THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM (SAFETY LEVIES) BILL 2003

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Tourism and Resources, the Honourable Ian Macfarlane MP)
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OUTLINE

The Offshore Petroleum (Safety Levies) Bill 2003 will impose levies on the operators of facilities engaged in the exploration, development and production of offshore petroleum. The levies directly relate to regulatory activities that will be carried out by the National Offshore Petroleum Safety Authority (NOPSA), and will be used to fund the Authority.

The Safety Authority is being created by amendments being made to the Commonwealth Petroleum (Submerged Lands) Act 1967, through the Petroleum (Submerged Lands) Amendment Bill 2003. The Authority is being given functions and powers by new provisions of the Commonwealth Petroleum (Submerged Lands) Act 1967 and by amendments to be made to the Petroleum (Submerged Lands) Acts of each State and Northern Territory. The Safety Authority will regulate occupational health and safety at and in relation to offshore petroleum facilities that are in Commonwealth waters, and that are in State/NT coastal waters.

Through the amendments being made to the Commonwealth Petroleum (Submerged Lands) Act 1967, and through State and Northern Territory mirror legislation, the Authority will deliver a uniform national safety regulation regime for Australia’s offshore petroleum industry, and will reduce the regulatory burden faced by industry participants.

Whilst the Authority is to be established through Commonwealth legislation, it will be accountable to the Commonwealth, State and NT ministers. This reflects the fact that it is a national agency.

In accordance with government policy, the activities of the Safety Authority will be fully cost-recovered. This will be achieved by the payment of the levies imposed by this Bill. The method of collection of the levies is addressed by the Petroleum (Submerged Lands) Amendment Bill 2003.

The Bill creates three types of levy, a safety investigation levy, a safety case levy, and a pipeline safety management plan levy. For each type of levy, the Bill contains a set of provisions that apply to petroleum activities in Commonwealth waters, and a set of provisions that apply to petroleum activities in State and Territory designated coastal waters. (Two sets of provisions have been necessary in each case. This is because, although the levies are identical, the terms that are used in the provisions giving rise to the liability to pay levy (eg ‘facility’) are defined in the Commonwealth legislation in terms of ‘Commonwealth waters’ and in State/Northern Territory ‘mirror’ legislation in terms of the waters to which those Acts apply. The defined terms therefore are not interchangeable.)

The safety investigation levy relates to investigations that are carried out by the National Offshore Petroleum Safety Authority in response to specific accidents and dangerous occurrences that may occur at or related to offshore petroleum facilities. The amount of the levy, or the method of calculation of the levy, is to be established through regulations. The Bill allows the regulations to specify different amounts or
calculation methods for different types of accidents or occurrences. In this respect it
is intended that there will be no levy for routine investigations, and that levies will
only apply once an investigation becomes major. This is a measure to ensure equity –
those operators or licensees that have no accidents or occurrences requiring a major
investigation will not be required to pay any safety investigation levies. As
investigations could become extremely resource intensive (eg in the event of a Royal
Commission), it is not intended that there will be any limit on the amount of levy that
may apply to any accident or occurrence.

The safety case levy relates to the more general regulatory activities that are required
in relation to a facility, including the conduct of inspections at or in relation to the
facility, and the conduct of audits against the operator’s safety management systems.
The safety case levy is an annual levy, to be imposed on the operator of a facility each
year that there is a safety case in force for that facility. (The Commonwealth and
State/Territory regulations together will provide that a petroleum facility cannot be
installed, constructed or operated in Safety Authority waters unless there is a safety
case in force, and the safety case will not be in force unless the Authority has assessed
and accepted it.)

The amount of the safety case levy, or the method of calculation of the levy, is to be
established through regulations. The Bill allows the regulations to specify different
amounts or calculation methods for different types of facility, to reflect the amount of
regulatory activity that is needed for each different type. Again, this is an equity
measure.

