Oil and Gas Safety Laws in Western Australia

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Abstract

This paper explains the source and general principles of the occupational safety and health legislation that applies to the oil and gas industry in Western Australia. It considers the federal legislation known as the Offshore Petroleum Act 2006 (Cth) which replaces the Petroleum (Submerged Lands) Act 1967 (Cth). It also considers the Petroleum Pipelines Act 1969 (WA), the Petroleum (Submerged Lands) Act 1982 (WA), and the Petroleum Act 1997 (WA). This legislation is considered from the point of view of determining which legislation applies to which location; identifying the main provisions of each of those Acts that is concerned with occupational safety and health; and explaining which government department administers each of those Acts.

Introduction

The precise legislation dealing with occupational safety and health issues in the oil and gas industry for workers living in Western Australia has not always been straightforward. There has been and continues to be a mixture of federal and state legislation on the topic. This paper will explain how the labyrinth of occupational safety and health legislation applies to oil and gas businesses that are based in Western Australia and where the oil and gas location has some semblance of geographical connection with Western Australia. The paper is written to explain the legislation in place in early 2006, together with the state legislation that applies or is proposed to apply after 2006.

Legislation generally

The most widely applicable legislation on occupational safety and health in Western Australia is state legislation known as the Occupational Safety and Health Act 1984 (WA), and the Mines Safety and Inspection Act 1994 (WA).

Section 4(2) of the Occupational Safety and Health Act 1984 provides that the legislation:

...does not apply to or in relation to any workplace that is, or at which work is carried out on, a mine, to petroleum well or petroleum pipeline to which the Mining Act 1978, the Mines Safety and Inspection Act 1994, the Petroleum Act 1967, the Petroleum (Submerged Lands) Act 1982 or the Petroleum Pipelines Act 1969, applies.¹

Thus one can conclude that for most petroleum wells or petroleum pipelines, the Occupational Safety and Health Act 1984 does not apply.

The Mines Safety and Inspection Act 1994 applies to mining operations, which in s 4 is described as:

...any method of working by which the earth or any rock structure, coal seam, stone, fluid, or mineral bearing substance is disturbed, removed, washed, sifted, crushed, leached, roasted, floated, distilled, evaporated, smelted, refined, sintered, pelletized, or dealt with for the purpose of obtaining any mineral or rock

¹ Notwithstanding this section, it should be noted that An Instrument of Declaration in WA Gazette, 28 June 2005, made under s 4(3), applied all the provisions of the Occupational Safety and Health Act 1984 and any of the regulations made under it to workplaces that are a mine to which the Mining Act 1978 applies. On 1 July 2005 responsibility for Resources Safety moved from the Department of Industry and Resources to the Department of Consumer and Employment Protection. Resources Safety became a Division of the Department of Consumer and Employment Protection.
from it for commercial purposes or for subsequent use in industry…²

Section 4 of the *Mines Safety and Inspection Act 1994* provides a definition of ‘mineral’. Within that definition of ‘mineral’ it says that this does not include ‘natural gas or mineral oil in a free state’.³ Therefore the logical deduction from these definitions is that oil and gas activities are not covered by the *Mines Safety and Inspection Act 1994* and cannot be considered in the same context as other mining.

As neither the *Occupational Safety and Health Act 1984* nor the *Mines Safety and Inspection Act 1994* apply to oil and gas, consideration can be given to the *Petroleum Pipelines Act 1969* (WA), the *Petroleum (Submerged Lands) Act 1982* (WA), and the *Petroleum Act 1997* (WA) to determine whether occupational safety and health issues are dealt with in those statutes. However the position becomes further complicated because there is also federal legislation on occupational safety and health that applies to the oil and gas industry.

**Petroleum safety legislation generally**

Safety legislation that applies to businesses or workers involving oil and gas is usually referred to as ‘petroleum’. The *Petroleum Pipelines Act 1969* (WA) s 4, the *Petroleum (Submerged Lands) Act 1982* (WA) s 4, and the *Petroleum Act 1997* (WA) s 5 provide that the term ‘petroleum’⁴ means:

(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;  
(b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or  
(c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen-sulphide, nitrogen, helium and carbon dioxide, and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir…

However, as previously indicated, the legislation dealing with petroleum is not restricted just to the above-named state statutes, as there is also federal legislation, primarily dealing with petroleum safety at locations that are not within the jurisdiction of the state. In broad terms this federal legislation is aimed at oil and gas activities that are located off the Western Australian shoreline and therefore outside that state’s jurisdiction. The federal legislation is currently known as the *Offshore Petroleum Act 2006* (Cth) but was until recently known as the *Petroleum (Submerged Lands) Act 1967* (Cth). Consideration will now be given to each of these statutes, commencing with the federal legislation and then the state legislation.

