

The Senate

Economics
Legislation Committee

Offshore Petroleum and Greenhouse Gas
Storage Legislation Amendment
(Miscellaneous Measures) Bill 2010
[Provisions]

April 2010

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Senate Economics Legislation Committee

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Chapter 1

Introduction

The referral

1.1 On 24 February 2010 the Senate referred the provisions of the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010 to the Senate Economics Legislation Committee for inquiry and report by 23 April 2010.

1.2 In referring the bill for inquiry the Senate requested that the Committee consider its provisions as necessary, but that it particularly look at Schedule 1 of Part 1 of the bill.¹

Background

1.3 The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (and related Acts) established a system of offshore titles to authorise the transportation, injection and storage of greenhouse gas into deep geological formations under the seabed; it also established a management system for such storage.²

1.4 That Act (together with a number of related bills) was the subject of a Senate inquiry in September 2008 after the Senate requested that the Economics Legislation Committee investigate the aspects of the bill that sought to shift liability for the leakage of carbon dioxide stored in geological formations from large greenhouse gas emitters to the public.³

1.5 This bill will amend the existing legislation to:

- fund the establishment of a National Offshore Petroleum Regulator (NOPR);
- strengthen the functions of the National Offshore Petroleum Safety Authority (NOSPA);
- clarify the operation of the titleholder provisions in situations of multiple titleholders;
- increase the effectiveness of compliance through the application of strict liability to appropriate offences;

1 Selections of Bills Committee, *Report No. 2 of 2010*, 24 February 2010, Appendix 4.

2 Senate Economics Legislation Committee, *Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 [Provisions]*, September 2008, p. 2.

3 Senate Economics Legislation Committee, *Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 [Provisions]*, September 2008, p. 1.

- restore the original policy intent by clarifying that a titleholder's duty of care under the Occupational Health and Safety provisions relates only to wells; and
- make other minor technical amendments.⁴

1.6 The bill will not impose any new regulatory burdens on the petroleum industry.

1.7 As the national regulator of the offshore petroleum industry, NOPR will remove unnecessary regulatory duplication, increase efficiency in the industry and promote consistency across offshore areas. The Government has stated that NOPR will commence operation from 1 January 2012.⁵

1.8 The Government has stated that the legislation to establish the NOPR will not be introduced until 2011 after the 'exact arrangements' are determined through consultation with the Ministerial Council on Mineral and Petroleum Resources.⁶

Conduct of the inquiry

1.9 The Committee advertised the inquiry in the national press and invited written submissions by 19 March 2010. Details of the inquiry were placed on the committee's website and the committee also wrote to a number of organisations and stakeholder groups inviting submissions. The five submissions received by the committee are listed in Appendix 1.

1.10 A public hearing was held by the committee in Perth on 31 March 2010 where the committee heard from the Western Australian Department of Mines and Petroleum and the Australian Department of Resources, Energy and Tourism. The witnesses representing the departments are listed in Appendix 2.

1.11 The Committee thanks all those who participated in this inquiry.

Structure of the report

1.12 The most contentious aspect of the bill, Part 1 dealing with the use of registration fees to establish the NOPR, is discussed in Chapter 2. The remainder of the bill is discussed in Chapter 3. The Committee concludes that the Senate should pass the bill.

4 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Second Reading Speech, *House of Representatives Hansard*, Wednesday 10 February 2010, p. 936.

5 Department of Resources, Energy and Tourism, *Submission 3*, March 2009, p. 3.

6 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Second Reading Speech, *House of Representatives Hansard*, Wednesday 10 February 2010, p. 935.

Chapter 2

Use of fees to establish NOPR

The need for a national regulator

2.1 Much of the contention around the bill arises from the issue of whether there should be a National Offshore Petroleum Regulator (NOPR). The bill itself does not establish NOPR; it merely provides an equitable means of funding its establishment. (This may be why the firms who would be regulated by NOPR chose not to make submissions.) Nonetheless, there would be no need for Part 1 of the bill were there not to be a NOPR.