In the case of a mobile facility, such as a pipe laying barge or a drilling unit, the
facility may operate in more than one jurisdiction during the course of a calendar
year. This will not result in multiple annual safety case levies being payable. The
levy will be payable according to which jurisdiction the facility is located in at the
start of each calendar year.

The pipeline safety management plan levy is similar to the safety case levy, but
applies in relation to pipelines that are licensed under the Commonwealth and/or the
State/Northern Territory Acts, and is linked to the pipeline safety management plan
that will be required under the regulations. The amount of the levy, or the method of
calculation of the levy, is to be established through regulations. The Bill allows the
regulations to specify different amounts or calculation methods for different types of
pipeline, to reflect the amount of regulatory activity that is needed for each different
type.

The safety case levy and the pipeline safety management plan levy will also apply to
proposed facilities, and facilities under construction, once a safety case is in force.
This ensures that levies are imposed that correspond to the regulatory activities
required prior to the date at which a new facility or pipeline is operational.

A pipeline from a facility in Commonwealth waters to a shore terminal will traverse
both Commonwealth waters and designated State or Territory coastal waters. In such
a case, the levy will be payable under both sections 9 and 10. However, the amount
of each levy will be adjusted under the regulations with the result that the total of the
two levies is equal to the amount that would be payable if the pipeline were located in a single jurisdiction.

Each levy will be paid by the operator of the facility, or the licensee of the pipeline. This is appropriate as these persons have day to day management and control of the relevant activities, are formally recorded as having these roles, are the persons responsible for reporting accidents and dangerous occurrences, and are the persons who must prepare and submit the safety case or pipeline safety management plan.

The levies will be structured such that the majority of the annual operating costs of the Safety Authority will be generated from the safety case levies. The safety investigation levies and the pipeline safety management plan levies will each generate a smaller proportion of the annual operating costs. This reflects the fact that “facilities” that require safety cases will also require the most regulatory activity.
REGULATION IMPACT STATEMENT

A regulation impact statement is not required for the Offshore Petroleum (Safety Levies) Bill 2003. However, a Cost Recovery Impact Statement (CRIS) will be prepared separately and prior to the introduction of any levies, fees or charges. This will be prepared and forwarded to the Department of Finance and Administration in accordance with the Government’s cost recovery policy. The expected annual operating costs of the National Offshore Petroleum Safety Authority (initially estimated to be around $6.6 million, based on 2000-01 levels of offshore petroleum activity) are to be fully recovered by industry fees. As such, the Bill will not have any financial impact on Commonwealth revenue or expenditure.
FINANCIAL IMPACT STATEMENT

The purpose of this Bill is to make provision for full recovery of the costs the annual operating costs of the National Offshore Petroleum Safety Authority. As such, the Bill will not have any financial impact on Commonwealth revenue or expenditure.
NOTES ON INDIVIDUAL SECTIONS

Section 1 – Short title

Section 1 is a formal provision specifying the short title of the Act as the Offshore Petroleum (Safety Levies) Act 2003.

Section 2 - Commencement

Subsection 2(1) provides that each provision of the Act commences, or is taken to have commenced, on the day or at the time specified in column 2 of the Commencement Information Table.

Item 1 - Commencement Information Table

Item 1 provides that Sections 1 and 2 of the bill, being Short Title and Commencement, as well as items not covered elsewhere in this table, will commence on the day on which this Act receives Royal Assent.

Item 2 - Commencement Information Table

Item 2 provides that Sections 3 to 11 of the bill, being definitions, sections for the implementation of the different levies in different waters of the sea, and a section making provisions to make regulations, will commence on 1 January 2005.

Section 3 – Definitions

This section provides definitions of certain terms, primarily to ensure that meanings are consistent with the Petroleum (Submerged Lands) Act, but also to simplify the main text of the bill.

The following definitions are adopted from Part IIIC of the Petroleum (Submerged Lands) Act 1967:

- Commonwealth waters
- Designated coastal waters
- OHS inspector
- Safety Authority
- State PSLA
- Territory PSLA

The terms “State safety law” and “Territory safety law” are defined to mean the provisions of the Petroleum (Submerged Lands Act of a State or Territory (respectively) that substantially correspond to Schedule 7 of the Commonwealth Petroleum (Submerged Lands) Act 1967.

