

Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010

This is a new edition of a Bills Digest previously prepared for the 42nd Parliament

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Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010

Date introduced: 29 September 2010

House: House of Representatives

Portfolio: Resources and Energy

Commencement: Sections 1 to 3 on Royal Assent, but Schedule 1 is to commence retrospectively on 1 January 2010.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

This Bill lapsed on the proroguing of Parliament in July 2010. It has been re-introduced without any significant changes.

Purpose

This Bill amends the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003* to include transitional arrangements from 1 January 2010 to 31 December 2012 which will allow:

- that where a safety management plan is in place for a pipeline in designated coastal waters, the effect will be as if there were a safety case in force for that facility
- the states and the Northern Territory to put in place provisions in their own legislation which will reflect the changes in Commonwealth legislation relating to the safety case regime, and
- the Commonwealth to collect safety case levies¹ in designated coastal waters.

Basis of policy commitment

The purpose of this Bill is to provide transitional arrangements for the period from 1 January 2010 until 31 December 2012 to allow the states and the Northern Territory to implement mirror legislation that corresponds to the current Commonwealth Offshore Petroleum (Safety) Regulations

1. 'Safety case levy means levy imposed by section 7 or 8', Section 3, *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003*; 'Safety case' is defined in Regulation 1.5 of the *Offshore Petroleum (Safety) Regulations 2009*: 'Safety case means the document known as a safety case that is submitted to the Safety Authority under Part 2 of Chapter 2.' NOPSA describes a 'safety case' as being 'a document produced by the operator of a facility which identifies the hazards and risks, describes how the risks are controlled, and describes the safety management system in place to ensure the controls are effectively and consistently applied, viewed 5 October 2010, <http://www.nopsa.gov.au/safety.asp#case>

2009 concerning the payment of safety case levies. It will also enable the Commonwealth to collect levies in the meantime in relation to designated coastal waters.

Section 8 of the Act imposes a safety case levy in relation to a facility in designated coastal waters. The term 'designated coastal waters', in relation to a state or the Northern Territory, has the same meaning in section 3 of the Act as in Part 6.9 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.² The safety case levies are calculated according to the formula set out in the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004, which also sets out the procedures for payment.

Offshore Petroleum (Safety) Regulations 2009

In the current Bill, references to the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996 are replaced by references to the Offshore Petroleum (Safety) Regulations 2009 (the Safety Regulations 2009). The Safety Regulations 2009 were tabled on 2 February 2010. However, the regulations commenced on 1 January 2010. The Explanatory Statement comments on the purpose of the regulations:

The purpose of the Offshore Petroleum (Safety) Regulations 2009 (the Safety Regulations) is to consolidate and update the safety-related regulations under the Act into one legislative instrument. The consolidation incorporates the Petroleum (Submerged lands) (Management of Safety on Offshore Facilities) Regulations 1996, the Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993, and the Petroleum (Submerged Lands) (Diving Safety) Regulations 2002. References to the Act are also corrected.

The Safety Regulations are also amended to allow for offshore pipelines to be regulated as "facilities" under the safety case regime. This is consistent with amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003* on 8 October 2009, with effect from 1 January 2010, removing provisions relating to the pipeline safety management plan levy.³

Offshore Petroleum (Safety Levies) Amendment Regulations 2009 No.1

The Offshore Petroleum (Safety Levies) Regulations 2004 were amended by the Offshore (Safety Levies) Amendment Regulations 2009 No.1. The Explanatory Statement comments on the purpose of the regulations as follows:

The purpose of the amendments to the Offshore Petroleum (Safety Levies) Regulations 2004 is to remove references to the pipeline safety management plan levy, to amend the safety case levy so that it covers pipelines and to extend coverage of safety levies to future greenhouse gas storage activities. The amendments also increase the unit value to work out the amount of

2. For fuller details of the definition see section 644, *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

3. Explanatory Statement, Offshore Petroleum (Safety) Regulations 2009, No. 382, p. 1.

safety levy payable. They also update the regulations to refer to and be consistent with the Principal Act and the Safety Levies Act.⁴

Since this Bill was introduced a first time on 10 February 2010, there have been other amendments to the Offshore Petroleum (Safety) Regulations 2009 and the Offshore Petroleum (Safety Levies) Regulations 2004. The explanatory statement to the regulations state the following:

Offshore Petroleum (Safety) Amendment Regulations 2010 (No. 1) Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Regulations 2010 (No. 1)

The purpose of the amendments to the Offshore Petroleum (Safety) Regulations 2009 (the Principal Safety Regulations) and the Offshore Petroleum and Greenhouse Gas (Safety Levies) Regulations 2004 (the Principal Safety Levies Regulations) are to enable the National Offshore Petroleum Safety Authority (NOPSA) to provide regulatory services relating to greenhouse gas activities and access safety cases for proposed facilities that utilise new technologies.

