities for islands located off the mainland States where offshore petroleum activity takes place.²³

Key OH&S issues

Regulation of pipelines

The Explanatory Memorandum to the Bill foreshadows that NOPSA would have an increased role in the regulation of offshore pipelines when the safety case levy for pipelines replaces the pipeline safety management plan levy.²⁴ Acceptance of a safety case by NOPSA and of an environment plan by the Designated Authority (DA) will be necessary in order to commence future operations for a licensed pipeline.²⁵

The Minister's Second Reading Speech states that:

This Bill removes references to the pipeline safety management plan levy and removes a consent to operate a pipeline. These two amendments are linked to planned amendments to the regulations in force under the Act which will see regulatory

23. Productivity Commission, op. cit., p. 178.

24. Explanatory Memorandum, Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009, p. 6.

25. Explanatory Memorandum, Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009, p. 6.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

arrangements for the construction and operation of pipelines being incorporated into safety regulations.²⁶

OH&S offence provisions and absolute liability

In Part 10 of the Bill, proposed amendments introduce the application of absolute liability to the jurisdictional element of specific offences—that the person is subject to the requirement that an operator of a facility must take all reasonable steps to ensure that:

- the facility is safe and without risk to anyone at and near the facility, and
- work and other activities carried out on the facility are done so in a safe manner without risk to the health of anyone at or near the facility.

The application of absolute liability to an element of an offence means that there is no defence of honest and reasonable mistake of fact. The effect of the proposed amendments is that a person, responsible for an offshore petroleum facility, would not be able to subsequently claim that they were unaware of their OH&S responsibilities under clause 9 of Schedule 3 of the Act, even if this lack of awareness was reasonable in the circumstances.

Committee consideration

The Senate Standing Committee on Economics (the Economics Committee) looked at the economic impact of the Western Australian gas crisis as a result of the Varanus gas explosion in 2008. The report entitled [*Matters relating to the gas explosion at Varanus Island, Western Australia*](#) was published in December 2008.²⁷ Briefly the report examined the following issues:

- overview of the inquiry and details concerning the Varanus Island incident;
- the economic impact on the Western Australian economy and which particular industries and regions were most affected;
- the government response to the incident with reference to the use of emergency powers, contingency planning, the government's consultation strategies allocation of available energy and the role of Commonwealth government agencies;
- response of the energy industry to the incident; and

26. M Ferguson, 'Second reading speech: Offshore Petroleum and greenhouse Gas Storage Legislation Amendment Bill 2009', House of Representatives, Debates, 19 March 2009, p. 3236.

27. Senate Standing Committee on Economics, [*Matters relating to the gas explosion at Varanus Island, Western Australia*](#), Canberra, 3 December 2008.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- development of an energy security strategy and options for diversifying sources of energy in Western Australia.²⁸

Importantly, the Senate Standing Committee for the Scrutiny of Bills (the Scrutiny of Bills Committee) reviewed the Bill and provided its comments on 13 May 2009.²⁹ The main concerns of the Scrutiny of Bills Committee concerned the following matters:

- the exercise of administrative power in Schedule 1, items 29 and 30 is not defined with certainty. Proposed sections 471A and 523A concern the notation of the Register by the DA in the case of section 471A and by the Minister in the case of section 523A with a new datum. The Committee suggested that greater certainty would result if the particular circumstances were included where it is deemed appropriate to notate the Register;
- the delayed commencement of Schedule 1, items 32-37 concerning the amendments to the pipeline safety management plan levy and consent to operate a pipeline. The Committee considered that as there was a significant delay in the commencement of these provisions, then the explanatory memorandum should have provided an explanation.

Financial implications

The Explanatory Memorandum states that the largely ‘minor and administrative changes’ will not have any financial impact on the Federal Government Budget, and it was noted that the pipeline safety management plan levy will be replaced with an equivalent safety case levy covering pipelines.³⁰

Main provisions

Proposed amendments are set out in Parts 1-14 in Schedule 1 of the Bill. This Digest will focus only on proposed amendments that are more substantive, as opposed to being purely technical, in nature.

28. Senate Standing Committee on Economics, [*Matters relating to the gas explosion at Varanus Island, Western Australia*](#), Canberra, 3 December 2008, p. 2.

29. Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, Canberra, no. 5, 2009, pp. 36–38.

30. Explanatory Memorandum, p. 1.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Part 1—Access authorities

Item 1 of the Bill proposes to **insert new paragraph 245(1)(d)** into the Act. Section 245 provides for consultation requirements³¹ imposed on the DA before approving a grant of a petroleum access authority in relation to adjoining offshore areas. According to existing subsection 245(1), section 245 applies if:

- an application has been made for a petroleum access authority in relation to an adjoining offshore area
- that area is subject to a specific petroleum title, and
- the applicant is not the registered petroleum titleholder in relation to the specified area.