**Offshore Petroleum Act 2006** (Cth)

Under this Act, the National Offshore Petroleum Safety Authority (NOPSA) is charged with administering offshore petroleum safety legislation.⁵ NOPSA is a statutory authority regulating Commonwealth, state and territory coastal waters with accountability to the relevant Ministers. Its headquarters are located in Perth and it commenced operations on 1 January 2005. NOPSA is taking over from the State Minister that was previously described as the Designated Authority to administer certain aspects of offshore petroleum health and safety.⁶ In practice the State Minister appointed a state government department to undertake this administration.⁷

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² Section 4.  
³ Section 4.  
⁴ Whenever possible, the term ‘petroleum’ will now be used in this paper in preference to the term ‘oil and gas’.

⁶ See the definition of ‘responsible State Minister’ in s 6 of the *Offshore Petroleum Act 2006* (Cth).

⁷ Before 1 January 2005, this statute provided for a joint authority arrangement with the states. At one time the state’s Department of Mineral and Petroleum Resources administered the Commonwealth offshore adjacent area under a Commonwealth-State Joint Authority arrangement. Recently
NOPSA was established by an amendment to the *Petroleum (Submerged Lands) Act 1967* (Cth) by the *Petroleum (Submerged Lands) Amendment Act 2003* (Cth). This amendment is now reflected in the *Offshore Petroleum Act 2006* (Cth). Part 4.8 – Division 2 of the *Offshore Petroleum Act 2006* (Cth) sets out NOPSA’s establishment, functions and powers. Section 356 contemplates that NOPSA will function in both Commonwealth offshore waters and the designated coastal waters of a State. Part 4.7 of the *Offshore Petroleum Act 2006* (Cth) establishes an occupational health and safety regime for petroleum activities at facilities located in Commonwealth waters. The facilities include pipelines.\(^8\)

The background to the creation of NOPSA emanates from a 1979 Commonwealth and states agreement to a division of offshore powers and responsibilities known collectively as the Offshore Constitutional Settlement.\(^9\) Initially, a major consequence of this Offshore Constitutional Settlement was that Western Australia retained responsibility for ‘coastal waters’ up to three nautical miles from the low water mark on the Western Australian shoreline and that the state legislation on occupational safety and health applied to activities of the petroleum industry in that three mile zone.\(^10\)

Petroleum companies that operated in a number of states and territories found that there were inefficiencies involved with complying with the requirements of a number of state and territory jurisdictions. This became more pronounced since the petroleum industry adopted a ‘safety case’ approach for risk management in the industry.\(^11\)

In the *Minerals and Petroleum Resources Policy Statement* produced in 1998, the federal government undertook to look at further opportunities to improve Australia’s offshore safety record by evaluating all aspects of Australia’s safety case regime in a comprehensive review. A report entitled *Future Arrangements for the Regulation of Offshore Petroleum Safety* was delivered to the Minister for Industry, Science and Resources in August 2001.\(^12\) The report identified that there was too much legislation, direction and regulation dealing with offshore petroleum activities. The report found that generally there was little coordination between the states, and there was also criticism of the capacity and skill of the state and territory regulators. It identified that the petroleum industry in general wanted uniform administration of safety around the country. The report identified that there was support for a national safety regulator to remove overlap and inconsistencies between the various jurisdictions.

As a result of the report the federal government passed the *Petroleum (Submerged Lands) Amendment Act 2003* (Cth), and as indicated above, this legislation created the authority known as NOPSA to regulate occupational safety and health matters on offshore petroleum facilities in both Commonwealth and state waters.\(^13\) The

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\(^8\) Further details about the establishment and powers of this National Offshore Petroleum Safety Authority are considered in an article by Patrick Brazil and Peter Wilkinson, ‘The Establishment of a National Offshore Petroleum Safety Authority’, *24 AMPLJ* 87.

\(^9\) For further details see the Petroleum (Submerged Lands) Amendment Bill 2003: *Explanatory Memorandum*, p. 3.

\(^10\) Maps produced by the Department of Industry and Resources illustrate the boundaries of these ‘State Coastal Waters’. See: various maps under the heading ‘Petroleum Maps’ at the following Department of Industry and Resources website:


\(^11\) This ‘safety case’ approach is discussed below at page 26 (see footnote 17).

\(^12\) For a reference to this document see:


\(^13\) For a reference to this document see:


\(^14\) Western Australia has made corresponding amendments to its *Petroleum (Submerged Lands) Act 1982* (WA), so as to confer equivalent functions on NOPSA in relation to petroleum activities in State coastal waters. However at the
establishment and functions of this authority are now reflected in Part 4.8 of the Offshore Petroleum Act 2006 (Cth).