The Principal Safety Levies Regulations are amended to allow NOPSA to work with a company that is planning to use new technology in a new project from the beginning of the design process of the facility. Previously this was not possible because the definition of a proposed facility assumed that construction for the project had already begun; and therefore the regulator, which operates on a cost-recovery basis, had no regulatory mechanism to recoup its costs for assessing such a project. This voluntary early engagement for new technology projects will allow companies to begin addressing the safety regulation approval processes earlier, while still maintaining the integrity of the overarching 'safety case' regime under the Offshore Act.⁵

Further Policy Background Details

For further detailed policy background and basis for this legislation, see the following Bills Digests:

- [Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009](#) which relates to occupational health and safety issues affecting the operation of offshore petroleum and greenhouse gas facilities
- [Offshore Petroleum and Greenhouse Gas Storage \(Safety Levies\) Amendment Bill 2009](#), which deals with the safety case levy for pipelines and to remove references to the safety management plan levy,
- [Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment \(Miscellaneous Measures\) Bill 2010](#) (Miscellaneous Measures Bill) which is currently before the Parliament. This Bill proposes amongst other things:

4. Explanatory Statement: Offshore Petroleum (Safety Levies) Amendment Regulations 2009 No. 1, p. 1.

5. Explanatory Statement, Offshore Petroleum (Safety) Amendment Regulations 2010 (No.1) Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Regulations 2010 (No.1) p.1.

- to augment the functions of National Offshore Petroleum Safety Authority (NOPSA) to include regulatory oversight of non-structural integrity for facilities, wells and well-related equipment, and
- to update listed OHS laws in section 638 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Committee consideration

The Selection of Bills Committee resolved to recommend that the current Bill not be referred to a parliamentary committee.⁶

The Alert Digest of the Senate Standing Committee for the Scrutiny of Bills drew attention to the retrospective provisions in **items 2, 5 and 6 of Schedule 1** of the original Bill. The Committee commented that it generally draws attention to any Bill where retrospective application of provisions is included and makes comment on whether it adversely impacts on people or not. The Committee quoted a passage from the Explanatory Memorandum for the Bill as follows:

While the Amendment Act provided transitional arrangements it did so on the basis that State and Territory regulations which correspond to the Commonwealth regulations would be similarly amended. This has not yet occurred which means that some safety levy payments due to the National Offshore Petroleum Safety Authority may not be collectable until such time as the Act is amended. Thus a transitional period is required ...

The Committee acknowledged this explanation and commented that it was unaware of any detrimental impacts as a result of the retrospectivity.⁷

Financial implications

The Explanatory Memorandum states that the Bill does not have any financial impact on the Australian Government Budget. There are no additional costs to industry.⁸

6. Senate Selection of Bills Committee, [Report No. 11](#), 30 September 2010.

7. Senate Standing Committee for the Scrutiny of Bills, Alert Digest, Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010, [No.2 of 2010](#), 24 February 2010, p. 61.

8. Explanatory Memorandum, Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2010, p. 2.

Key provisions

Schedule 1— Amendments to the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003.

Item 1 amends the definition of ‘*safety case in force in relation to a facility*’ in existing subsection 7(8) to omit reference to the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996 and insert a reference to the new Offshore Petroleum (Safety) Regulations 2009 which commenced on 1 January 2010. Among other things, the Safety Regulations repealed the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996 (the 1996 Regulations).

Item 2 amends **section 8** of the Act which deals with the imposition of a safety case levy in designated coastal waters. **Proposed subsection 8(7A)** is inserted to provide that if during a period starting 1 January 2010 and ending 31 December 2012, there is a pipeline safety management plan in force for a pipeline that is a facility, then the section has effect, with the result that the safety management plan will be treated as if it were a safety case in force for that facility.

Proposed subsection 8(7B) provides that if:

- a facility located or proposed to be located in designated coastal waters, and
- during the period 1 January 2010 to 31 December 2012, a safety case is in force for the facility under legislation (within the meaning of regulations made by the relevant state or the Northern Territory which mirrors provisions or substantially corresponds with the 1996 Regulations as immediately in force before 31 December 2009), section 8 then has effect as though a safety case were in force for that facility at the relevant time. In other words, the safety case will be treated as being in force under the Offshore Petroleum (Safety) Regulations 2009.

Item 3 inserts a definition of ‘*pipeline safety management plan in force in relation to a pipeline*’ into subsection 8(8) of the Act. **Item 4** amends the definition of ‘*safety case in force in relation to a facility*’ in subsection 8(8) to remove a reference to the 1996 Regulations and replace it with a reference to the Safety Regulations.

Items 5 and 6 provide that the amendments in items 1 and 4 (being the insertion of the reference to the Safety Regulations 2009 in place of the 1996 Regulations in the definition of ‘*safety case in force in relation to a facility*’ in subsections 7(8) and 8(8) of the Act) apply in relation to a safety case in force at the start of a year starting on or after 1 January 2010 (or part of that year).

Concluding comments

This Bill enables the Commonwealth to collect safety case levies even though the states and the Northern Territory have not as yet passed legislation that corresponds to the changes to the Commonwealth’s regulations.

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