The term “applicable State or Territory safety law” is defined to mean the safety law of the State or Territory that applies in the designated coastal waters of the State or
Territory. In this context “safety” should be read as meaning “occupational health and safety”.

The following terms are defined to be the various levies that are imposed by this bill:
- “Pipeline safety management plan levy” is defined to mean a levy imposed by sections 9 or 10
- “Safety case levy” is defined to mean a levy imposed by section 7 or 8
- “Safety investigation levy” is defined to mean a levy imposed by section 5 or 6

The term “year” is defined to mean a 12 month period beginning on 1 January. This determines the period for which a safety case levy or a pipeline safety management plan levy applies.

Section 4 – Extension to External Territories

This section extends the Act to apply to each external Territory to which the Petroleum (Submerged Lands) Act 1967 applies. Currently, these Territories are prescribed by section 7 of the Petroleum (Submerged Lands) Act 1967 to be:

(a) Norfolk Island;
(b) the Territory of Christmas Island;
(c) the Territory of Cocos (Keeling) Islands;
(d) the Territory of Ashmore and Cartier Islands; and
(e) the Territory of Heard Island and McDonald Islands.

Section 5 – Imposition of Safety Investigation Levy – Commonwealth waters

This section specifies when a safety investigation levy will be imposed related to petroleum activities in Commonwealth waters, the person who must pay the levy, how the amount of the levy will be set, and relevant supporting matters.

Sub-section 5(1) states that a levy will be imposed in the event that there is a notifiable accident or occurrence in relation to a facility in Commonwealth waters, and an OHS inspector conducts an investigation into that accident or occurrence, and conditions specified in the regulations are met. The conditions that are referred to would relate to the scale of the investigation.

Sub-section 5(2) applies the term “safety inspection levy” to this type of levy.

Sub-section 5(3) specifies that the levy is payable by the operator of the facility, the operator being the person identified under the regulations as the operator of the facility. The operator also has the duty to notify the accident or occurrence.

Sub-section 5(4) specifies that the levy is not payable unless the regulations referred to in sub-section 5(1) are in force. The note indicates that the means of collecting the levy is set out in section 150ZZV of the Petroleum (Submerged Lands) Act 1967 (as amended by the Petroleum (Submerged Lands) Petroleum Amendment Bill 2003).
Sub-section 5(5) specifies that the amount of the levy, or the basis for calculation of the levy, is to be specified in regulations. Sub-section 5(6) allows the regulations to specify different amounts for the levy, or different bases for calculation of the levy, for different types of notifiable accidents or occurrences.

Sub-section 5(7) clarifies that sub-section (6) does not limit sub-section 33(3A) of the Acts Interpretation Act 1901, which specifies that “Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) with respect to particular matters (however the matters are described), the power shall be construed as including a power to make, grant or issue such an instrument with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.”

Sub-section 5(8) provides the following definitions for the purpose of section 5:
− The terms “accident”, “dangerous occurrence”, “facility”, “inspection” and “operator” are defined as having the same meaning as in Schedule 7 to the Petroleum (Submerged Lands) Act 1967.
− The term “notifiable accident or occurrence” is defined to mean an accident or dangerous occurrence at or near the facility that is required to be notified to the Safety Authority under clause 41 of Schedule 7 to the Petroleum (Submerged Lands) Act 1967.

Section 6 – Imposition of Safety Investigation Levy – Designated coastal waters

Section 6 largely duplicates section 5.

The only differences are
− Sub-section 6(1) refers to notifiable accidents or occurrences in designated coastal waters, as opposed to notifiable accidents or occurrences in Commonwealth waters
− In the definitions, the terms “accident”, “dangerous occurrence”, “facility”, “inspection” and “operator” are defined as having the same meaning as in the applicable State or Territory safety law.
− In the definitions, the term “notifiable accident or occurrence” is defined to mean an accident or dangerous occurrence at or near the facility that is required to be notified to the Safety Authority under the provisions of the applicable State or Territory safety law that substantially corresponds to clause 41 of Schedule 7 to the Petroleum (Submerged Lands) Act 1967.