2.2 In 2008, the Productivity Commission was asked to investigate the upstream petroleum sector.¹ Following the release of the Productivity Commission's report,² the Minister for Resources and Energy announced that a single national offshore petroleum regulator would be established and commence operation on 1 January 2012.³

2.3 The Department of Resources, Energy and Tourism (DRET) estimates that the annual administrative costs to the regulators would drop from around \$16 million to \$12 million under a national regulator, but the large savings would accrue to the industry as they faced significantly less compliance cost and shorter approval times.⁴ This would in turn lead to larger and quicker collections of various state and federal taxes. They agreed with the Productivity Commission:

The commission found that... there was considerable scope to reduce the regulatory burden, to remove unnecessary duplication and to provide greater consistency in the regulation across Australia.⁵

2.4 The committee notes that there is an ongoing regulatory burden on states like Western Australia. This will most certainly remain the case while agreement is being sought on the role of NOPR through to final implementation. The committee also notes that only a proportion of this burden has been supported through the registration fees reimbursed to states. For a period of time as negotiations to resolve these

1 Source: <http://www.pc.gov.au/projects/study/upstreampetroleum>.

2 A key recommendation of the Productivity Commission's report was the establishment of a national offshore petroleum regulator.

3 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Minister reaffirms government commitment to safety in the oil and gas industry, Media Release, 5 August 2009.

4 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010, p. 13.

5 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010, p. 10.

regulatory issues take place the withdrawal of these registration fees will see an increase in the financial burden on the states.

2.5 The Western Australian Government does not support a national regulator and, unless there is further negotiation, will not agree to its territorial waters coming under the administration of NOPR. The argument of efficiency was rejected:

CHAIR—In other words, you can achieve the goal of a more simple and efficient operation but still have the joint authority.

Mr Sellers—That is certainly our belief.⁶

2.6 Beyond that, the argument was basically one of conservatism:

We do not see merit in shifting the system that we already have...⁷

2.7 It was also mentioned that a large proportion of current and potential offshore gas fields are off the coast of Western Australia.⁸

2.8 While they are off Western Australia, much of the current and prospective fields are in Commonwealth not Western Australian waters:

...the bulk of Australia's resources of petroleum are found in the Commonwealth offshore area adjacent to Western Australia. I think that, generally, over 75 per cent of the petroleum resources are in those areas.⁹

2.9 According to DRET, Western Australia is the only recalcitrant state.¹⁰ The establishment of NOPR can still proceed without the involvement of Western Australia, and there will still be benefits from replacing multiple regulators with two regulators, even if a single regulator would be better still.

2.10 Another suggestion was that there could be a single regulator if all other governments agreed to let the Western Australian Government be that regulator.¹¹ The Environment and Biodiversity Act may be an example of how this might work.

2.11 Assistant Professor Tina Hunter puts forward arguments in favour of a NOPR:

This model provides the greatest consistency in decision-making and regulatory enforcement across all jurisdictions, and minimize duplication requirements for all stakeholders. This model has the potential to consolidate existing petroleum expertise. In addition, there could be gain

6 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 3.

7 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 4.

8 Mr William Tinapple, Executive Director, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 4.

9 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010. See also Mr Tinapple, p. 4.

10 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010, p. 13.

11 *Proof Committee Hansard*, pp 8 and 15.

from significant economies of scale in administrative and support functions.¹²

2.12 A joint submission by the Australian Workers' Union and the Maritime Union of Australia also welcomed the establishment of NOPR.¹³

Committee view

2.13 The Committee did not hear any compelling argument for having multiple authorities with jurisdictions over national waters and the various state waters. It therefore welcomes the establishment of a national regulator and regrets the hesitancy of the Western Australian Government in cooperating in its establishment.

Funding NOPR

2.14 Part 1 of the bill provides for temporary funding to establish NOPR by amending the Act to enable the Commonwealth to retain registration fees currently collected under the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006*.¹⁴

2.15 The bill will amend section 76 of the Act which currently states:

(1) This section applies if, during a particular month, the Commonwealth receives an amount (the *received amount*):

a. That is payable under:

i. Chapter 2, 4 or 7 of this Act (other than an amount paid for the grant of a cash-bid petroleum exploration permit, a special petroleum exploration permit or a section 181 petroleum production license); or

ii. Section 4 of the Annual Fees Act; **or** [emphasis added]

iii. Section 5 or 6 of the Registration Fees Act; [emphasis added]

In connection with a title or other document that relates to:

iv. A block; or

v. An infrastructure facility; or

vi. A pipeline...¹⁵

2.16 The bill proposes that the 'or' in subparagraph 76(1)(a)(ii) be omitted. It also proposes that subparagraph 76(1)(a)(iii) be repealed. (The provisions to be repealed are bolded in the above extract of the bill.)

