

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 251

Issued by the Authority of the Minister for Industry, Tourism and Resources

Petroleum (Submerged Lands) Act 1967

Offshore Petroleum (Safety Levies) Act 2003

Offshore Petroleum (Safety Levies) Amendment Regulations 2006 (No. 1)

In accordance with a commitment by the Commonwealth Government, and the agreement of the States and Territories, the *Petroleum (Submerged Lands) Amendment Act 2003* amended the *Petroleum (Submerged Lands) Act 1967* to establish the National Offshore Petroleum Safety Authority (NOPSA) to regulate occupational health and safety in all of Australia's offshore petroleum activities and provide for the funding of NOPSA. The *Offshore Petroleum (Safety Levies) Act 2003* provides a mechanism to impose and collect levies to fund NOPSA.

Subsection 157(1) of the *Petroleum (Submerged Lands) Act 1967* provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that by that Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to that Act. In addition, section 11 of the *Offshore Petroleum (Safety Levies) Act 2003* provides that the Governor-General may make regulations for the purposes of sections 5, 6 (Imposition of safety investigation levy in Commonwealth waters and designated coastal waters), 7, 8 (Imposition of safety case levy in Commonwealth waters and designated coastal waters), 9 and 10 (Imposition of pipeline safety management plan levy in Commonwealth waters and designated coastal waters) of that Act.

The purpose of the Regulations is to amend the *Offshore Petroleum (Safety Levies) Regulations 2004* (the Principal Regulations) to improve administrative processes and improve the coverage of different types of mobile facilities and vessels under the Safety Case levy. The Regulations will remove inconsistencies between definitions of "mobile facilities" in Schedule 7 to the *Petroleum (Submerged Lands) Act 1967* and Schedules 1 and 2 to the Principal Regulations. Currently, the Principal Regulations do not provide a definition of all mobile facilities at Schedules 1 and 2; as a result some operators are being charged at the rate for facilities that are other than mobile facilities and are therefore not eligible for the remittal process. The amendments will ensure that mobile vessels or facilities which are used to lay pipes, erect, dismantle or decommission facilities and provide accommodation for workers on another facility are considered as mobile facilities for the purpose of calculating the Safety Case levy and that operators of these vessels are eligible for remittance of fees.

The Regulations amend the design of the Pipeline Safety Management Plan (PSMP) Levy by removing the "notional length" as the basis for calculating the levy. The Principal Regulations currently set out a method of determining the levy based on the "notional length" of a pipeline. The "notional length" has been shown to be an inefficient method of calculating the levy because in practice the regulatory effort does not increase significantly with the length of the pipeline. The amendments introduce a new method to calculate the amount of the levy based on the complexity

of the pipeline. Complexity will be determined by the number of sub-sea developments or manifolds on the pipeline. This is where the major portion of the occupational health and safety risks need to be addressed by the PSMP and the majority of intervention by the workforce will take place.

The amendments will also provide a simplified method to determine payment of the PSMP levy when a pipeline is located in both or equally in Commonwealth waters or State/Northern Territory designated coastal waters. This retains the concept that a licensee is only liable to pay the PSMP levy when there is a major revision to the pipeline.

The 2006 Regulation Amendments have been developed in consultation with the offshore petroleum industry; NOPSA; the National Oil and Gas Safety Advisory Committee; and relevant authorities within each State and Northern Territory to implement recommendations from a review of cost recovery arrangements for NOPSA in 2005. The review was undertaken to meet a commitment by the Minister for Industry, Tourism and Resources to the offshore petroleum industry and outlined in the Department's 2005–06 Portfolio Budget Statement.

Details of the Regulations are set out in the Attachment.

The Regulations will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered.

Authority: Subsection 157(1) of the *Petroleum (Submerged Lands) Act 1967*; and section 11 of the *Offshore Petroleum (Safety Levies) Act 2003*

ATTACHMENT

Details of the proposed *Offshore Petroleum (Safety Levies) Amendment Regulations 2006 (No. 1)*

Regulation 1 - Name of Regulations

This regulation provides that the title of the Regulations is the *Offshore Petroleum (Safety Levies) Amendment Regulations 2006 (No. 1)*

Regulation 2 - Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 - Amendment of *Offshore Petroleum (Safety Levies) Regulations 2004*

This regulation provides that the amendments to the *Offshore Petroleum (Safety Levies) Regulations 2004* (the Principal Regulations) are as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

Item [1] – Regulation 4 – Payment of levy for pipeline located both in Commonwealth waters and State/NT designated coastal waters

The regulation replaces existing regulations 4 and 5. It combines the purpose of the existing regulations and provides a simpler method of determining whether the PSMP levy is payable in Commonwealth waters or State/Northern Territory coastal waters.

