



THE
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Paul Howes National Secretary

MUA-AWU
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Mr John Hawkins
Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via e-mail: mailto:economics.sen@aph.gov.au

Dear Secretary,

Senate Economics Legislation Committee Inquiry into the Offshore Petroleum and Greenhouse Storage Legislation Amendment (Miscellaneous Measures) Bill 2010

The Australian Worker's Union (AWU) was invited by the Committee Secretariat on 3 March 2010 to make a submission to the above inquiry by 19 March 2010.

This submission is an agreed position between the AWU and the Maritime Union of Australia (MUA) which together constitutes the MUA-AWU Offshore Alliance and as such represents our joint submission to the Committee's inquiry.

General Comments:

We note the bill makes a number of policy and technical amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. In particular, the bill introduces a measure whereby the Commonwealth will retain the industry fees raised under the Act in order to use the revenue raised for the establishment of a National Offshore Petroleum Regulator. We also note the Committee is due to report to the Senate by 23 April 2010.

The AWU and MUA have examined the Offshore Petroleum and Greenhouse Storage Legislation Amendment (Miscellaneous Measures) Bill 2010, Explanatory Memorandum and Second Reading Speech by the Minister for Resources and Energy, the Hon Martin Ferguson AM, MP. We support the intent of the Bill and highlight four areas that are of most relevance to our respective members' interests, namely:

- Funding the new National Offshore Petroleum Regulator (NOPR);
- Augmenting the functions of NOPSA to include regulatory oversight of non-OHS structural integrity for facilities, wells and well-related equipment;
- Making certain offence provisions applying to titleholders, where the offence consists of a physical element (the doing of or failure to do an act), offences of



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- strict liability (where the onus of proof reverts to the titleholder rather than the regulator) and applicable penalties; and
- Clarifying that a titleholder's occupational, health and safety (OHS) responsibilities relate only to wells and not to facilities more generally.

1. Funding of the new National Offshore Petroleum Regulator (NOPR)

The MUA-AWU Offshore Alliance welcomes progress towards the establishment of the NOPR by 1 January 2012. Although legislation establishing the new regulator is not expected until next year (as discussions regarding the exact arrangements are ongoing within the Ministerial Council on Mineral and Petroleum Resources), the MUA-AWU Offshore Alliance is looking forward to the new national regulator and for the opportunity to continue to be consulted on progress with its establishment.

The MUA-AWU Alliance shares the views of the Minister that this initiative is a key development in the ongoing improvements and streamlining of the national regime for the regulation of petroleum and greenhouse gas activities in Commonwealth waters.

To this end, the bill introduces a measure by which the Commonwealth will retain the industry fees raised under the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006* in order to use this money for the establishment of NOPR rather than see it revert to the States and Territories as it does currently. However, we note that pending the establishment of the new regulator, and as the Minister's Second Reading speech makes clear, the States and Territories will continue to recover their costs of administering petroleum activities in Commonwealth offshore areas.

2. Augment the functions of NOPSA to include regulatory oversight of non-OHS structural integrity for facilities, wells and well related equipment;

While welcoming the augmentation of NOPSA's functions which will assist in more effective regulation, the MUA-AWU Offshore Alliance seeks assurances that fees collected by NOPSA under its cost recovery arrangements are sufficient to allow it to properly regulate the augmented functions it will be given and will not therefore detract from its capacity to perform its OHS functions. We are concerned therefore that NOPSA will not be expected to in effect be doing more (regulatory work) with fewer resources as this outcome would cut across the regulatory intent of the amendment.

This is more the case given the Bill proposes providing for the fees raised under the *Offshore Petroleum and Greenhouse Gas (Registration Fees) Act 2006* (the Registration Fees Act) to provide establishment funding for the proposed new NOPR and none of these fees will go to NOPSA for its augmented functions.



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3. To make certain offence provisions applying to titleholders, where the offence consists of a physical element (the doing of or failure to do an act), offences of strict liability.

While we support making offences based on strict liability principles, (reversing the onus of proof), we question whether enforcement (and future deterrence) is aided by amendments in the size of the applicable penalties. The fact that the Bill reduces some existing penalties from 5 years imprisonment to a monetary fine of 100 Penalty Units i.e. to \$11,000 (100x\$110), represents a significant downgrading of the penalty, despite the fact that the Explanatory Memorandum says this penalty regime is in line with Commonwealth strict liability guidelines.

The MUA-AWU Offshore Alliance is convinced that reflecting shifts in community expectations regarding the treatment of contraventions of regulatory requirements in critical industries in addition to the views of experienced regulators such as the ACCC, the possibility of "jail-time" is a compelling regulatory tool, more likely to elicit better practices "on the ground" by titleholders and which are more consistent with a "strict liability" framework.

4. To clarify that a titleholder's occupational, health and safety (OHS) responsibilities relate only to wells and not to facilities more generally.

In relation to this amendment, the MUA-AWU Offshore Alliance seeks assurances that the interaction between the NOPSA jurisdiction and the proposed new NOPR jurisdiction is clear-cut and does not allow for OHS responsibilities to be clouded or neglected.

The MUA-AWU Offshore Alliance welcomes this opportunity to contribute to the deliberations of the Senate's Economics Legislation Committee and stands ready to participate in its future hearings as required.

Yours sincerely

Paul Howes
**NATIONAL SECRETARY
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