

Petroleum (Submerged Lands) Amendment Bill 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Petroleum (Submerged Lands) Amendment Bill 2004*.

Policy Objectives of the Legislation

The purpose of the Bill is to:

- provide that cross-references to State laws remain valid, when the Offshore Petroleum Act (Cwlth) is enacted; and
- implement the legislative scheme to confer powers and functions on National Offshore Petroleum Safety Authority (NOPSA) which was established by the *Petroleum (Submerged Lands) Amendment Act 2003* (Cwlth).

Reasons for the Bill

The Commonwealth is rewriting the *Petroleum (Submerged Lands) Act 1967*. The name of the Commonwealth Act will be changed to the Offshore Petroleum Act. Legislative action is required by the State in advance of commencement of the main provisions of the rewritten Commonwealth Act to ensure that cross-references to State laws remain valid.

The *Petroleum (Submerged Lands) Amendment Act 2003* (Cwlth) received Royal Assent in December 2003. The Act establishes the NOPSA to regulate safety in Commonwealth waters and State and Northern Territory coastal waters. NOPSA will deliver a uniform national safety regulatory regime for Australia's offshore petroleum industry and will reduce the regulatory burden faced by industry participants. Amendments are

required to the State *Petroleum (Submerged Lands) Act 1982* to confer powers and functions on NOPSA.

The amendments to the State legislation are required to be passed by Parliament and have received Royal Assent by 31 December 2004 as NOPSA commences operation on 1 January 2005.

Achieving the Objectives

The objectives will be achieved by:

- delivering a uniform national safety regulatory regime for Australia's offshore petroleum industry that will reduce the regulatory burden faced by industry participants.

Administrative costs

No additional administrative costs will result from these amendments.

Fundamental Legislation Principles

In August 2001, with the support of the industry and the work force, the Commonwealth Department of Industry Science and Resources prepared a report on offshore safety. The report found that the current system of regulation was inadequate with unclear limitations, overlapping acts and inconsistent application between Commonwealth and State jurisdictions.

The Commonwealth has responded to the report by initiating the creation of a National Offshore Petroleum Safety Authority to regulate occupational health and safety matters on offshore petroleum facilities in both Commonwealth and State waters. The Commonwealth has already passed legislation to enable the authority to undertake its regulatory activities in Commonwealth waters and to provide the safety authority with the ability to fully recover the cost of its operations through industry fees and levies.

All the States are party to the Offshore Constitutional Settlement with the Commonwealth which supports consistent offshore regulation. This obligation requires Queensland to enact legislation to mirror the legislative changes made by the Commonwealth to enable the safety authority to carry out its occupational health and safety role in State waters. It will mean that State laws which currently regulate occupational health and safety (OHS) matters on offshore facilities will be disapplied and a new Schedule 3 inserted into the Queensland Act which provides the OHS regime to apply in State waters.

Schedule 3 of the draft Bill outlines the duties that are to be carried out by various people with responsibilities on an offshore facility, including the operator of a facility and employers of workers. It also extends to the manufacturers and suppliers of plant and substances to be used on the offshore facility to ensure that when properly used it is safe and without risk to the health and safety of the workers.

Currently there are no similar sections and exemption from liability in the Queensland Act. The new clauses have been included to reflect similar requirements applying in the Commonwealth *Petroleum (Submerged Lands) Act 1967*. Inclusion of these provisions is consistent with the Offshore Constitutional Settlement between the Commonwealth and the States to provide for consistent offshore regulation. It will also enable the operators-employers of offshore facilities to choose to carry out their functions in good faith without being subject to possible legal action.

The Bill contains a number of clauses that may be considered to breach fundamental legislative principles.

Clause 12 of the Bill inserts a proposed new section 14A into the principal Act, which will insert in the section a list of the Acts currently known to require disapplication, provide that a regulation may prescribe any other law of the State relating to occupational health and safety that is to be disappplied in the future and provides that the regulation mentioned in paragraph (b) expires 1 year after its commencement.

Clause 151R provides that the safety authority, the CEO, an OHS inspector and a person acting under the direction or authority of NOPSA is excluded from liability for the performance of an OHS function carried out in good faith. This exemption from liability does not currently exist in the Queensland *Petroleum (Submerged Lands) Act 1982* but reflects a similar exemption conferred by the Commonwealth *Petroleum (Submerged Lands) Act 1967*. Inclusion of this provision is consistent with the Offshore Constitutional Settlement between the Commonwealth and the States to provide for consistent offshore regulation. It will also enable the safety authority to carry out their functions without constraint from possible legal action in both Commonwealth and State waters, particularly when incidents occur on offshore facilities that require immediate action.

Clauses 34, 39 and 84 provide for immunity from civil proceedings and Clause 76 provides immunity from civil and criminal proceedings for certain persons. It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation. The clauses prevent civil liability from being attached to the individual. The proposed immunity under these

clauses does not extend to a person who has been negligent, even though the person may have acted in good faith.

