

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.