Proposed paragraph 245(1)(d) would introduce an additional (as opposed to alternative) factor to the above list of factors affecting the application of section 245. In other words, section 245 would apply if all of the above factors are met, **as well as** if the relevant registered petroleum titleholder had not given written consent to the grant of the petroleum access authority. The effect of this amendment is that if the titleholder has already consented to the grant of a petroleum access authority then the consultation requirements for a 30 day notice period would not apply, hence the expedited consultation arrangements.

Part 2 – Locations

Items 3-11 of the Bill propose to **amend sections 95-96** and **128-133** of the Act relating to declarations of locations, or nominations of blocks, where petroleum has been discovered.

These sections currently refer to the Designated Authority (DA) making such declarations and the nomination of blocks. A DA is defined in section 70 of the Act as the responsible State or Northern Territory Minister.³² The responsible Commonwealth Minister is the DA for the Eastern Greater Sunrise offshore area, as well as the external territories of Norfolk Island; Christmas Island; the Cocos (Keeling) Islands; Ashmore and Cartier Islands; and Heard and McDonald Islands.³³

Proposed amendments change references to the DA to refer instead to the Joint Authority (JA). The JA for a State is defined in subsection 56(2) of the Act, as constituting the responsible State and Commonwealth Ministers and is known as the Commonwealth–

31. As to those consultation requirements. See *Offshore Petroleum and Greenhouse Gas Storage Act 2006* subsection 245(2).

32. *Offshore Petroleum and Greenhouse Gas Storage Act 2006* subsections 70(2) and (4).

33. *Offshore Petroleum and Greenhouse Gas Storage Act 2006* subsections 70(6) and (8).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

[name of State] Offshore Petroleum Joint Authority.³⁴ It is stated in the Explanatory Memorandum that the nomination of blocks and declaration of locations are necessary steps to be taken before an exploration company applies for a retention lease or a production licence, both of which may be granted by the JA.³⁵ The **proposed amendments** would achieve consistency in the process, particularly with the provisions relating to retention leases and production licences process in which the JA is already involved and allow more input by the responsible State Minister in the overall decision-making process.

Part 3—Petroleum scientific investigation consents

Items 13 and 14 of the Bill propose to **amend subsections 253(1) and 254(1)** of the Act respectively, by substituting references to the DA with references to the JA.

The **proposed amendments** mean that it will be the JA, not the DA, who would be able to grant petroleum investigation consents and impose whatever conditions on consents that the JA considers appropriate. As the JA involves the Commonwealth Minister as well as the State Minister, the significance of these amendments relate to the ability of the Commonwealth Government to have a role in implementing international obligations under the United Nations Convention on the Law of the Sea (UNCLOS).³⁶ UNCLOS consists of a body of rules agreed to by States (countries) regulating the use of the oceans, maritime boundaries and the use and exploitation of the oceans' resources.³⁷

Part 4—OH&S prosecutions

Item 16 of the Bill proposes to **insert new subclause 41(c)** into **Schedule 6** of the Act.

Clause 41 of Schedule 6 of the Act relates to OH&S prosecutions.

The **proposed amendment** would effectively extend the application of clause 89 of Schedule 3 of the Act, which deals with proceedings commenced by NOPSAs or an OH&S inspector for offences that had existed for the purposes of subsection 140H(2) of the now

34. Similar definitions exist for the Northern Territory, Eastern Greater Sunrise Offshore area and the external Territories: *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, subsections 56(4), (6) and (8).

35. Explanatory Memorandum, Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009, p 3.

36. Explanatory Memorandum, Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009, p. 3.

37. For further information about UNCLOS and the law of the sea see the Geoscience Australia website, http://www.ga.gov.au/oceans/mc_los_More.jsp

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

repealed *Petroleum (Submerged Lands) Act 1967* (PSLA), as in force during the period beginning on 1 January 2005 and ending just prior to the commencement of the Act.

Part 5–Notification of discovery of petroleum

Item 17 of the Bill proposes to **amend subsection 284(1)** of the Act.

Section 284 provides for the requirement for notification of petroleum discoveries in petroleum exploration permit and petroleum retention lease³⁸ areas.

Proposed subsection 284(1) would extend the application of section 284 to petroleum production licence³⁹ areas. It is stated in the Explanatory Memorandum that the proposed amendment is intended to enable more particular information to be obtained with respect to petroleum accumulations.⁴⁰ **Item 18** of the Bill proposes to **substitute subsection 284(2)** and **repeal subsection 284(3)** of the Act.