Clauses 45–47 provide inspectors with power of entry. Under clause 45 an inspector may, without consent or a warrant, enter a place of business to which this Bill relates. A power of entry to a place of business when the matter concerns occupational health and safety is consistent with other modern safety legislation. The entry by consent option is overwhelmingly used in practice as inspectors entering premises only do so when specifically invited to enter by the owner/occupier. It is logical and sensible that this option remain. The entry onto business premises during working hours without invitation is an essential part of an inspector's work, as an "unannounced" inspection can often detect a breach which would otherwise be hidden.

Clause 63 makes it an offence for a prescribed person (prescribed person means any of the following persons — (a) the operator of a facility; (b) the person in charge of operations at a workplace in relation to a facility; (c) a member of the workforce at a facility; (d) a person representing a person mentioned in paragraph (a) or (b)) to fail to provide a document or answer a question to an OHS inspector unless the person has a reasonable excuse. The provision specifies that non-compliance on the basis of a tendency to incriminate the person is not a reasonable excuse. This provision may be regarded as compromising the person's protection against self-incrimination. An OHS inspector's power to require a person to produce a document or make a document available for inspection is limited to documents connected with the conduct of an inspection. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person. The same justification is relied upon with regard to the requirement for a person to answer a question of an OHS inspector.

Clause 80 provides for an offence of victimisation in relation to an employer who takes detrimental action against an employee because of particular actions of the employee relating to occupational health and safety. Subsection (3) reverses the onus of proof by providing that, if all other elements of the offence have been proved, the defendant has the onus of establishing that the action was not taken because of the employee's occupational health and safety action. It is considered that the reversal is justified on the grounds that the information the defendant is required to prove is peculiarly within the defendant's knowledge.

Clause 83 provides that an act or omission by a person's representative, relating to an offence against the Bill, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. In these circumstances, the person will have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission. This is reasonable as a person should be required to oversee the conduct of his or her representatives and, in doing so, make reasonable efforts to ensure that his or her employees or agents comply with the requirements of the legislation.

Consultation

The Commonwealth has consulted extensively with the States and Territory in the rewriting of the Commonwealth Act and in relation to the proposed amendments. The Commonwealth has consulted the Australian Petroleum Production and Exploration Association (APPEA) and the relevant Unions.

The Department of Natural Resources, Mines and Energy (NRM&E) has consulted with all State Government Agencies with regard to the proposed amendments and the possible impact on other State legislation.

The States, Territory, APPEA and Unions all support the establishment of NOPSA. All Government Departments support the proposed amendments.

Notes on Provisions

1 Short title

Clause 1 sets out the short title of the Act as the *Petroleum (Submerged Lands) Amendment Act 2004*.

3 Act Amended

Clause 3 amends the *Petroleum (Submerged Lands) Act 1982*.

2 Commencement

Clause 2 provides that the Act will commence on 1 January 2005.

4 Amendment of s 4 (Definitions)

Clause 4 makes consequential amendments to definitions in the Principal Act.

5 Amendment of s 5 (Effect of territorial sea baseline changes on pipeline licence)

Clause 5 amends the references in s.5(1)(c)(ii) from “adjacent area” to “Commonwealth adjacent area”. It also omits the footnote in the subsection. Clause 4 also changes the footnote, deleting specific references to s.5AAA(3).

6 Amendment of pt 1, div 2, hdg (Administration of the Commonwealth adjacent area)

Clause 6 inserts “for Queensland” in the heading of pt 1, div 2.

7 Replacement of s 9 (Commonwealth adjacent area)

Clause 7 amends the definition of the Act, as the rewritten Commonwealth Act will be called the Offshore Petroleum Act.

8 Amendment of s 10 (Minister as member of Joint Authority)

Clause 8 provides that the Minister may exercise any power and perform any function authorised or required by a Commonwealth Act.

9 Amendment of s 11 (Minister as Designated Authority)

Clause 9 authorises the Minister to perform the functions and exercise the powers that a Commonwealth Act invests in the designated authority in respect of the Commonwealth adjacent area for Queensland.

10 Amendment of s 12 (Delegations under Commonwealth Act)

Clause 10 authorises the Minister to delegate a power conferred by a Commonwealth Act about the adjacent area for Queensland upon the designated authority to a public servant.

11 Amendment of s 13 (Public servants performing functions under Commonwealth Act)

Clause 11 authorises a public servant to perform functions under a Commonwealth Act in respect of the adjacent area for Queensland.

12 Insertion of new s 14A

Clause 12 of the Bill inserts a proposed new section 14A into the principal Act, which will insert in the section a list of the Acts currently known to require disapplication, provide that a regulation may prescribe any other law of the State relating to occupational health and safety that is to be disappplied in the future and provides that the regulation mentioned in paragraph (b) expires 1 year after its commencement.

13 Amendment of s 15 (Jurisdiction of State limits)

Clause 13 inserts the word ‘courts’ in the heading.