12 Assistant Professor Tina Hunter, *Submission 4*, p. 6.

13 Australian Workers Union and Maritime Union of Australia, *Submission 2*, p. 2.

14 Currently the Act requires that these fees, as well as the annual fees and other industry fees raised under the Act, be paid by the Government to the states and Northern Territory.

15 Section 76, *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

2.17 Although seemingly insignificant, this change will redirect \$15.3 million in 2010-11 and \$7.7 million in 2011-12 from the states and Northern Territory to the Commonwealth.¹⁶ The Government will use these funds to establish NOPR.¹⁷

2.18 In their submission the Department of Resources, Energy and Tourism stated that:

The legislation establishing NOPR will also establish transparent and accountable, full cost recovery arrangements for the new regulator...The present measure is not part of those on-going cost-recovery arrangements.¹⁸

2.19 Given the Government's intention to establish a full cost recovery arrangement for the operation of the NOPR in the legislation that it will introduce in 2011, the measure contained in Part 1 of the bill will only be effective for a limited period of time. The Department explains that this approach accords with the Productivity Commission's report which identified that these registration fees, which are a 1.5 per cent *ad valorem*¹⁹ tax on transfers and dealings in petroleum titles,²⁰ are inefficient.²¹

2.20 An argument against the bill is that it is premature:

...we consider it inappropriate to continue with the amendments for the Commonwealth to retain the registration fees before an agreement is reached on an acceptable regulatory model.²²

Until there is agreement between the Commonwealth and WA on the establishment of a NOPR, legislation enabling the retention of registration fees by the Commonwealth should not be passed.²³

Committee view

2.21 The Committee sees value in reducing uncertainty by clarifying how the establishment of NOPR will be funded, even while negotiations about the precise powers and role of NOPR continues.

16 Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010, Explanatory Memorandum, p. 4.

17 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Second Reading Speech, *House of Representatives Hansard*, Wednesday 10 February 2010.

18 Department of Resources, Energy and Tourism, *Submission 3*, p. 3.

19 *Ad valorem* means 'in proportion to the value'. The Productivity Commission recommended that they be replaced by a fee that reflects the actual cost of registering transfers and dealings.

20 DRET, *Submission 3*, p. 3.

21 DRET, *Submission 3*, p. 7.

22 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 2.

23 Assistant Professor Tina Hunter, *Submission 4*, p. 7.

Chapter 3

Other aspects of the bill

Part 2 of the bill – functions of the safety authority

3.1 The National Offshore Petroleum Safety Authority (NOPSA) was established following a review into Australia's offshore safety in 1999. At the time of the review, the states and Northern Territory were responsible for the day to day regulation of safety in the offshore petroleum sector. The review recommended the establishment of a national petroleum safety regulation authority that would regulate federal, state and Northern Territory waters.¹

3.2 Since 1 January 2005, NOPSA has been responsible for regulating occupational health and safety matters that arise from petroleum and greenhouse gas operations in Commonwealth waters.²

3.3 NOPSA was given responsibility for the health and safety regulation of offshore greenhouse gas storage operations. NOPSA's functions have extended to the structural integrity of these facilities, to the extent this affects the safety of workers.³ In order to strengthen the Authority's role, Part 2 of the bill sets out amendments that will clarify that its regulatory function extends explicitly to non-occupational health and safety aspects of the structural integrity of offshore facilities as a whole.⁴

3.4 The explanatory memorandum further explains that the proposed amendments:

...have the intent of strengthening the ability of NOPSA to carry out its existing regulatory responsibilities and [augment] its responsibilities by expressly including oversight of the whole of structural integrity facilities (including pipelines), wells and well-related equipment. For achieving completeness of this oversight role, the amendments include non-OHS structural integrity aspects to ensure complete coverage of this particular function.⁵

