Amendments and New Clauses to be moved on Behalf of the Government

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
Financial Impact Statement

Funding for the development and implementation of the regulatory framework has been provided and no additional funding is sought for this purpose. Fees will be charged for greenhouse gas titles to cover the costs of day-to-day administration.
Amendments to the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008

Outline

1. This amendment to the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 ('the Bill') was developed to address the matters raised by the Senate Scrutiny of Bills Committee.

2. In their review of the amendments to the Bill made in the House of Representatives, the Senate Scrutiny of Bills Committee concluded that provisions in the revised Bill relating to the Minister's regulation making power in respect of the significant risk of a significant adverse impact:
   'may inappropriately delegate legislative powers and seeks the Minister's advice whether these criteria might be included in the primary legislation rather than in the regulations'.

3. The proposed amendments relate to each of the situations in which the responsible Commonwealth Minister is required to determine whether or not there is a significant risk of a significant adverse impact.

4. Specific regulation making powers have been included to provide for the manner of determining whether a significant risk of a significant adverse impact exists.

5. In determining if a significant risk of a significant adverse impact exists, the amendments require regulations to take into account the probability of the occurrence of the adverse impact, the economic consequences of the adverse impact and the relative value of the consequences to the potential economic value of the operations undertaken on the title.

6. The proposed amendments define the impacts that will be regarded as an 'adverse impact' on petroleum title activities. These are an increase in the capital costs, an increase in the operating costs, a reduction in the petroleum recovery rates and a reduction in the quantity of petroleum recovered.

7. The proposed amendments also define the impacts that will be regarded as an 'adverse impact' for greenhouse gas title activities. These are an increase in the capital costs, an increase in the operating costs, a reduction in the greenhouse gas injection rates or a reduction in the quantity of greenhouse gas that may be injected.

8. Provisions to enable the regulations to set threshold criteria that may be regarded in determining if a significant risk of a significant impact exists are included in the proposed amendments.
Clause notes for Government amendments to the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008

(1) Schedule 1, item 81, page 22 (line 21), at the end of the definition of significant risk

Amendment 1 amends item 81 of the Bill by adding new sections 15FA, 15FB, 15FC and 15FD to the list of provisions that affect the meaning of the term significant risk.

(2) Schedule 1, item 109, page 36 (line 23) to page 38 (line 7)

Amendment 2 amends item 109 of the Bill by deleting section 15F and substituting the following 4 new sections.

Proposed section 15F Significant risk of a significant adverse impact—approval of key petroleum operations

Proposed section 15F(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that a key petroleum operation will have a significant adverse impact on injection or storage operations under a greenhouse gas title.

Subsection (2) provides that the regulations must require that the following matters be taken into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) those economic consequences relative to the potential economic value of the entire injection and storage operations under the relevant greenhouse gas title.

The regulations may provide for other matters to be taken into account.

Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:

– an increase in the capital costs of the operations (other than costs prescribed in the regulations);

– an increase in the operating costs (other than costs prescribed in the regulations);

– a reduction in the rate of injection of greenhouse gas; or

– a reduction in the quantity of greenhouse gas that can be stored.
13. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

14. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.

Proposed section 15FA  Significant risk of a significant adverse impact—grant of production licence

15. Proposed subsection 15FA(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that operations under a petroleum production licence will have a significant adverse impact on operations under a greenhouse gas title.

16. Subsection (2) provides that the regulations must require that the following matters be taken into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) those economic consequences relative to the potential economic value of the entire operations under the relevant greenhouse gas title.

The regulations may provide for other matters to be taken into account.

17. Subsection (5) defines the impacts of one title-holder’s operations on another’s that will be regarded as an ‘adverse impact’. They are:

– an increase in the capital costs of the operations (other than costs prescribed in the regulations);

– an increase in the operating costs (other than costs prescribed in the regulations);

– a reduction in the rate of injection of greenhouse gas; or

– a reduction in the quantity of greenhouse gas that can be stored.

18. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.
19. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.

Proposed section 15FB Significant risk of a significant adverse impact—approval of key greenhouse gas operations

20. Proposed subsection 15FB(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that key greenhouse gas operations will have a significant adverse impact on petroleum exploration or recovery operations under a petroleum title.

21. Subsection (2) provides that the regulations must require that the following matters be taken into account:

   (a) the probability, or range of probabilities, of the occurrence of the adverse impact; and
   (b) the economic consequences of the adverse impact; and
   (c) those economic consequences relative to the potential economic value of the entire petroleum operations under the relevant petroleum title.

The regulations may provide for other matters to be taken into account.

22. Subsection (5) defines the impacts of one title-holder’s operations on another’s that will be regarded as an ‘adverse impact’. They are:

   – an increase in the capital costs of the operations (other than costs prescribed in the regulations);
   – an increase in the operating costs (other than costs prescribed in the regulations);
   – a reduction in the rate of recovery of petroleum; or
   – a reduction in the quantity of petroleum that can be recovered.

23. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

24. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.
Proposed section 15FC Significant risk of a significant adverse impact—grant of greenhouse gas injection licence

25. Proposed subsection 15FC(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that operations under a greenhouse gas injection licence will have a significant adverse impact on petroleum operations under a petroleum title.

26. Subsection (2) provides that the regulations must require that the following matters be taken into account:
   (a) the probability, or range of probabilities, of the occurrence of the adverse impact; and
   (b) the economic consequences of the adverse impact; and
   (c) those economic consequences relative to the potential economic value of the entire petroleum operations under the relevant petroleum title.

The regulations may provide for other matters to be taken into account.

27. Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:
   – an increase in the capital costs of the operations (other than costs prescribed in the regulations);
   – an increase in the operating costs (other than costs prescribed in the regulations);
   – a reduction in the rate of recovery of petroleum; or
   – a reduction in the quantity of petroleum that can be recovered.

28. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

29. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.

Proposed section 15FD Significant risk of a significant adverse impact—power of responsible Commonwealth Minister to protect petroleum

30. Proposed subsection 15FD(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that operations under a greenhouse gas injection licence will have a significant
adverse impact on a commercial or potentially commercial discovery of petroleum in a pre-commencement petroleum title area.

31. Subsection (2) provides that the regulations must require that the following matters be taken into account:
   (a) the probability, or range of probabilities, of the occurrence of the adverse impact; and
   (b) the economic consequences of the adverse impact; and
   (c) those economic consequences relative to the potential economic value of the entire discovery of petroleum in the pre-commencement petroleum title area.

The regulations may provide for other matters to be taken into account.

32. Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:
   – an increase in the capital costs of the operations (other than costs prescribed in the regulations);
   – an increase in the operating costs (other than costs prescribed in the regulations);
   – a reduction in the rate of recovery of petroleum; or
   – a reduction in the quantity of petroleum that can be recovered.

33. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

34. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.