14 Amendment of s 59 (“Unit development”)

Clause 14 substitutes references to “adjacent area” with “Commonwealth adjacent area”.

15 Amendment of s 64 (Application for pipeline licence)

Clause 15 clarifies that the licence area relates to the area of a licence granted under the Commonwealth Act not the State Act.

16 Amendment of s 65 (Grant or refusal of pipeline licence)

Clause 16 clarifies that the licence area relates to the area of a licence granted under the Commonwealth Act not the State Act.

17 Insertion of new s 124A

Clause 17 inserts a new section 124A in the Principal Act regarding interfering with offshore petroleum installation or operation.

18 Insertion of new pt 3A

Clause 18 inserts a new part 3A in the Principal Act conferring powers and functions on the National Offshore Petroleum Safety Authority.

Part 3A National Offshore Petroleum Safety Authority

Division 1 Preliminary

151A Definitions for pt 3A

Clause 151A defines terms used in part 3A that are relevant to the functions of the Safety Authority.

151B Occupational health and safety

Clause 151B provides that schedule 3 has effect. Schedule 3 sets out requirements regarding OHS on offshore petroleum facilities.

151C Listed OHS laws

Clause 151C lists the OHS laws as defined for the purposes of the Principal Act.

151D Regulation-making power – occupational health and safety

Clause 151D provides for the making of regulations for the purposes of OHS of persons in offshore petroleum facilities.

Division 2 Functions and powers of the Safety Authority

151E Safety Authority's functions

Clause 151E confers general functions on the Safety Authority that are concerned with the OHS of persons engaged in offshore petroleum operations. Offshore petroleum operations include offshore petroleum-related diving activities and other offshore petroleum activities that take place at an offshore petroleum facility, but do not include seismic survey vessels and operations carried out on those vessels, except for diving activities.

The functions include promoting OHS of persons, development and implementation of effective monitoring and enforcement strategies, investigations of accidents and occurrences affecting OHS, and reporting.

151F Safety Authority's ordinary powers

Clause 151F provides that the Safety Authority has power to do all things necessary or convenient to be done for, or in connection with the performance of its functions. These include power to acquire, hold and dispose of real property, enter contracts, lease and occupy real property, conduct research, hold and apply for patents and to do anything incidental to its functions.

151G Judicial notice of seal

Clause 151G provides for the standard provisions with respect to the seal of the Safety Authority.

Division 3 Safety Authority Board

Division 3 provides for the functions and powers of the National Offshore Petroleum Safety Authority Board, and its decisions.

151H Functions of the Board

Clause 151H confers functions on the Board in respect of advising and making recommendations to various persons and bodies. These include the Chief Executive Officer ("CEO") of the Safety Authority, and the State and Commonwealth Ministers with regards to policy or strategic matters relating to OHS and performance of the Safety Authority.

151I Powers of the Board

Clause 151I confers powers on the Board by reference to its functions as set out in section 151H. The Board has power to do all things necessary or convenient for, or in connection with, the performance of its functions.

151J Validity of decisions

Clause 151J provides that the functions and powers set out in sections 151H and 151I respectively are not affected where there is a vacancy or vacancies in the membership of the Board.

Division 4 Chief executive officer and staff of the Safety Authority**151K CEO acts for Safety Authority**

Clause 151K provides that anything done by the CEO in the name of the Safety Authority or on the Safety Authority's behalf is taken to have been done by the Safety Authority.

151L Working with the Board

Clause 151L establishes the working relationship between the CEO and the Board.

151M Delegation by CEO

Clause 151M permits public service and public authority employees and officers to accept delegations from the CEO under the Commonwealth Act. Persons exercising powers under a delegation must do so in accordance with any directions of the CEO.

151N Secondments to Safety Authority

Clause 151N permits public service and public authority employees and officers to assist the Safety Authority in connection with the performance of any of its functions or the exercise of any of its powers.

Division 5 Other Safety Authority provisions

151O Minister may require the Safety Authority to prepare reports or give information

Clause 151O sets out the powers of the Minister to require the Safety Authority to prepare reports or documents on specified matters relating to the performance of the Safety Authority's function or exercise of its powers. Copies of the report or documents are to be given to the Minister, the Commonwealth Minister and each interstate Minister.

151P Directions to Safety Authority

Clause 151P provides that the Minister may request that the Commonwealth Minister give a direction to the Safety Authority. The Commonwealth Minister must make a decision regarding the request within 30 days of receipt. If s/he refuses to grant the request then s/he must provide the Minister with reasons. A direction given by the Commonwealth Minister must be complied with by the Safety Authority.

151Q Reviews of operations of Safety Authority

Clause 151Q provides that the Minister is to cause to be conducted reviews of the operations of the Safety Authority relating to each 3-year period after the commencement of operations of the Authority on 1 January 2005. This review relates to the Safety Authority's functions in coastal waters (called the "adjacent area" in the Principal Act). The review can be conducted in conjunction with similar reviews under corresponding laws.