3.5 In their submission, the Department of Resources, Energy and Tourism referred to a need for further discussion as to NOPSA's role in the regulation of wells

1 National Offshore Safety Authority, History of NOPSA, www.nopsa.gov.au/history.asp, viewed 16 March 2010.

2 Explanatory Memorandum, p. 3.

3 Explanatory Memorandum, p. 3.

4 Explanatory Memorandum, p. 6.

5 Explanatory Memorandum, pp 2 – 3.

and structural integrity given the concerns of the state and Northern Territory departments that the changes will decrease their resource management rights.⁶

3.6 The development of regulations that relate to structural integrity and which set out a 'detailed delineation of...structural integrity functions between NOPSA and the Designated Authorities...relating to resource security and resource management which may also have a structural integrity aspect'⁷ may go some way to addressing these concerns.

3.7 Submitters welcomed this part of the bill:

...welcoming the augmentation of NOPSA's functions which will assist in more effective regulation...⁸

By increasing the functions and powers of NOPSA to include well integrity and well related equipment, safety of petroleum activities will be increased. Therefore, changes to NOPSA's functions will contribute to improved safety of workers on offshore petroleum facilities.⁹

3.8 Assistant Professor Hunter thought this process could go further:

These legislative changes proposed will still split the responsibilities for Well Operations Management Plans between NOPSA and the responsible Delegated Authority (who assesses the well design and construction and drilling applications)...Furthermore, the regulatory amendments do not consider the environmental regulation of well operations and integrity, which also remains with the relevant Commonwealth or State Authority. Therefore, whilst in principle these proposed legislative amendments will provide benefits for the regulation of well integrity, it will still split the regulatory responsibility of well integrity between multiple regulators.¹⁰

Part 3 of the bill – multiple titleholders

3.9 The amendments set out in Part 3 of the bill introduce provisions to clarify the application of the provisions where a title is owned by two or more titleholders.¹¹

3.10 Division 1 will enable multiple titleholders to nominate one titleholder to act on their behalf in instances where an 'eligible voluntary action' is involved.¹² This will

6 DRET, *Submission 3*, p. 8.

7 Explanatory Memorandum, p. 3.

8 Australian Workers' Union and Maritime Union of Australia, *Submission 2*, p. 2.

9 Assistant Professor Tina Hunter, *Submission 4*, p. 8.

10 Assistant Professor Tina Hunter, *Submission 4*, p. 9.

11 Second Reading Speech, *House of Representatives Hansard*, 10 February 2010, p. 936.

12 The concept of eligible voluntary actions will be introduced into Part 6.A and will apply to the making of applications and requests, and the giving of nominations and notices to a relevant authority (ie the Joint Authority, the Designated Authority or the responsible Commonwealth Minister) – Explanatory Memorandum, p. 7.

extend to both multiple holders of petroleum titles and multiple holders of greenhouse gas titles.¹³

3.11 Division 2 will provide that where an obligation is imposed on a titleholder, and that title is held by multiple parties, the obligation is imposed on them all but that it can be discharged by any one of the registered titleholders.¹⁴ Division 2 also contains a clause which will enable regulations to be made exempting specific obligations from being imposed on multiple titleholders.¹⁵

3.12 AMPLA regards the expression 'registered titleholders' as unduly restrictive, and argue that an obligation should also be capable of being discharged by an operator authorised by the titleholders.¹⁶

3.13 The Western Australian Government expressed concern that this provision:

...could be viewed as taking away the property rights of an individual member of a joint venture.¹⁷

3.14 At the hearing, the WA Government commented:

while the proposed amendments would make title administration easier we are concerned that this could be viewed as taking away some of the property rights of an individual member of a joint venture.¹⁸

3.15 The Department of Energy, Resources and Tourism replied that there had already been consultation and agreement on this issue:

APPEA, which is the peak industry association in this industry, supports the multiple titleholder amendments in this bill.¹⁹

3.16 The Scrutiny of Bills Committee noted the explanation of the explanatory memorandum that including these provisions ensures that the legislation is 'future-proofed' and the proposed provisions will have a limited impact.²⁰

13 Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010, pp 8-12.

14 Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010, pp 12-13.

