

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 2011

EXPLANATORY MEMORANDUM

GENERAL OUTLINE

The *Petroleum (Submerged Lands) Amendment Bill 2011* amends the *Petroleum (Submerged Lands) Act 1982* (PSLA 82) to revoke the functions and powers of the National Offshore Petroleum Safety Authority (NOPSA) in State waters and replace it with the Minister for Mines and Petroleum (“Minister”).

This proposal to remove NOPSA’s powers and functions from the PSLA 82 and replace it with the Minister is the reversal of what occurred in 2007 when the *Petroleum Legislation Amendment and Repeal Act 2005* amended the PSLA 82 to make NOPSA the Safety Authority.

The State will resume responsibility for occupational safety and health regulatory services in the waters of the three nautical mile territorial sea and any waters inside the baseline to which the State’s PSLA 82 applies and this will provide:

- a clear demarcation point between the Commonwealth Offshore Regulators and the State regulator;
- a consistent approach to safety, integrity and security of supply for all WA areas including onshore, islands and State waters; and
- ability for the Minister to intervene to remedy any incident that occurs and implement reforms and control areas where he is held accountable.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Short Title

The title is the *Petroleum (Submerged Lands) Amendment Act 2011*.

Clause 2 – Commencement

This clause provides for:

- sections 1 and 2 to come into operation on the day this Act receives Royal Assent.
- The remainder of the Act comes into operation on a day fixed by proclamation and that different days may be fixed for different provisions.

Clause 3 – Act amended

This clause provides that the amendments in the Bill are to the *Petroleum (Submerged Lands) Act 1982*.

Clause 4 – Section 4 amended

This clause deletes the terms “OHS Inspector” and “Safety Authority” from the terms used in the PSLA 82 and inserts the relocated definition for “listed OSH law”. The term

“OHS” inspector is a term restricted to the Safety Authority provisions and is not required as, under the WA petroleum legislation, inspectors are appointed under s.125 for such or all purposes of the Act. “Safety Authority” as a defined term is no longer needed as it will be replaced by “Minister” where required. The term “listed OSH law” was previously located in s.151C – see clause 9 below.

Clause 5 – Section 125 amended

This clause deletes the references to Part IIIA in s.125 which previously separated State inspectors from the Part of the Act that primarily deals with NOPSA. As the references to NOPSA in Part IIIA will be removed, this exception is no longer required.

Clause 6 – Section 126 amended

This clause also deletes the references to Part IIIA so that the scope of activities for inspectors appointed under s.125 now includes occupational safety and health if required.

Clause 7 – Section 137A amended

This clause deletes references to “the Safety Authority” in s.137A “Evidentiary matters” which establishes that certain matters in relation to a petroleum operation are taken to have been proved in the absence of evidence to the contrary. The section also outlines that, in proceedings for an offence against the Act, proof is not required unless evidence is given to the contrary and provides for the certification of codes of practice, Australian Standards and Australian/New Zealand standards.

Clause 8 – Part IIIA Division 1 heading deleted

This clause deletes the title of this Division as it is no longer required following the restructure of Part IIIA.

Clause 9 – Section 151A and 151C deleted

This clause deletes two sections – s.151A as the terms “Board” and “CEO” which refer to the “Safety Authority” are no longer required and s.151C as the term “listed OSH law” has been moved to section 4 - for consistency with other WA petroleum legislation.

Clause 10 – Part IIIA Division 2 heading deleted

This clause deletes the heading of this Division “Functions and powers of the Safety Authority” as it is no longer required.

Clause 11 – Section 151E amended

This clause amends s.151E to replace “Safety Authority” with “Minister” and to remove any occupational safety and health functions that are not applicable to the Minister. A new provision is introduced in s.151E(2) to align the PSLA 82 with the other State petroleum Acts, (the *Petroleum and Geothermal Energy Resources Act 1967* and the *Petroleum Pipelines Act 1969*) to provide the Minister with the power to do all things necessary or convenient to be done for the Minister’s occupational safety and health functions.

Clause 12 – Section 151F and 151G deleted

This clause deletes two sections that are no longer required. These are section 151F relating to the Safety Authority's ordinary powers and section 151G which details the standard provisions with respect to the seal of the Safety Authority.

Clause 13 – Part IIIA Divisions 3, 4 and 5 deleted

This clause deletes the three Divisions that are no longer required relating to the "Safety Authority Board"; "Chief Executive Officer and staff of the Safety Authority"; and "Other Safety Authority provisions".

Clause 14 – Schedule 3 Division 2 inserted

This clause inserts new transitional provisions relating to the arrangements to apply in relation to the transfer of functions to the Minister outlined in s151E as amended by clause 11. This new provision provides that for the purposes of the four listed sets of safety regulations applicable to the Act, on and from the commencement of clause 11, the term "Safety Authority" is to be taken as a reference to the "Minister" unless the context otherwise requires.

Division 2, 6(3) allows for a period of up to 12 months to make the necessary textural amendments to the regulations to replace "Safety Authority" with "Minister".