Clause 151Q(6) provides that, without limiting the matters to be covered by a review, the review must include an assessment of the effectiveness of the Authority in improving the OHS of persons engaged in offshore petroleum operations.

Clause 151Q(7) requires the tabling of any report of a review in each House of Parliament within 15 sitting days of the report being made available to the Minister.

151R Liability for acts and omissions

Clause 151R applies to the Safety Authority, the CEO, an OHS inspector or a person acting under direction of Safety Authority or CEO. It provides

that they are not personally liable for acts or omissions done in good faith for the performance of a function under a listed OHS law.

19 Insertion of new sch 3

Clause 19 inserts a new schedule 3 into the Principal Act regarding OHS on offshore petroleum facilities.

Schedule 3 Occupational health and safety

Part 1 Preliminary

1 Objects

Clause 1 sets out the objects of schedule 3.

The objects relate to the securing of the OHS of all members of the workforce at a facility, whether they work at the facility under a contract of employment with any person or under some other contractual arrangement and regardless of whether they have any contract at all with a person who owes a duty of care.

It also provides that the objects are not confined to members of the workforce while they are working but are also intended to protect the workforce during mealtimes, recreation and periods of rest offshore.

2 Definitions for sch 3

Clause 2 provides definitions for the purposes of schedule 3.

3 Facilities

Clause 3 defines the vessels and structures located in State waters that are considered to be facilities for the purpose of schedule 3.

4 Operator must ensure presence of operator's representative

Clause 4 provides that an operator must ensure at all times the presence of a representative of the operator, who has the day-to-day management and

control of the operations at the facility, and display their name prominently at the facility.

5 Health and safety of persons using an accommodation facility

Clause 5 provides that the provisions of schedule 3 apply to persons who are at a facility solely for purposes of accommodation, even though all their work activities may be at another facility.

6 Contractor

Clause 6 defines contractor for the purposes of schedule 3.

Part 2 Occupational health and safety

Division 1 Duties relating to occupational health and safety

7 Duties of operator

Clause 7 establishes the duties of care that are owed by the operator of a facility to the members of the workforce.

The primary duty of the operator is to take all reasonably practicable steps to ensure that the facility and all work and other activities at the facility are safe and without risk to health.

8 Duties of persons in control of parts of facility or particular work

Clause 8 establishes duties of persons who may be in management or control of a part of a facility, or of certain activities at a facility. Examples of such persons may be those supervising a drilling crew, maintenance crew or dive team.

The duties established for these persons are similar to those established for the operator, but are limited to the areas or activities under the control of the person. They do not include requirements to provide medical and first aid facilities, or develop or monitor health and safety policy.

9 Duties of employers

Clause 9 establishes duties of employers to employees and to contractors.

The employer duties are to take all reasonable practicable steps to protect the health and safety of employees.

There is overlap in the duties of care imposed on operators, on persons in control of parts of the facility or particular work, and on employers. There is further overlap with the duties of care imposed on manufacturers, suppliers, etc, which are defined by later clauses, and ensures that there are no gaps in the coverage of the duties of care, so that, when enforcement action is required, it can be taken against the most appropriate person in the circumstances.

10 Duties of manufacturers in relation to plant and substances

Clause 10 provides for the duties of care of manufacturers (including importers and overseas manufacturers with no place of business in Australia) in relation to plant and substances reasonably expected to be used by members of the workforce at a facility. This provision does not affect other State laws relating to goods.

11 Duties of suppliers of facilities, plant and substances

Clause 11 provides for the duties of care of suppliers of plant and substances, to all persons at all times they are at an offshore petroleum facility. This provision also extends to an ostensible supplier in the business of financing the acquisition or use of goods by others.

12 Duties of persons erecting facility or installing plant

Clause 12 provides for the duties of care of persons erecting or installing plant, to all persons at all times they are at an offshore petroleum facility.

13 Duties of persons in relation to occupational health and safety

Clause 13 provides the duties of care of any person at an offshore petroleum facility in relation to OHS.

14 Reliance on information supplied or results of research

Clause 14 provides for persons in complying with their duties, may rely on information provided by others, or on the results of testing and research conducted by others.

Division 2 Regulations relating to occupational health and safety**15 Regulations relating to occupational health and safety**

Clause 15 provides that regulations may be made that relate to any matter affecting or likely to affect OHS of any class of person at a facility and lists those matters.

Part 3 Workplace arrangements**Division 1 Designated work groups****Subdivision 1 Establishment of designated work groups****16 Establishment of designated work groups by request**

Clause 16 provides that the operator of a facility has the responsibility to organise a designated work group if a request is made by a member of the workforce or workforce representative.

The operator on receiving such a request must within 14 days enter into consultation with members of the workforce, workforce representatives, or each employer (if any) of members of the workforce.

17 Establishment of designated work groups at initiative of operator

Clause 17 provides that the operator of a facility may initiate the establishment of a designated work group.