15 Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010, lines 29-30, p. 12 and lines 24-25, p. 13.

16 AMPLA, *Submission 4*, p. 2.

17 WA Department of Mining and Petroleum, *Submission 1*, p. 3.

18 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 2.

19 Ms Jessica Brown, Resources Division, DRET, *Proof Committee Hansard*, 31 March 2010, p.16.

20 Scrutiny of Bills Committee, Alert Digest No. 2 of 2010, 24 February, p. 56.

Part 4 of the bill – strict liability

3.17 Part 4 of the bill will amend various offence provisions within the Act to make those offences ones of strict liability, ie fault does not need to be proved.

3.18 The explanatory memorandum explains that these changes are being made to improve the effectiveness of enforcement as the 'remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements [make] it...extremely difficult to prove intent.'²¹ It also explains that the proposed changes are in line with Commonwealth strict liability guidelines.²²

3.19 The Department of Resources, Energy and Tourism noted in their submission that the Attorney General was consulted and his approval given when these amendments were being considered.²³

3.20 AMPLA argue that more justification should be given for imposing 'strict liability' offences, and suggest it may be better to await the conclusions of the inquiry into the Montara oil spill.²⁴

3.21 The Scrutiny of Bills Committee also drew attention to these proposed amendments stating that 'the committee considers that the reasons for the imposition of strict and absolute liability should be set out in the relevant explanatory memorandum' yet making no further comment given that the bill 'is not seeking to increase any penalties on titleholders, and in some instances the bill removes imprisonment as a penalty and replaces [the] sanction with penalty units.'²⁵

3.22 In their joint submission the Australian Workers Union and Maritime Union of Australia questioned whether the reduction in penalties from imprisonment to monetary fines would act as a deterrent given that it 'represents a significant downgrading of the penalty'.²⁶ A similar concern was expressed in a confidential submission.²⁷ Along similar lines, Assistant Professor Hunter argues:

Whilst the element of intention may pose difficulties for the regulators to prove, where it can be proved the harsh penalties should remain. Without this provision, it is possible that industry will view the fines as 'soft', and the penalty will no longer act as a deterrent where the fault element is a failure to do or not to do an act as required.²⁸

21 Explanatory Memorandum, p. 3.

22 Explanatory Memorandum, p. 3.

23 DRET, *Submission 3*, p. 9.

24 AMPLA, *Submission 4*, p. 7.

25 Scrutiny of Bills Committee, Alert Digest No. 2 of 2010, 24 February, p. 57.

26 Australian Workers Union and Maritime Union of Australia, *Submission 2*, p. 3.

27 Confidential, *Submission 5*.

28 Assistant Professor Tina Hunter, *Submission 4*, p. 10.

Part 6 of the bill – duties of titleholders in relation to wells

3.23 Schedule 3 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* establishes a framework to regulate occupational health and safety matters at or near facilities located in Commonwealth waters. Part 6 of the current bill proposes amendments to schedule 3 that will ensure:

...a titleholder's duty of care in relation to wells extends not only to wells in respect of which activities have been carried out, or are being carried out, during the term of the current title but also to wells in respect of which activities have been carried out under the authority of any previous titles in a series of titles...regardless of the identity of the titleholder.²⁹

3.24 These changes will make certain that although a titleholder's responsibilities will be broad reaching,³⁰ they will not extend to matters over which a titleholder could not reasonably be expected to have control.³¹

3.25 AMPLA are concerned that this provision may impose obligations retrospectively.³²

3.26 The Scrutiny of Bills Committee referred to the changes proposed in Part 6 and noted that advice from the Minister's office was being sought to provide the 'rationale for imposing retrospective liability in relation to a titleholder's duty of care and whether the retrospective application is appropriate' particularly as 'clauses 13A and 13B...are being expanded.'³³

3.27 The Scrutiny of Bills Committee also identified the clauses within proposed sections 13A and 13B that seek to impose absolute liability for whether or not a duty of care was owed by the defendant but did not make further comment as 'absolute liability applies to the existing versions of sections 13A and 13B in identical terms to those proposed in the bill.'³⁴

29 Explanatory Memorandum, p. 12.

30 The explanatory memorandum identifies at page 13 that the new clauses will set out that the duties of a titleholder will relate to ensuring a well that has been used or constructed, is being used, maintained or altered, or is being prepared for use in connection with operations authorised by the title is so designed, constructed, commissioned, altered, equipped, maintained and operated that risks to health and safety of persons at or near a facility are kept as low as reasonably practicable. Persons at or near a facility include persons engaged in a well-related activity, such as drilling, and will also expressly include divers. The duty will also extend to the suspension, abandonment and closing-off of wells.