The effect of the **proposed amendment** is that the permittee, lessee or licensee would no longer have to immediately notify the DA of the petroleum discovery. Instead, he or she would have to inform the DA of the petroleum discovery before the end of a 30 day period of time commencing on the day that the well resulting in that discovery was completed. It is stated in the Explanatory Memorandum that the extra time would allow the petroleum company to obtain more detailed information about the discovery and its potential for commercial development.⁴¹

Item 21 of the Bill proposes similar amendments to **subsections 452(2) and (3)** of the Act, with respect to the notification of petroleum discoveries in greenhouse gas assessment permit, greenhouse gas holding lease and greenhouse gas injection licence areas.⁴²

Part 6–Datum

Part 6 of the Bill sets out proposed amendments in relation to the datum. A datum is a framework to define coordinate systems used for referencing geographic positions on

38. As to the meaning of ‘petroleum exploration permits’ and petroleum retention lease’ see *Offshore Petroleum and Greenhouse Gas Storage Act 2006* section 7.

39. As to the meaning of ‘petroleum production licence’, see *ibid*.

40. Explanatory memorandum, p. 4.

41. Explanatory memorandum, p. 4.

42. As to the meaning of ‘greenhouse gas assessment permit’, ‘greenhouse gas holding lease’ and ‘greenhouse gas injection licence’, see *Offshore Petroleum and Greenhouse Gas Storage Act 2006* section 7.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

maps.⁴³ In Australia, the Geocentric Datum of Australia (the GDA) is the new coordinate system replacing the Australian Geodetic Datum (the AGD). The GDA is part of a ‘global coordinate reference frame’ and is compatible with the Global Positioning System (GPS).⁴⁴

Item 24 of the Bill proposes to **substitute table item 8** in **section 42** of the Act, which relates to the use of the current datum. **The proposed amendment** would mean that for all greenhouse gas titles, the position on the earth will be determined by reference to the current datum.

Item 27 of the Bill proposes a similar amendment to **section 43** of the Act, in relation to the use of the previous datum.

Item 28 of the Bill proposes to **substitute sections 44** and **45** of the Act, dealing with variations of titles and instruments, as well as the variations of title applications, respectively.

Proposed subsection 44(1) would mean that the DA’s authority to issue an instrument varying petroleum titles or instruments for the purposes of relabelling using geographic coordinates based on the current datum derives directly under the Act, as opposed to under the Regulations as is currently the case.

Proposed subsection 44(2) would similarly affect the responsible Commonwealth Minister’s authority in relation to greenhouse gas titles and instruments.

Proposed section 45 also changes the source of such authority (of the DA or Commonwealth Minister, as the case may be) from the Regulations to the Act.

Part 7—Pipeline safety management plan levy

Items 32 and **33** of the Bill propose to **repeal paragraph 683(d)** and **section 688** of the Act, referring to the pipeline safety management plan levy.

On commencement of these items, the pipeline safety management plan levy will become a safety case levy.⁴⁵

43. For additional information on datums, see Geoscience Australia, ‘Datums and Coordinates’, <http://www.ga.gov.au/geodesy/datums/aboutdatums.jsp>, viewed 14 May 2009.

44. See Geoscience Australia, ‘Geocentric Datum of Australia (GDA)’, <http://www.ga.gov.au/geodesy/datums/gda.jsp>, accessed 14 May 2009.

45. For information about the ‘safety case levy’, see NOPSA, ‘Safety case and PSMP levies’, *Guideline*, <http://www.nopsa.gov.au/document/N-11000-GL0238%20-%20Safety%20Case%20and%20PSMP%20Levies.pdf>, accessed 14 May 2009.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Part 8—Consent to operate a pipeline

Item 35 of the Bill proposes to **repeal subsections 210(3), (4), (5) and (6)** of the Act, removing the requirement for the DA's consent when starting or recommencing pipeline operations. The Explanatory Memorandum states that under the future regime, NOPSA will have greater regulatory control of pipelines and the **proposed amendments** would remove some of the duplication and extra compliance costs that would otherwise result.⁴⁶

Part 10—OH&S duties

Items 41, 43, 44, 45, 46, 48 and 49 of the Bill propose to amend the OH&S offence provisions of **Schedule 3** of the Act as follows:

- clause 9—duties of an operator (**item 41**)
- clause 10—duties of persons in control of parts of a facility or particular work (**item 43**)
- clause 11—duties of employers (**item 44**)
- clause 12—duties of manufacturers in relation to plant and substances (**item 45**)
- clause 13—duties of suppliers of facilities, plant and substances (**item 46**)
- clause 14—duties of persons erecting facilities or installing plant (**item 48**), and
- clause 15—duties of persons in relation to occupational health and safety (**item 49**).