Subdivision 2 Variation of designated work groups

18 Variation of designated work groups by request

Clause 18 provides that the operator of a facility has the responsibility to vary an established designated work group if a request for variation is made.

19 Variation of designated work groups at initiative of operator

Clause 19 provides that the operator of a facility may initiate the variation of an established designated work group.

Subdivision 3 General

20 Referral of disagreement to reviewing authority

Clause 20 provides that, if a disagreement arises between the parties in the course of consultation under clause 16, 17, 18 or 19, either party may refer the disagreement to the reviewing authority for resolution. The reviewing authority is the Australian Industrial Relations Commission.

21 Manner of grouping members of the workforce

Clause 21 provides for the manner in which members of the workforce may be grouped and the issues that the parties to the consultation must have regard.

Division 2 Health and safety representatives

Subdivision 1 Selection of health and safety representatives

22 Selection of health and safety representatives

Clause 22 provides for the selection of a Health and Safety Representatives (“HSRs”). HSRs are the persons selected to represent the members of each

designated work group during consultations with management on OHS issues.

23 Election of health and safety representatives

Clause 23 relates to the election of HSRs if there is a vacancy for a HSR, and no person has within a reasonable time been unanimously selected by the group. The operator is required to invite nominations from all group members. If the operator fails to invite such nominations in a reasonable time, the Safety Authority may direct the operator to do so. No person can be nominated if disqualified under clause 29.

If there is only one candidate, that person is taken to be elected. If more than one candidate is nominated, the operator must conduct or arrange for the conduct of an election. All members of the workforce in the designated work group are entitled to vote. The operator must comply with any directions of the Safety Authority when conducting the election.

24 List of health and safety representatives

Clause 24 requires the operator to prepare and keep up to date a list of all HSRs, and to make that list available to the members of the workforce and to Safety Authority inspectors (who are called “OHS inspectors” in the Act).

25 Members of designated work group must be notified of selection etc of health and safety representatives

Clause 25 requires the operator to notify members of the workforce of a vacancy for a HSR within a reasonable time of that vacancy arising, and to notify those members of the name of the person selected within a reasonable time of the selection being made.

26 Term of office

Clause 26 provides that a HSR holds office for a term agreed to by the parties or for 2 years if there is no agreement.

27 Training of health and safety representatives

Clause 27 provides that a HSR must undertake a Safety Authority accreditation of HSR training courses. The operator and employer are required to grant the HSR leave to attend an accredited course.

28 Resignation etc of health and safety representatives

Clause 28 provides the processes to be followed for the formal resignation of HSRs. It also sets out the requirements for notifying relevant persons of such resignations.

29 Disqualification of health and safety representatives

Clause 29 provides the process for disqualification of a HSR.

30 Deputy health and safety representatives

Clause 30 allows for the selection of a deputy HSR by the designated work group who exercises the powers of the HSR if the HSR ceases to be the HSR or is unable.

Subdivision 2 Powers of health and safety representatives**31 Powers of health and safety representatives**

Clause 31 sets out the powers of a HSR. These powers include: to inspect the workplace, to request an inspection by an OHS inspector, to accompany that inspector during such an inspection, to represent the group members in consultations with management, to investigate complaints by group members about OHS, to be present at any interview of a group member by an inspector or management about OHS issues, to obtain access to relevant information, and to issue provisional improvement notices under clause 35.

32 Assistance by consultant

Clause 32 provides that in exercising these powers, HSRs may be assisted by consultants, if that is agreed by either the Safety Authority or management.

33 Information

Clause 33 provides that neither the HSR or consultant is entitled to have access to information that is subject to legal professional privilege, or that is of a confidential medical nature unless they have the person's consent or the person cannot be identified by that information.

34 Obligations and liabilities of health and safety representatives

Clause 34 provides that HSRs are not obliged to exercise their powers and protects them from liability. Clause 34 provides for immunity from civil proceedings. It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation. The clause prevents civil liability from being attached to the individual. The proposed immunity under this clause does not extend to a person who has been negligent, even though the person may have acted in good faith.

35 Provisional improvement notices

Clause 35 provides that HSRs have power to issue provisional improvement notices (“PINs”), to the persons responsible for relevant work activities that the HSR believes that there is a contravention of the OHS laws. The PIN may also indicate an action if the HSR believes the responsible person must take to rectify the apparent contravention. HSRs may only issue PINs after having consulted with the responsible person about the apparent contravention, and if there is a failure to reach agreement within a reasonable time.

36 Effect of provisional improvement notice

Clause 36 provides that if a HSR issues a PIN to any person, that person may request an inspection by an OHS inspector. Upon that request being made the PIN is suspended, but the inspector may subsequently confirm, vary or cancel the PIN, and make any other decision or exercise any other powers considered necessary. The responsible person is required to ensure that the notice (as confirmed or varied by the inspector) is complied with, to the extent that the responsible person has control.