Clause 15 – Schedule 5 clause 2 amended

This provision amends Schedule 5, clause 2, which provides a simplified outline of Schedule 5, by replacing "Safety Authority" with "Minister". "Schedule 5 - Occupational safety and health" provides the detailed requirements for duties of care, workplace arrangements and inspectors powers.

Clause 16 – Schedule 5 clause 26 amended

This provision amends Schedule 5 clause 26, which provides that an operator must maintain a list of safety and health representatives, by replacing "OHS Inspectors" with "inspectors".

Clause 17 – Schedule 5 clause 33 amended

This provision amends Schedule 5 clause 33(1)(a)(iii), powers of safety and health representatives, by replacing "OHS Inspector or Safety Authority" with "inspector".

Clause 18 – Schedule 5 clause 38 amended

This provision amends Schedule 5 clause 38, which provides that a person may request an inspection if issued with a provisional improvement notice by a safety and health representative, to replace "Safety Authority or an OHS Inspector" with "an Inspector".

Clause 19 – Schedule 5 clause 43 amended

This provision amends clause 43 of Schedule 5, which deals with the emergency powers of a safety and health representative, by replacing "Safety Authority or an OHS Inspector" with "an inspector" and "inspector" as required.

Clause 20 – Schedule 5 clause 45 amended

This provision amends Schedule 5, clause 45, which provides for an exemption order to be made if there are reasonable grounds that it is impracticable for the person to comply with the provisions of Division 3 - Workplace Arrangements, by replacing “Safety Authority” with “Minister” and “it is” with the “Minister is”.

Clause 21 – Schedule 5 clause 46 amended

This provision amends Schedule 5, clause 46 which provides a simplified outline of Division 4 of Schedule 5 relating to “Inspections”, by replacing “Safety Authority” with “Minister”.

Clause 22 – Schedule 5 clause 47 amended

This provision amends Schedule 5, clause 47 and the clause’s title replacing “Safety Authority” with “Minister” and “OHS inspector” with “inspector” in the description of the powers, functions and duties of an inspector as required.

Clause 23 – Schedule 5 Division 4 Subdivision 3 heading amended

This provision amends the title of Division 4 Subdivision 3 by deleting “OHS inspector” and replacing it with “inspector”.

Clause 24 – Schedule 5 clause 49 amended

This provision amends Schedule 5, clause 49, which details the powers of entry and search of facilities, by replacing “OHS inspector’s” with “inspector’s” and “Safety Authority’s” with Minister’s”.

Clause 25 – Schedule 5 clause 50 amended

This provision amends Schedule 5, clause 50, which details the powers of entry and search of regulated business premises other than facilities, by replacing “OHS inspector’s” with “inspector’s” and “Safety Authority’s” with Minister’s”.

Clause 26 – Schedule 5 clause 51 amended

This provision amends Schedule 5, clause 51, which details the powers of entry and search of premises other than regulated business premises, by replacing “OHS inspector’s” with “inspector’s” and “Safety Authority’s” with Minister’s”.

Clause 27 – Schedule 5 clause 53 amended

This provision amends Schedule 5, clause 53, obstructing or hindering OHS inspector, by replacing “OHS inspector” with “inspector” and “OHS inspector’s” with “inspector’s”. It also amends the title of this section to “Obstructing or hindering inspector”.

Clause 28 – Schedule 5 clause 54 amended

This provision amends Schedule 5, clause 54, which details the power to require reasonable assistance and information in the conduct of an inspection, by replacing “OHS inspector’s” with “inspector’s”.

Clause 29 – Schedule 5 clause 59 amended

This provision amends Schedule 5, clause 59, which details the power to issue notices that prohibit specified activities, by replacing “OHS inspector’s” with “inspector’s”.

Clause 30 – Schedule 5 clause 64 amended

This provision amends Schedule 5, clause 64, which requires the completion of a written report as soon as practicable after conducting an inspection, by replacing “OHS inspector’s” with “inspector’s” and “Safety Authority” with Minister.

Clause 31 – Schedule 5 Division 4 Subdivision 5 heading amended

This amendment deletes “OHS” from the title of Subdivision 5 “Reviews of OHS inspectors decisions” so that it now reads “Review of inspector’s decisions”.

Clause 32 – Schedule 5 clause 78 amended

This provision amends Schedule 5, clause 78 which provides that proceedings may be instituted for an offence against a listed OSH law.

Clause 32(1) replaces “the Safety Authority” with “an Inspector” and inserts a new provision that an inspector is not to be personally responsible for any costs incurred by or awarded against the inspector in connection with any proceeding for an offence against a listed OHS law. This amendment aligns the PSLA 82 with similar provisions in the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* and the *Mines Safety and Inspection Act 1994*.

Clause 32(2),(3) and (4) deletes “Safety Authority” references and replaces it with “an inspector” as required.

Clause 33 – Various references to “OHS inspector” amended

Other references to “OHS Inspector” in the Act are to be deleted and replaced by “inspector”. The parts of the Act that are to be amended are all in Schedule 5 – “Occupational safety and health” and are listed in table format.

Clause 34 – Various references to “Safety Authority” amended

Other references to “Safety Authority” in the Act are to be deleted and replaced by “Inspector”. The parts of the Act that are to be amended are all in Schedule 5 – “Occupational safety and health” and are listed in table format.