It should be noted that State and Territory petroleum submerged lands safety law is to be amended to mirror that of the Commonwealth. Therefore the effect of section 6 in State and Territory designated coastal waters will be the same as that of section 5 in Commonwealth waters.

Section 7 – Imposition of Safety Case Levy – Commonwealth waters

This section specifies when a safety case levy will be imposed related to petroleum activities in Commonwealth waters, the person who must pay the levy, how the amount of the levy will be set, and relevant supporting matters.
Sub-section 7(1) provides that, if either a safety case is in force at the start of a year, or a safety case is in force for a part of a year (but not at the start of the year), in relation to a facility that is located in, or proposed to be located in, Commonwealth waters, then a levy is imposed on the safety case in respect of that year or that part of a year.

Sub-section 7(2) applies the term “safety case levy” to this type of levy.

Sub-section 7(3) specifies that the levy is payable by the operator of the facility. The operator is also the person who prepares the safety case, and whose activities at the facility are permitted by the Safety Authority’s acceptance of that safety case. The note indicates that the means of collecting the levy is set out in section 150ZZVA of the Petroleum (Submerged Lands) Act 1967 (as amended by the Petroleum (Submerged Lands) Petroleum Amendment Bill 2003).

Sub-section 7(4) provides that the amount of the levy in respect of a full year is the amount that is specified in, or worked out in accordance with, the regulations. Subsection 7(5) provides that, in the case of a safety case that is not in force on 1 January in a year, the amount of levy in respect of the part of the year is the amount that is worked out in accordance with the regulations.

Sub-section 7(6) allows the regulations to specify different amounts for the levy, or different bases for calculation of the levy, for different types of facilities. These different types of facilities may include, for example large-scale fully-staffed production platforms, floating production and storage units, small-scale not-normally-staffed “satellite” platforms, mobile drilling units, accommodation barges, pipe laying barges, or transport and heavy lift barges such as are used during installation and construction of fixed production platforms. The amount or basis for calculation of the levy will reflect the regulatory activity that each type of facility will typically require.

Sub-section 7(7) clarifies that sub-section (6) does not limit sub-section 33(3A) of the Acts Interpretation Act 1901.

Sub-section 7(8) provides the following definitions:
- The terms “facility”, “operator” and “proposed facility” are defined as having the same meaning as in Schedule 7 to the Petroleum (Submerged Lands) Act 1967.
- The term “safety case in force in relation to a facility” is defined as having the same meaning as in the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996. These regulations specify, amongst other matters, what a safety case must contain, and the processes by which it is submitted by the operator, it is assessed by the Safety Authority and (if it is accepted) it becomes “in force”.

Section 8 – Imposition of Safety Case Levy – Designated coastal waters

Section 8 largely duplicates section 7.

The only differences are:
Sub-section 8(1) refers to facilities located or proposed to be located in designated coastal waters, as opposed to those located or proposed to be located in Commonwealth waters.

In the definitions, the terms “facility”, “operator” and “proposed facility” are defined as having the same meaning as in the applicable State or Territory safety law.

In the definitions, the term “safety case in force in relation to a facility” is defined as having the same meaning as in regulations of the State or Territory that substantially correspond to the Petroleum (Submerged Lands)(Management of Safety on Offshore Facilities) Regulations 1996.

As previously noted, State and Territory petroleum submerged lands safety law is to be amended to mirror that of the Commonwealth. Therefore the effect of section 8 in State and Territory designated coastal waters will be the same as that of section 7 in Commonwealth waters.

Section 9 – Imposition of Pipeline Safety Management Plan Levy - Commonwealth waters

This section specifies when a pipeline safety management plan levy will be imposed related to petroleum activities in Commonwealth waters, the person who must pay the levy, how the amount of the levy will be set, and relevant supporting matters.