Subdivision 3 Duties of the operator and other employers in relation to health and safety representatives

37 Duties of the operator and other employers in relation to health and safety representatives

Clause 37 provides that the operator is required to consult with a HSR (if requested) about any workplace changes that may affect the health and safety of the workforce, and (if there is no health and safety committee)

about the implementation and review of measures to control health and safety. They also require the operator to allow the HSR to make inspections under clause 31.

Division 3 Health and safety committees

38 Health and safety committees

Clause 38 establishes when a health and safety committee must be established, such as if the workforce exceeds 50 in total, there are designated work groups, and a request is made. The clause also states that the composition and procedures of the committee are to be agreed by appropriate consultation, that the committee must meet at least every 3 months, and that minutes of meetings must be retained for 3 years.

39 Functions of health and safety committees

Clause 39 defines the functions of health and safety committees which include providing assistance to the operator of a facility to review, develop and implement health and safety measures for the workforce. Clause 39 provides for immunity from civil proceedings. It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation. The clause prevents civil liability from being attached to the individual. The proposed immunity under this clause does not extend to a person who has been negligent, even though the person may have acted in good faith.

40 Duties of the operator and other employers in relation to health and safety committees

Clause 40 makes provisions to ensure that the health and safety committee functions effectively, for example by requiring that relevant information be provided to the committee, and by requiring that persons are given time off work activities to attend committee meetings.

Division 4 Emergency procedures

41 Action by health and safety representatives

Clause 41 deals with the emergency powers of a HSR.

It provides that if a HSR has reasonable cause to believe that there is an imminent and serious danger to the health or safety of any person at or near a facility unless a group member ceases to perform particular work, the HSR must either inform a supervisor or, if no supervisor can be contacted immediately, must direct that the work cease and inform a supervisor as soon as practicable. The supervisor must then take such action as he or she thinks appropriate to remove the danger.

It also provides that if the HSR has reasonable cause to believe that there continues to be an imminent and serious danger to health or safety unless the work ceases, despite any action taken by the supervisor, the HSR must direct that the work cease and, as soon as practicable, inform the supervisor that the direction has been given.

42 Directions to perform other work

Clause 42 provides that if an employee has ceased to perform work in accordance with a direction of a HSR or OHS inspector under clause 41, the employer may direct the employee to do suitable alternative work.

Part 4 Inspections

Division 1 Powers, functions and duties of OHS inspectors

43 Powers, functions and duties of OHS inspectors

Clause 43 establishes that OHS inspectors have the powers, functions and duties conferred or imposed by a listed OHS law. The Safety Authority may issue direction and restrictions on the exercise of the OHS inspector's powers.

Division 2 Inspections

44 Inspections

Clause 44 provides that an OHS inspector may conduct an inspection at any time or as directed by the Safety Authority, to determine that a listed OHS law is being complied with, a listed OHS law has been contravened or concerning an accident or dangerous occurrence at a facility.

Division 3 Powers of OHS inspectors in relation to the conduct of inspections

Subdivision 1 Power of entry

45 Power of entry – general

Clause 45 provides inspectors with power of entry. Under clause 45 an inspector may, without consent or a warrant, enter a place of business to which this Bill relates. A power of entry to a place of business when the matter concerns OHS is consistent with other modern safety legislation. The entry by consent option is overwhelmingly used in practice as inspectors entering premises only do so when specifically invited to enter by the owner/occupier. It is logical and sensible that this option remains. The entry onto business premises during working hours without invitation

is an essential part of an inspector's work, as an "unannounced" inspection can often detect a breach which would otherwise be hidden.

46 Inspector's additional entry power for facility

Clause 46 provides that inspectors have the essential right of entry at any time, so that they may properly monitor operating plants. This clause specifically excludes any residential premises on the operating plant from this right of entry.

47 Inspector's additional entry power for particular regulated business premises

Clause 47 provides OHS inspectors with powers of entry and search at "regulated business premises" that are not facilities. The search powers under this clause relate only to documents that relate to a facility or facility operations that are the subject of an inspection. The powers therefore relate only to the responsibilities of the Safety Authority in relation to health and safety of the workforce at a facility.

"Regulated business premises" are defined in clause 3 to mean premises that are occupied by a person who is the operator of a facility and that are used or proposed to be used, wholly or principally in connection with offshore petroleum operations. The intent is to enable inspectors to enter and search operators' premises used in relation to offshore operations. These may be, for example, premises used for remote operation of facilities, or offices used for management of operations, supply bases, heliports, etc, where there are documents related to an inspection.

Subdivision 2 Procedure for entry

48 Entry with consent

Clause 48 provides for when an inspector or authorised officer seeks consent to enter a place. The inspector or officer is required to tell the occupier the purpose of the entry and give the occupier the right of refusal. The inspector or officer may ask the occupier to sign a consent form, a copy of which must be given to the occupier.

49 Application for warrant

Clause 49 provides for entry by warrant and details the method by which a warrant is obtained.