31 Explanatory Memorandum, p. 13.

32 AMPLA, *Submission 4*, p. 9.

33 Scrutiny of Bills Committee, Alert Digest No. 2 of 2010, 24 February, p. 58.

34 Scrutiny of Bills Committee, Alert Digest No. 2 of 2010, 24 February, p. 59.

Parts 5, 7 and 8 – other matters

3.28 The remaining parts of the bill, Parts 5, 7 and 8 contain minor amendments to ensure the Act can be administered.

3.29 Part 5 of the bill will amend state and territory legislation that replicates the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to ensure that State and Northern Territory Ministers can perform functions and powers under Commonwealth regulations.³⁵ At present although the state and territory legislation authorises State and Northern Territory Ministers to perform functions and exercise powers under the Act it does not identify that they can also perform functions and powers conferred under Commonwealth regulations.³⁶ The amendments of Part 5 of the bill will address this situation.

3.30 Part 7 sets out a minor technical correction.³⁷

3.31 Part 8 of the bill contains amendments that update the Act to ensure that it reflects recent amendment to regulations. A number of regulations³⁸ were consolidated and replaced.³⁹

Recommendation 1

3.32 The Committee recommends that the Senate pass the bill.

Senator Annette Hurley

Chair

35 Explanatory Memorandum, p. 12.

36 Explanatory Memorandum, p. 12.

37 It omits '67(1)' from subsection 57(4) of Schedule 3 to the Act and substitutes '62(2) or 62(4)'.

38 The following regulations were replaced by the *Offshore Petroleum (Safety) Regulations 2009 – Offshore Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996*, the *Petroleum (Submerged Lands) (Diving Safety) Regulations 2002* and the *Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993*. The OHS aspects relating to pipelines were also removed from the *Petroleum (Submerged Lands) Pipelines Regulations 2001* and incorporated into the 2009 Regulations.

39 Explanatory Memorandum, p. 15.

Dissenting Report by Coalition senators

Introduction

The Coalition is particularly concerned about the introduction of a National Offshore Petroleum Regulator (NOPR), and does not believe a reasonable case of change from the existing joint system has been made.

National Offshore Petroleum Regulator

The Coalition is concerned that Western Australia has a better understanding of its own territorial waters, particularly as a large proportion of current and potential offshore gas fields are off the West Australian coast.¹

It was made clear in the submission for the Western Australian Department of Mines and Petroleum that there is no support in Western Australia for the removal of its role as a regulator of offshore petroleum.

CHAIR – In other words, you can achieve the goal of a more simple and efficient operation but still have the joint authority.

Mr Sellers – That is certainly our belief.²

Additionally, the Western Australian Government felt there was no need to change the system. It was felt that the current joint system works perfectly well.

We do not see the merit in shifting the system that we already have.³

While the Department of Resources, Energy and Tourism points out that Western Australia remains the only recalcitrant state,⁴ it was accepted that WA has a unique interest because...

...the bulk of Australia's resources of petroleum are found in the Commonwealth offshore area adjacent to Western Australia. I think that, generally, over 75 per cent of the petroleum resources are in those areas.⁵

1 Mr William Tinapple, Executive Director, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 4.

2 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 3.

3 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 4.

4 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 31 March 2010, p. 13.

5 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 31 March 2010, p. 11.

WA does not support the establishment of a NOPR and has made it clear that it will not roll in its state waters (comprising the internal and coastal waters) under NOPR's administration. This is significant because over two thirds of offshore petroleum exploration and development occurs off the coast of WA.⁶

It has been suggested that the *Environment and Biodiversity Act (1999) Cth* could be an option for the basis of any regulatory system run by Western Australia. Under the Act, the Commonwealth authorises the State to carry out environmental assessment and only holds its own if there is some disagreement.

