Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009

(Government)

(1) Schedule 1, page 26 (after line 22), after Part 13, insert:

**Part 13A—Inquiries into significant offshore incidents**

**Division 1—Amendment of the Offshore Petroleum and Greenhouse Gas Storage Act 2006**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

62A Section 7

Insert:

*Commissioner* means a person appointed under section 780A.

62B Section 7

Insert:

*Commission of inquiry* means an inquiry conducted, or to be conducted, by a person appointed under section 780A.

62C Section 7

Insert:

*Royal Commission* has the same meaning as in the *Royal Commissions Act 1902*.

62D After Part 9.10

Insert:
Part 9.10A—Inquiries into significant offshore incidents

780A Appointment of Commissioner

(1) The responsible Commonwealth Minister may, in writing, appoint a person to:
   (a) conduct a Commission of inquiry into matters specified in the instrument of
       appointment relating to any or all of the following:
       (i) a significant offshore petroleum incident;
       (ii) any matters incidental to a significant offshore petroleum incident;
       (iii) a significant offshore greenhouse gas incident;
       (iv) any matters incidental to a significant offshore greenhouse gas incident; and
   (b) report to the responsible Commonwealth Minister on the matters (including any
       recommendations relating to the matters) on or before a day specified in the
       instrument of appointment.

(2) The appointment takes effect on the day of effect specified in the instrument of
    appointment. The day of effect must not be earlier than the day on which the instrument is
    made.

(3) A copy of the instrument must be published in the Gazette.

(4) The Commissioner’s report is not a legislative instrument.

(5) For the purposes of this section, a significant offshore petroleum incident is a significant
    incident or occurrence that relates to any or all of the following operations in an offshore
    area:
    (a) petroleum exploration operations;
    (b) petroleum recovery operations;
    (c) operations relating to the processing or storage of petroleum;
    (d) operations relating to the preparation of petroleum for transport;
    (e) operations connected with the construction or operation of a pipeline;
    (f) operations relating to the decommissioning or removal of structures, equipment or
        other items of property that have been brought into an offshore area for or in
        connection with any of the operations mentioned in paragraph (a), (b), (c), (d) or
        (e).

(6) Paragraph (5)(f) does not, by implication, limit paragraph (5)(a), (b), (c), (d) or (e).

(7) For the purposes of this section, a significant offshore greenhouse gas incident is a
    significant incident or occurrence that relates to any or all of the following operations in
    an offshore area:
    (a) operations relating to exploration for a potential greenhouse gas storage formation
        or a potential greenhouse gas injection site;
    (b) operations relating to the injection of a greenhouse gas substance into the seabed or
        subsoil;
    (c) operations relating to the storage of a greenhouse gas substance in the seabed or
        subsoil;
    (d) operations relating to the processing, compression or pre-injection storage of a
        greenhouse gas substance;
    (e) operations relating to the preparation of a greenhouse gas substance for transport;
(f) operations relating to the decommissioning or removal of structures, equipment or other items of property that have been brought into an offshore area for or in connection with any of the operations mentioned in paragraph (a), (b), (c), (d) or (e).

(8) Paragraph (7)(f) does not, by implication, limit paragraph (7)(a), (b), (c), (d) or (e).

(9) For the purposes of this section, a significant incident or occurrence includes circumstances in which a significant incident or occurrence nearly happened.

780B Hearings

(1) A Commissioner may hold hearings for the purposes of a Commission of inquiry.

(2) The hearings may be held at such places, whether within or outside Australia, as the Commissioner determines.

(3) Subject to this Act, the procedure at a hearing is to be such as the Commissioner determines.

780C Commissioner not bound by the rules of evidence

A Commissioner is not bound by the rules of evidence and may inform himself or herself on any matter in such manner as he or she thinks fit.

780D Departmental officers

(1) The Secretary of the Department may enter into an arrangement with the Commissioner of a Commission of inquiry to make APS employees in the Department available, for a period not exceeding the duration of the Commission of inquiry, to assist with the conduct of the Commission of inquiry.

(2) In performing functions and exercising powers to the extent reasonably necessary to assist with the conduct of a Commission of inquiry, an APS employee made available under such an arrangement:
   (a) is subject to the directions of the Commissioner; and
   (b) is not subject to the directions of the Secretary of the Department.

780E Application of the Royal Commissions Act 1902

(1) Subject to this section, the Royal Commissions Act 1902, other than sections 4 and 5, applies in relation to a Commission of inquiry, and to the Commissioner conducting it, as if:
   (a) the Commission of inquiry were a Royal Commission; and
   (b) the Commissioner were a member of a Royal Commission; and
   (c) that Act bound the Crown in each of its capacities.

(2) This section does not make the Crown liable to be prosecuted for an offence.

(3) The regulations may, for the purposes of the application of section 9 of the Royal Commissions Act 1902 in accordance with subsection (1) of this section, provide for or specify matters of the kind referred to in subsection 9(2) of that Act.
Section 9 of the *Royal Commissions Act 1902*, in its application in accordance with subsection (1) of this section, has effect as if those regulations were regulations made for the purposes of subsection 9(2) of that Act.

Sections 10 and 15 of the *Royal Commissions Act 1902*, in their application in accordance with subsection (1) of this section, have effect as if references in those sections to offences against that Act included references to such offences as apply in accordance with subsection (1) of this section.