In general, the proposed amendments introduce the application of absolute liability to the jurisdictional element of those offences—that the person is subject to the requirement that an operator of a facility must take all reasonable steps to ensure that:

- the facility is safe and without risk to anyone at and near the facility, and
- work and other activities carried out on the facility are done so in a safe manner without risk to the health of anyone at or near the facility.

For example, **item 41** of the Bill proposes to **insert new subclauses 9(4A) and (4B)** into Schedule 3 of the Act.

Proposed subclause 9(4A) provides that absolute liability would apply to paragraph 9(4)(a). Sub clause 9(4) provides that:

- (4) A person commits an offence if:
 - (a) the person is subject to a requirement under subclause (1); and
 - (b) the person omits to do an act; and

46. Explanatory memorandum, p. 6.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

(c) the omission breaches the requirement.

Penalty: 1,000 penalty units.

Subclause 9(1) provides that:

9 Duties of operator

General duties

(1) The operator of a facility must take all reasonably practicable steps to ensure that:

(a) the facility is safe and without risk to the health of any person at or near the facility; and

(b) all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility.

The application of absolute liability to an element of an offence means that there is no defence of honest and reasonable mistake of fact. The effect of the proposed amendments is that a person, responsible for an offshore petroleum facility, cannot subsequently claim that they were unaware of their OH&S responsibilities under subclause 9(1) of Schedule 3 of the Act.

It is noted that **proposed subclause 9(4B)** provides that the other elements of the offence have, as their fault element, negligence. According to section 5.5 of the *Criminal Code Act 1995*, a person is negligent, in relation to a physical element of an offence, if his or her conduct involves:

- such a great falling short of the standard of care exercised by a reasonable person in the particular circumstances, and
- such a high risk that the physical element exists or will exist,

that such conduct warrants criminal punishment.

Similar amendments are proposed in relation to the other items as listed.

Item 47 of the Bill proposes to **insert new clause 13A** into **Schedule 3** of the Act. **Proposed clause 13A** would impose obligations on petroleum and greenhouse gas titleholders in relation to the design of facilities, requiring the relevant titleholder to take all reasonably practicable steps to ensure that the facility is designed to be safe and without risk to health, when it is properly used.

Absolute liability would apply in a similar way as in items 41, 43, 44, 45, 46, 48 and 49.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

It is noted that the Government assures that while the **proposed amendment** would allow titleholders to be held responsible for their contributions to unsafe situations, there is no intention to shift responsibility from facility operators where they are at fault.⁴⁷

Part 13–Greenhouse gas storage

Part 13 of the Bill contains **proposed provisions** designed to address and resolve various inconsistencies in the Act. Examples of these provisions are as follows.

Items 55 and 58 of the Bill propose to **amend paragraphs 297(3)(b) and 304(3)(b)** of the Act by replacing ‘day’ with ‘day before the day’, in relation to the timing for release of greenhouse gas assessment areas following the end of the notice period of 60 days. The effect of these proposed amendments is that release of a greenhouse gas assessment area cannot occur until the day after the end of 60 day notice period.

Importantly, **items 60 and 61** of the Bill propose to **amend subsection 358(8)** and **insert new subsection 358(8A)** into the Act, in an effort to deal with an inconsistency arising when amendments were made to the Offshore Petroleum and Greenhouse Gas Bill 2008 in the Senate.

This inconsistency related to the source of the greenhouse gas to be injected into the greenhouse gas formations. The amendments, as proposed and passed in the Senate⁴⁸ and now incorporated into subparagraph 370(c)(i) of the Act, allow for the Commonwealth Minister, when deciding whether to grant a greenhouse gas injection licence, to be satisfied that (among other factors) the greenhouse gas substances are not only located within the production licence area in question, but from other production licence areas as well, if the Minister considers it in the public interest to grant the greenhouse gas injection licence.

Section 358 of the Act, in contrast, provides for conditions to be placed on greenhouse gas injection licences and only allows a greenhouse gas injection licence to be granted to a licensee, where the origin(s) of the greenhouse gas in question is/are located within the licence area in question.

In addition, **proposed new subsection 374(4A)**, in **item 62** of the Bill, would provide that the Commonwealth Minister may vary the licence in accordance with the matters set out in **items 60 and 61**, as discussed above.

47. Explanatory Memorandum, p. 8.

48. Senator David Johnston, No.5, Senate Journal No. 41, 10 November 2008, p. 1102.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2784.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.