Section 347 of the Offshore Petroleum Act 2006 (Cth) identifies the laws that NOPSA and its inspectors will administer and enforce in Commonwealth waters. These are specified in more detail in Schedule 3 of the Offshore Petroleum Act 2006 (Cth), and various regulations made under the Act. These regulations are identified later in this paper at page 27.

In general terms these categories of persons are required to take all reasonably practicable steps to protect the health and safety of the workers at the facility and of any other persons who may be affected. It contains provisions for consultation on occupational safety and health issues between each facility operator, relevant employers and the workers. Inspectors from NOPSA are granted powers to enter offshore facilities or other relevant premises to ensure compliance with this occupational safety and health legislation.

Another feature of this legislation is often referred to as the ‘safety case’ approach. The ‘safety case’ approach in the petroleum industry emanated out of a UK public enquiry by Lord Cullen into the Piper Alpha disaster. The ‘safety case’ regime has been used in the nuclear industry for the past 40 years and it was introduced by the European Community (now the European Union) in 1986 following the Seveso dioxin emission in northern Italy. For further details of the ‘safety case’ approach in Western Australia, see ‘The Case for Safety Cases?’ (2005) 14(3) MineSafe WA 3-5.

That enquiry was commissioned in 1988 after a petroleum disaster occurred in the North Sea and was of great concern to the offshore petroleum industry worldwide. His report made many recommendations, including a recommendation to introduce the ‘safety case’ concept for oil and gas activities in the North Sea, to align offshore safety management with existing onshore legislation. This concept was adopted in Australia for offshore petroleum activities by the Consultative Committee on Safety in the Offshore Petroleum Industry when it decided that Australia should introduce the safety case approach. This is underpinned by the objectives in the Petroleum Submerged Lands (Management of Safety on Offshore Facilities) Regulations 1996.

NOPSA’s website explains the safety case approach as follows:

Objective based (or goal setting) regimes, including the safety case regime, are based on the principle that the legislation sets the broad safety goals to be attained and the operator of the facility develops the most appropriate methods of achieving those goals. A basic tenet is the premise that the ongoing management of safety is the responsibility of the operator and not the regulator.

A safety case is a document produced by the operator of a facility which:

- Identifies the hazards and risks
- Describes how the risks are controlled, and
- Describes the safety management system in place to ensure the controls are effectively and consistently applied.


Guidance on how to prepare, submit and assess ‘safety cases’ is found in NOPSA’s publication Safety Case Guidelines (2004).

Brazil and Wilkinson\(^{22}\) explain that:

A safety authority then assesses safety cases and ‘accepts’ a safety case if it is satisfied that the arrangements set out in the document demonstrate that the risks will be reduced to as low as is reasonably practicable. Once ‘accepted’ the safety authority (in this case NOPSA) visits the facilities to monitor the application of the safety cases in practice.

The basic tenet is the premise that ongoing management of safety is a responsibility of the operator, but with an independent body to assess and accept the safety case proposed.

It was mentioned earlier that regulations can be made under the Offshore Petroleum Act 2006 (Cth) and the previous named Petroleum (Submerged Lands) Act 1967. The current regulations are:

- The Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993, which establishes certain legislative processes required by Schedule 7, and also establishes some prescriptive OHS standards. These include bans on certain hazardous substances, and are broadly consistent with national agreements.

- The Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996, which require a registered ‘operator’ for each offshore petroleum facility, and require each facility to be managed in accordance with a detailed safety case that has been prepared by the operator and accepted by NOPSA.

- The Petroleum (Submerged Lands) (Pipeline) Regulations 2001, which requires a registered operator for each licensed pipeline. The regulations require the pipeline to be managed in accordance with a pipeline management plan that has been prepared by the pipeline licensee and accepted by NOPSA. These regulations address a range of matters wider than occupational health and safety but NOPSA’s involvement is limited to occupational health and safety issues.

  - The Petroleum (Submerged Lands) (Diving Safety) Regulations 2002, which require each diving contractor to act in accordance with a diving safety management system that has been accepted by NOPSA. The regulations also require diving contractors to act in accordance with a diving project plan that has been accepted by the relevant facility operator.

One of the implications of the introduction of the safety case approach has been the removal of prescriptive requirements previously found in a document called the ‘Petroleum (Submerged Lands) Acts: Schedule: Specific Requirements as to Offshore Petroleum Exploration and Production’, February 2004 (Schedule of Specific Requirements).\(^{23}\) In this document, specific requirements such as electrical requirements and crane licensing requirements were specified. However NOPSA’s website indicates that:

When the previous, prescriptive system of regulation was replaced by the present process of assessing safety cases, several matters that were the subject of specific regulations were revoked, and not included in the new regulations. These matters are the safety related items identified in the Schedule of Specific Requirements, and are no longer required by the Designated Authorities which previously administered them.