A further concern supporting the current joint system of regulation is that any offshore development in Commonwealth waters implicitly involves the State Government as there is a requirement for onshore infrastructure such as towns, ports, railways and airports. A national offshore regulator would not address such onshore requirements for any oil and gas developments regarding land tenure or *Native Title Act* issues which are critical in ensuring the development of offshore gas projects.

The Coalition Senators concur with the view of the Western Australian Department of Mines and Petroleum that...

WA does not believe that to unilaterally impose this amendment is in the spirit of co-operative federalism publicly declared by the current Federal Government.⁷

Schedule 1 – Part 3 – Multiple titleholders

The issue of multiple titleholders does not appear to have been resolved and the Coalition Senators are concerned about this, particularly given the evidence from the Western Australian Department of Mines and Petroleum.⁸ It was additionally submitted that...

WA has consistently stressed to the Commonwealth that while the proposed amendments would make title administration easier, WA is concerned that this could be viewed as taking away the property rights of an individual member of a joint venture. Preserving property rights for individual joint venturers is an issue is petroleum commercial joint venture agreements.⁹

6 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 1.

7 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 2.

8 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 2 and 3.

9 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 3.

Sole Risk Issue

The amendments proposed could impact on the sole risk provisions of a joint venture agreement.¹⁰ The Western Australian Department of Mines and Petroleum expressed concern as to the impact on sole risk.¹¹

Under the proposed amendments, it is not clear to WA how a joint venturer partner that is not the nominated operator could make an application to drill a well except through the nominated operator. This may not be a feasible approach and WA has suggested that consultation with the legal/commercial areas of the petroleum industry is required on this issue.¹²

Schedule 1 – Part 1 – Registration Fees

The Bill requires that the Commonwealth retain registration fees to help fund the establishment of the National Offshore Petroleum Regulator (NOPR). While it has already been established that the Coalition Senators are extremely concerned about the introduction of a NOPR, there is additional concern about the fact that the form and function of the NOPR in regard to its operation in the Western Australian offshore area is currently the subject of intense negotiations between the Commonwealth and Western Australia.¹³

Therefore WA cannot agree to the proposed legislative amendment for the Commonwealth to retain registration fees.¹⁴

Conclusion

The Coalition believes that the case for changing the existing joint system has not been made and in fact the convincing evidence for the usefulness of preserving the status quo was presented. The introduction of NOPR, without due understanding of the intricacies of the Western Australian petroleum resources industry, would not bode well for the market as a whole.

The Coalition Senators are of the view that as has been the case with so much Rudd Government legislation, this Bill has been put together in haste without sufficient discussion and consultation with stakeholders.

The Coalition will not be supporting the introduction of the National Offshore Petroleum Regulator.

10 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 3.

11 The Western Australian Department of Mines and Petroleum defined sole risk as a commonly used term in joint venture agreements to cover provisions where one, or some, but not all of a joint venture wish to drill a well.

12 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 3.

13 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 1.

14 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 1.

Senator Alan Eggleston

Deputy Chair

Senator David Bushby

APPENDIX 1

Submissions Received

Submission

Number

Submitter

- | | |
|---|---|
| 1 | WA Department of Mines and Petroleum |
| 2 | Australian Workers Union and Maritime Union of Australia |
| 3 | Department of Resources Energy and Tourism <ul style="list-style-type: none">• Supplementary Submission |
| 4 | Assistant Professor Tina Hunter, Faculty of Law, Bond University |
| 5 | Confidential |

APPENDIX 2

Public Hearing and Witnesses

PERTH, 31 March 2010

BROWN, Ms Jessica Kate, Manager, Legislation Review and Timor Sea, Offshore Resources Branch, Department of Resources, Energy and Tourism

HARVEY, Mr Colin, Principal Legislation and Policy Officer, Petroleum Division, Department of Mines and Petroleum, Western Australia

LIVINGSTON, Mr Peter, Acting General Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism

SELLERS, Mr Richard, Director General, Department of Mines and Petroleum, Western Australia

TINAPPLE, Mr William, Executive Director, Department of Mines and Petroleum, Western Australia