50 Issue of warrant

Clause 50 provides for the magistrate to issue the warrant and gives the details of the contents of the warrant.

51 Application by electronic communication and duplicate warrant

Clause 51 provides various methods by which an application for a warrant may be made including telephone, facsimile or other electronic communication and provides for various mechanisms of issue.

52 Defect in relation to warrant

Clause 52 provides that insubstantial defects in a warrant do not invalidate the warrant.

53 Warrants – procedure before entry

Clause 53 provides that an inspector must, before entering a place under a warrant, provide identification, give the occupier a copy of the warrant and give the person the opportunity to allow entry without force.

54 Entry of facility

Clause 54 provides for an inspector to enter a facility under clause 46. On entering the facility, the OHS inspector must take reasonable steps to notify the operator's representative, or a HSR for a designated work group, the purpose of entering the facility.

55 Entry of particular regulated business premises

Clause 55 provides OHS inspectors with powers of entry at "regulated business premises" other than a facility under clause 47. On entering the facility, the OHS inspector must take reasonable steps to notify the operator's representative, or a HSR for a designated work group, the purpose of entering the facility. If requested by the occupier, the OHS inspector must produce the OHS inspector's identity card; a copy of the Safety Authority's written direction, if any, to conduct the inspection; and a

copy of the restrictions, if any, imposed on the powers of the OHS inspector under clause 43(3).

Subdivision 3 Powers after entering a place

56 Application of sdiv 3

Clause 56 provides for this subdivision to apply only after entry has been effected and, where consent has been requested, that consent has been given.

57 General powers – facility

Clause 57 provides for powers after entry that are necessary to investigate or inspect the situation for which entry was sought. They include the ability to test, measure, copy, photograph anything or take a thing or a sample away for testing. The powers also provide for the inspector or authorised officer to bring onto the site other persons or equipment necessary to exercise the power.

58 General powers – other places

Clause 58 provides OHS inspectors with the powers to search a place that is not a facility and may inspect, take extracts from, or make copiers of, any documents at the premises that relate to a facility that is, or to facility operations that are, the subject of the inspection.

59 Obstructing or hindering OHS inspector

Clause 59 provides that it is an offence to obstruct or hinder an OHS inspector.

Subdivision 4 Other powers

60 Definition of sdiv 4

Clause 60 defines a “prescribed person”.

61 Power to require assistance and information

Clause 61 provides that an OHS inspector has the power to require reasonable assistance and information in the conduct of an inspection.

62 Power to require the answering of questions and the production of documents or articles

Clause 62 provides that an OHS inspector has the power to require a person being questioned in relation to the conduct of an inspection to answer questions and produce documents or articles, if the inspector believe reasonably necessary to do so in connection with the conduct of the inspection.

63 Privilege against self-incrimination

Clause 63 provides for the privilege against self-incrimination in answering questions or producing document etc during the conduct of an investigation. Clause 63 makes it an offence for a prescribed person (prescribed person means any of the following persons — (a) the operator of a facility; (b) the person in charge of operations at a workplace in relation to a facility; (c) a member of the workforce at a facility; (d) a person representing a person mentioned in paragraph (a) or (b)) to fail to provide a document or answer a question to an OHS inspector unless the person has a reasonable excuse. The provision specifies that non-compliance on the basis of a tendency to incriminate the person is not a reasonable excuse. This provision may be regarded as compromising the person's protection against self-incrimination. An OHS inspector's power to require a person to produce a document or make a document available for inspection is limited to documents connected with the conduct of an inspection. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person. The same justification is relied upon with regard to the requirement for a person to answer a question of an OHS inspector.

64 Power to take possession of plant, take samples of substances etc

Clause 64 gives OHS inspectors the power to take possession of plant, to take samples of substances, etc, for example as part of an investigation into

an accident. The affected persons are to be notified when powers under clause 64(1) are exercised.

65 Power to direct that workplace etc not be disturbed

Clause 65 provides that OHS inspectors have the power to issue notices that direct that workplaces not be disturbed, in order to remove immediate threats to health and safety, or to allow inspections or other examinations to take place. The direction must be displayed in a prominent place in work place and must specify the time required to remove the threat or carry out an inspection, etc. The direction may be renewed.

66 Power to issue prohibition notices

Clause 66 provides that OHS inspectors have the power to issue notices that prohibit specified activities.

The operator's representative at the facility must give a copy of the notice to the HSR of each designated work group that is affected by the notice, and to display a copy of the notice in a prominent place.

The OHS inspector is also required to give a copy of the notice to any person (who is not the operator) who owns plant, substances, etc, affected by the notice.

67 Compliance with prohibition notice

Clause 67 provides that operators must ensure that the prohibition notice issued is complied with. The OHS inspector is to inform the operator if the action taken by the operator to remove the threat to health and safety is not adequate. The notice ceases to have effect once the inspector has informed the operator that the inspector is satisfied with the action taken to remove the threat.