The effect is to retain the concept that the PSMP levy is to be paid based on where the majority of the pipeline is located. The levy is to be paid only once in a set period, whether the pipeline is located in Commonwealth waters or State/Northern Territory Coastal waters or traverses both. The result is that the levy is payable as if the pipeline were located in a single jurisdiction.

Item [2] – Regulation 5 – Payment of levy for pipeline located equally in Commonwealth waters and State/NT designated waters

The regulation deletes existing regulation 5 which is replaced by regulation 4 (see Item [1] above).

Item [3] – Regulation 39 – Amount of pipeline safety management plan levy

The regulation replaces existing regulation 39 to provide a new mechanism for calculating the amount of the PSMP levy in Commonwealth waters. The PSMP levy will be calculated based on the complexity of the pipeline. The amendment provides consistency with the approach to calculating the safety case levy at regulation 21 and 29.

Subregulation 39(1)

The subregulation replaces the current subregulation with a new method of calculating the amount of the PSMP levy for a pipeline or multiple pipelines located in Commonwealth waters. The subregulation sets out the calculation of the PSMP levy

as the sum of the “Safety Management System amount” (SMS amount) and the “pipeline amount” as worked out using new Schedule 3 to the Principal Regulations (see Item [7] below).

The note explains that a licensee is only required to pay one SMS amount for a PSMP in any year, whether they have a single pipeline or multiple pipelines. The amendment also ensures that the levy on a pipeline is only payable in relation to one location as set out in regulation 4 (see Item [1] above).

The amendment will remove length as the basis for calculating the PSMP levy and will establish the complexity of a pipeline as the basis. The effect of the regulation is to provide more equitable treatment to pipeline licensees of multiple pipelines operating under a single SMS, by removing the cross-subsidisation of the cost of assessing the PSMP of pipeline licensees with a single pipeline. The amendment will also ensure the levy more accurately reflects the amount of regulatory effort needed to assess a single PSMP, and will provide sufficient funds to the Safety Authority to recover the cost of assessing an individual PSMP.

Subregulation 39(2)

The subregulation deletes the existing mechanism to work out the notional length of a pipeline at current subregulation 39(2). The effect of the amendment is to ensure that when a PSMP is already in force at the start of a year, a new levy will only be imposed if there is a major revision to the PSMP, and that otherwise the levy is zero.

Item [4] – regulation 45 – Amount of pipeline safety management plan levy

The regulation replaces existing regulation 45 to provide a new mechanism to calculate the PSMP levy in designated coastal waters. The effect of the amendment is to retain consistency with the amendment to regulation 39 in Commonwealth waters (see Item [3] above).

Item [5] – Schedule 1 – clause 2.3 table, item 5

The item expands the definition of a mobile facility in the table of facility ratings in Schedule 1 to the Principal Regulations. It replaces the term “pipe-lay barge, construction/transport barge or accommodation barge” in the current regulation with the term “vessel for laying pipes for petroleum, or vessel or structure used for the erection, dismantling or decommissioning of a facility or for the provision of accommodation for persons working on another facility”.

Schedule 1 describes how to calculate the Facility amount and SMS amount for the safety case levy and the table provides a description of different facility types and the applicable facility rating for each. The amendment provides consistency with the terms used in subparagraph 2A(1)(b)(v) to Schedule 7 to the *Petroleum (Submerged Lands) Act 1967* and a more accurate description of these facility types. This should ensure that all mobile vessels and structures being used or prepared for use for the erection, dismantling or decommissioning of a facility, laying pipes and providing accommodation for a facility are covered in the Principal Regulations. The new definition aims to ensure that the regulator and industry clearly understand which mobile vessels are covered, and enables the Safety Authority to charge the safety case levy at the mobile rate to all mobile vessels.