### 780F Conferral of inspection powers

1. The Secretary of the Department may, in writing, determine that a specified person, or a person included in a specified class of persons, who is engaged by the Commonwealth to assist with the conduct of a Commission of inquiry has all the functions and powers of, or specified functions and/or powers of:
   - a petroleum project inspector (other than a Greater Sunrise visiting inspector); and
   - a Greater Sunrise visiting inspector; and
   - a greenhouse gas project inspector; and
   - an OHS inspector; under this Act and the regulations.

2. The person is taken, for the purposes of this Act and the regulations, to be:
   - a petroleum project inspector (other than a Greater Sunrise visiting inspector); or
   - a Greater Sunrise visiting inspector; or
   - a greenhouse gas project inspector; or
   - an OHS inspector; as the case may be, in connection with the performance of those functions and the exercise of those powers.

3. In performing those functions and exercising those powers, the person:
   - is subject to the directions of the Commissioner; and
   - is not subject to the directions of:
     - the Secretary of the Department; or
     - a Designated Authority; or
     - the responsible Commonwealth Minister; or
     - the Safety Authority.

### Identity cards

1. The Secretary of the Department must issue an identity card to the person. The identity card must:
   - specify the Commission of inquiry concerned; and
   - contain a recent photograph of the person.

2. A person commits an offence if:
   - the person has been issued with an identity card; and
   - the person ceases to be subject to a determination under subsection (1); and
   - the person does not immediately return the identity card to:
     - the Secretary of the Department; or
     - if the Secretary of the Department, by written notice given to the person, specifies another person to whom the card is to be returned—that other person.
Penalty: 5 penalty units.

(6) Subsection (5) does not apply if the identity card was lost or destroyed.

Note: The defendant bears an evidential burden in relation to the matter in this subsection—see subsection 13.3(3) of the Criminal Code.

(7) A person who is subject to a determination under subsection (1) must carry the identity card at all times when exercising powers, or performing functions, under this Act or the regulations as:
   a petroleum project inspector (other than a Greater Sunrise visiting inspector); or
   a Greater Sunrise visiting inspector; or
   a greenhouse gas project inspector; or
   an OHS inspector.

(8) Subsections 600(6), 606(5) and 681(5) do not apply to a person who is subject to a determination under subsection (1) if the person is exercising powers, or performing functions, under this Act or the regulations as:
   a petroleum project inspector (other than a Greater Sunrise visiting inspector); or
   a Greater Sunrise visiting inspector; or
   a greenhouse gas project inspector; or
   an OHS inspector.

(9) This Act has effect, in relation to a person who is subject to a determination under subsection (1), as if the identity card were the identity card of each of the following:
   a petroleum project inspector (other than a Greater Sunrise visiting inspector); or
   a Greater Sunrise visiting inspector; or
   a greenhouse gas project inspector; or
   an OHS inspector.

(10) A determination made under subsection (1) is not a legislative instrument.

**780G Application of laws relating to disclosure**

A law of the Commonwealth that relates to the disclosure of information applies in relation to disclosure of information to a Commission of inquiry in the same way that it would apply to disclosure of the information to a Royal Commission.

**Division 2—Other amendments**

**Archives Act 1983**

**62E Subsection 3(1) (definition of Commission of inquiry)**

Repeal the definition, substitute:

*Commission of inquiry* means:
   a Commission of inquiry within the meaning of the Quarantine Act 1908; or

**62F Paragraph 22(1)(b)**

Omit “the Commission of inquiry”, substitute “a Commission of inquiry”.

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62G Subsections 22(2) and (4)

Omit “the Commission of inquiry”, substitute “a Commission of inquiry”.

62H Paragraph 22(5)(b)

Repeal the paragraph, substitute:

(b) the Minister administering the Quarantine Act 1908 is taken to be the responsible Minister in relation to the records of the Commission of inquiry within the meaning of that Act; and

(c) the Minister administering the Offshore Petroleum and Greenhouse Gas Storage Act 2006 is taken to be the responsible Minister in relation to the records of a Commission of inquiry within the meaning of that Act.

Freedom of Information Act 1982

62J Subsection 4(1) (definition of Commission of inquiry)

Repeal the definition, substitute:

Commission of inquiry means:

(a) the Commission of inquiry within the meaning of the Quarantine Act 1908; or

(b) a Commission of inquiry within the meaning of the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

62K Subsection 4(1) (subparagraph (a)(vii) of the definition of prescribed authority)

Omit “the Commission of inquiry”, substitute “a Commission of inquiry”.

62L Paragraph 13(3)(b)

Repeal the paragraph, substitute:

(b) records of the Commission of inquiry (within the meaning of the Quarantine Act 1908) that are in the custody of the Australian Archives are, for the purposes of this Act, taken to be documents of an agency and to be in the possession of the Department administered by the Minister administering the Quarantine Act 1908; and

(c) records of a Commission of inquiry (within the meaning of the Offshore Petroleum and Greenhouse Gas Storage Act 2006) that are in the custody of the Australian Archives are, for the purposes of this Act, taken to be documents of an agency and to be in the possession of the Department administered by the Minister administering the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

Privacy Act 1988

62M Subsection 6(1) (definition of Commission of inquiry)

Repeal the definition, substitute:

Commission of inquiry means:

(a) the Commission of inquiry within the meaning of the Quarantine Act 1908; or

(b) a Commission of inquiry within the meaning of the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

62N Subparagraph 7(1)(a)(vi)
Omit “the Commission of inquiry”, substitute “a Commission of inquiry”.

[inquiry]