68 Power to issue improvement notices

Clause 68 provides an OHS inspector with the power to issue an improvement notice if s/he believes on reasonable grounds that a listed OHS law is being or has been contravened.

69 Compliance with improvement notice

Clause 69 provides that a person issued with an improvement notice must comply with it.

70 Notices not to be tampered with or removed

Clause 70 provides that a displayed PIN, prohibition notice or improvement notice must not be tampered with or removed without reasonable excuse.

Division 4 Reports on inspections

71 Reports on inspections

Clause 71 requires an OHS inspector to prepare a written report for the Safety Authority (including the inspector's conclusion, recommendation and any other prescribed matters) as soon as practicable after conducting an inspection. Clause 71(3) requires the Safety Authority to give a copy of the report to the operator of the facility, to employees who carry out activities to which the report relates, and to the owners of plant etc to which the report relates. Clause 71(6) requires a copy of the report, and any related Safety Authority comments, to be given to each health and safety committee and (where there is no such committee) to the HSR of each designated work group.

Division 5 Appeals

72 Appeals

Clause 72 provides for an appeal against a decision of an OHS inspector to the reviewing authority, by an operator of a facility or any employer (other than the operator) affected by the decision, a person to whom a notice has been issued under clause 35(3) or 68(1), a HSR, a workplace representative, a member of the workforce or a person who owns any workplace, plant, substance or thing to which a decision under clause 36, 67 or 68 relates.

73 Powers of reviewing authority on appeal

Clause 73 sets out the powers of the reviewing authority on an appeal.

Part 5 General

74 Notifying and reporting accidents and dangerous occurrences

Clause 74 requires notification and reporting of accidents and dangerous occurrences in relation to a facility as opposed to a workplace, and requires the notification and report to be sent to the Safety Authority.

75 Records of accidents and dangerous occurrences to be kept

Clause 75 requires records of the accidents and dangerous occurrences notified under clause 74 to be kept by the operator of the facility.

76 Codes of practice

Clause 76 provides for prescribed codes of practice to have the purpose of providing practical guidance to operators and employers of members of the workforce. Clause 76 provides immunity from civil and criminal proceedings for certain persons. It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation. The clause prevents civil liability from being attached to the individual. The proposed immunity under this clause does not extend to a person who has been negligent, even though the person may have acted in good faith.

77 Use of codes of practice in proceedings

Clause 77 provides that codes of practice can be used in proceedings for an offence against a listed OHS law, if they were in effect at the time of the alleged contravention.

78 Interference with equipment etc

Clause 78 makes it an offence to interfere with equipment or device provided for the health and safety or welfare of the workforce at a facility.

79 Members of workforce not to be levied

Clause 79 makes it an offence for either the operator or an employer to levy a member of the workforce in relation to health and safety matters.

80 Victimisation

Clause 80 provides for an offence of victimisation in relation to an employer who takes detrimental action against an employee because of particular actions of the employee relating to occupational health and safety. Subsection (3) reverses the onus of proof by providing that, if all other elements of the offence have been proved, the defendant has the onus of establishing that the action was not taken because of the employee's occupational health and safety action. It is considered that the reversal is justified on the grounds that the information the defendant is required to prove is peculiarly within the defendant's knowledge.

81 Institution of prosecutions

Clause 81 provides that proceedings for an offence against a listed OHS law may be instituted by the Safety Authority or an OHS inspector. A HSR or a workplace representative may request the Safety Authority to institute proceedings if a period of 6 months has elapsed since the relevant act or omission occurred and the Safety Authority has not yet instituted proceedings.

82 Role of Commonwealth DPP

Clause 82 allows the Commonwealth DPP to prosecute offences under the listed OHS laws.

83 Conduct of directors, employees and agents

Clause 83 imputes the conduct of company officers and agents to the company in relation to OHS matters. Clause 83 provides that an act or omission by a person's representative, relating to an offence against the Bill, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. In these circumstances, the person will have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission. This is reasonable as a person should be required to oversee the conduct of his or her representatives and, in doing so, make reasonable efforts to ensure that his or her employees or agents comply with the requirements of the legislation.

84 Act not to give rise to other liabilities etc

Clause 84 provides that schedule 3 provides for immunity from civil proceedings. It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation. The clause prevents civil liability from being attached to the individual. The proposed immunity under this clause does not extend to a person who has been negligent, even though the person may have acted in good faith.

85 Circumstances preventing compliance may be defence to prosecution

Clause 85 provides that circumstances preventing compliance with a listed OHS law may be defence to prosecution.

86 Approval of forms

Clause 86 provides that the CEO may approve forms for use under this Act.

87 Regulation making power – sch 3 generally

Clause 87 provides for regulation-making powers regarding OHS.

Schedule Minor amendments of the *Petroleum (Submerged Lands) Act 1982*

Clauses 1 to 5 insert penalty units to provide for consistency with the *Penalties and Sentences Act 1992*.