Item [6] – Schedule 2 – item 2

Schedule 2 to the Principal Regulations describes mobile facilities. The item replaces “pipe-lay barge or construction/transport barge” with “vessel for laying pipes for petroleum, or vessel or structure used for the erection, dismantling or decommissioning of a facility”. This item ensures consistency with the definition in subparagraph 2A(1)(b)(v) of Schedule 7 to the *Petroleum (Submerged Lands) Act 1967* and also with Schedule 1 to the Principal Regulations.

This will provide that it is the activity that is covered by the regime rather than the vessel and provide consistent coverage of mobile vessels and facilities. It will enable the Safety Authority to charge the safety case levy at the mobile rate to all mobile vessels described in Schedule 7 to the *Petroleum (Submerged Lands) Act 1967* and enable operators of mobile facilities to be eligible for remittance of fees.

Schedule 2 – item 3

The amendment to item 3 in Schedule 2 replaces “accommodation barge” with “accommodation facility used for persons working on another facility” to achieve consistency with the definition in subparagraph 2A(1)(b)(ii) of Schedule 7 to the *Petroleum (Submerged Lands) Act 1967* and also with Schedule 1 to the Principal Regulations.

The item will provide that only accommodation vessels used for persons working on another facility are captured by the regime, and not other vessels which could accommodate people for other purposes.

Item [7] – Schedule 3 – Pipeline amount and SMS amount

The amendment inserts a new Schedule 3 to the Principal Regulations. It provides a new mechanism to calculate the amount of the PSMP levy payable for a pipeline or multiple pipelines, as set out under proposed regulations 39 and 45. This item describes the components used to calculate the PSMP levy.

The amendment adopts a structure similar to the Safety Case levy, using the formula “Pipeline Amount” plus “Safety Management System” (SMS) amount, to provide a consistent and transparent mechanism to calculate the PSMP levy. To work out the pipeline amount, a description and rating will be provided for each type of pipeline based on its complexity. The SMS amount will reflect the fixed cost associated with assessing a SMS. The effort to assess a PSMP for multiple pipelines that employ the same SMS is less than the effort required to assess the PSMPs for the same number of pipelines which have different licensees and different SMS. The ongoing interface with a single licensee of many pipelines would also be less effort than required for multiple licensees.

The PSMP levy under the current structure does not provide sufficient funds to recover the cost of assessing an individual licensed pipeline. In addition, the cost to a licensee with multiple or a network of pipeline licences is disproportionately high compared to the amount of regulatory effort required to assess the PSMP. As a result, network licensees subsidise licensees of single pipelines. The effect of the regulation is to remove this cross-subsidisation to provide more equitable treatment of licensees. While the cost for individual pipelines will rise, the cost for a network will reduce and will more accurately reflect the amount and cost of regulatory effort.

Part 1 – Pipeline Amount – Division 1 – Factors used to work out the pipeline amount

The regulation provides the basis for calculating the “pipeline amount”. The pipeline amount is obtained by multiplying the pipeline rating by the unit value.

The mechanism to calculate the PSMP levy is based on the method used to calculate the safety case levy. It ensures that the levy is based on the complexity of the pipeline and will reflect the amount of regulatory effort for the safety authority to complete an assessment.

Division 2 – Applicable pipeline rating

The regulation provides that the pipeline rating for a pipeline with: no sub-sea development is 1; one or two sub-sea developments or manifolds connected is 2; and more than two sub-sea developments or manifolds connected is 3. This ensures that the PSMP levy is calculated based on the complexity of the pipeline.

The complexity of a pipeline is determined by the number of sub-sea developments or manifolds attached to it. Assessing a PSMP for a more complex pipeline requires greater regulatory effort therefore higher ratings will be applied to pipelines that are more complex. The pipeline rating is shown against a description for each type of pipeline.

Division 3 – Unit value

This provides that the “unit value” is set out as \$10,000 per pipeline.

Part 2 – SMS Amount

Item 2.1 provides that a licensee is required to pay only one SMS amount in relation to a year.

Item 2.2 establishes that the SMS amount is \$40,000 per licensee.

The note clarifies that a licensee would pay only one SMS amount regardless of how many pipelines are operated under the same PSMP.