Sub-section 9(1) provides that if either a pipeline safety management plan is in force at the start of a year or a pipeline safety management plan is in force during a part of a year (but not at the start of the year) in relation to a pipeline that is located in, or is proposed to be located in, Commonwealth waters, and the pipeline is covered by a pipeline licence, then a levy is imposed on the pipeline safety management plan in respect of that year or part of a year. Pipelines are licensed under Part III Division 4 of the Petroleum (Submerged Lands) Act 1967.

Sub-section 9(2) applies the term “pipeline safety management plan levy” to this type of levy.

Sub-section 9(3) specifies that the levy is payable by the pipeline licensee. The pipeline licensee is the person who has the duty of preparing the pipeline safety management plan. The note indicates that the means of collecting the levy is set out in section 150ZZVB of the Petroleum (Submerged Lands) Act 1967 (as amended by the Petroleum (Submerged Lands) Petroleum Amendment Bill 2003).

Sub-section 9(4) provides that the amount of the levy in respect of a full year is the amount that is specified in, or worked out in accordance with, the regulations. Subsection 9(5) provides that, in the case of a pipeline safety management plan that is not in force on 1 January in a year, the amount of levy in respect of the part of the year is the amount that is worked out in accordance with the regulations. Sub-section 9(6) allows the regulations to specify different amount for the levy, or different bases for calculation of the levy, for different types of pipelines. The amount or basis for calculation of the levy will reflect the regulatory activity that each type of pipeline will typically require.
Sub-section 9(7) clarifies that sub-section (6) does not limit sub-section 33(3A) of the Acts Interpretation Act 1901.

Sub-section 9(8) provides the following definitions:

- The terms “pipeline” and “pipeline licence” are defined as having the same meaning as in the Petroleum (Submerged Lands) Act 1967. It is clarified that “pipeline” includes a pipeline that is proposed to be constructed or operated, or is being constructed.

- The term “pipeline safety management plan in force in relation to a pipeline” is defined as having the same meaning as in the Petroleum (Submerged Lands) (Pipelines) Regulations 2001. These regulations specify, amongst other matters, what a pipeline safety management plan must contain, and the processes by which it is submitted by the pipeline licensee, it is assessed by the Safety Authority and (if it is accepted) it becomes “in force”.

Section 10 – Imposition of Pipeline Safety Management Plan Levy – Designated coastal waters

Section 10 largely duplicates section 9.

The only differences are

- Sub-section 10(1) refers to pipelines located or proposed to be located in designated coastal waters, as opposed to those located or proposed to be located in Commonwealth waters.

- In the definitions, the terms “pipeline” and “pipeline licence” are defined as having the same meaning as in the applicable State or Territory safety law.

- In the definitions, the term “pipeline safety management plan in force in relation to a pipeline” is defined as having the same meaning as in regulations of the State or Territory that substantially correspond to the Petroleum (Submerged Lands) (Pipelines) Regulations 2001.

As previously noted, State and Territory petroleum submerged lands safety law is to be amended to mirror that of the Commonwealth. Therefore the effect of section 10 in State and Territory designated coastal waters will be the same as that of section 9 in Commonwealth waters.

Section 11 – Regulations

This section provides that regulations may be made for the purpose of sections 5 to 11. These would set out the manner in which each of the levies would be calculated.

In the case of a pipeline that traverses both Commonwealth and State/Northern Territory coastal waters, the levy will be payable under both sections 9 and 10. However, the amount of each levy will be adjusted under the regulations with the result that the total of the two levies is equal to the amount that would be payable if the pipeline were located in a single jurisdiction.

Although the details have not been determined at this stage, it is anticipated that the regulations would provide for the majority of the annual operating costs of the National Offshore Petroleum Safety Authority to be generated by the safety case levy.
on each facility having a safety case that is in force. The pipeline safety management plan levy and the safety investigation levy are expected to generate a relatively small proportion of the annual operating costs of the Authority.