[Note: Legislation to revoke these requirements is expected to be introduced in Western Australia shortly.]

NOPSA’s regulatory responsibilities do not include the matters identified in the Schedule of Specific Requirements, however where operators were previously required to comply with a criterion or standard defined in a

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\(^{22}\) Patrick Brazil and Peter Wilkinson, ‘The Establishment of a National Offshore Petroleum Safety Authority’ 24 AMPLJ 87, 89.

regulation or obtain a certificate or licence, these requirements are no longer in force but are expected to be addressed by the operator in the safety cases they submit. The operator is now required to identify its responsibilities under the law and develop adequate systems and standards for satisfying those responsibilities.

One of the matters affected by these changes is the certification of crane drivers, for which an explanatory note has been provided.

In the coastal waters of Western Australia, equivalent laws to the Commonwealth’s Schedule 3 and regulations, are found in the amendments made by the Petroleum Legislation Amendment and Repeal Act 2005 (WA) to the Petroleum (Submerged Lands) Act 1982 (WA). The effect of these amendments is that NOPSA will administer those locations where Western Australian law operates. This is intended to ensure that consistent State and Federal laws apply and that they are administered by the same authority. This reflects the commitment to the 1967 Offshore Constitutional Settlement, whereby the states and federal governments endeavoured to maintain some common principles and regulation for the exploration of submerged lands.

The Offshore Petroleum (Safety Levies) Act 2003 of the Commonwealth establishes the cost recovery regime through which NOPSA is funded. The Offshore Petroleum (Safety Levies) Regulations 2004 set out the methods of calculating the levies, and the procedures for payments. The levies under this Commonwealth legislation relate to state and Northern Territory waters, as well as to Commonwealth waters. There is no equivalent state or Northern Territory legislation on this point.

The Petroleum (Submerged Lands) Act 1982 (WA)

The Petroleum (Submerged Lands) Act 1982 (WA), with an amendment made to it by the Petroleum Legislation Amendment and Repeal Act 2005 (WA), purports to mirror the federal Offshore Petroleum Act 2006 (Cth) and to deal with the laws applicable to what has become known as the ‘Commonwealth offshore adjacent area’. The 2005 amendment provides a new Part IIIA and a Schedule 5 that deals with the Robens approach to occupational health and safety.

The Petroleum (Submerged Lands) Act 1982 (WA) applies to facilities in Western Australian coastal waters. As indicated earlier, this is the area of the sea floor that stretches out three miles out from the low water mark on the shoreline. In this legislation as it currently operates at the time of writing, occupational safety for all offshore petroleum facilities and operations (including petroleum transmission pipelines) is currently regulated by the WA Department of Industry and Resources’ Petroleum and Royalties Division. This includes activities in the adjacent

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25 It should also be noted that other Australian states and territories have also passed similar legislation: Petroleum (Submerged Lands) Act 1982 (Vic), Schedule 7 and Petroleum (Submerged Lands) Regulations 2004 (Vic); Petroleum (Submerged Lands) Act 1982 (NT), Schedule 4 and the Petroleum (Submerged Lands) (Application of Commonwealth Laws) Regulations 2004 (NT); Petroleum (Submerged Lands) Act 1982 (Tas), Schedule 5; Petroleum (Submerged Lands) Act 1982 (SA), Schedule 7 and Petroleum (Submerged Lands) Act 1982 (Qld), Schedule 3.

26 Previously known as the Petroleum (Submerged Lands) Act 1967 (Cth).

27 The definition of ‘facilities’ is found in clause 4 of Schedule 5 to the Act (under the 2005 amendment). It is written in wide terms and includes pipelines.

28 There is some uncertainty on this point as the WA Department of Consumer and Employment Protection’s website says: ‘On 1 July 2005, responsibility for safety and health regulation of dangerous goods, mining, onshore petroleum and major hazards was transferred from DoIR [Department of Industry and Resources] to the Department of Consumer and Employment Protection. Further information can be obtained from State Development Minister Alan Carpenter and Consumer and Employment Protection Minister John Kobelke’s joint media statement released on 27 May 2005.’ <www.docep.wa.gov.au/ResourcesSafety/9AEE122E4CBC4ACARFB6C53F989A26.asp>.

Similar wording is found on the WA Department of Industry and Resources website at: <www.doir.wa.gov.au/mineralsandpetroleum/CEDA49B366B421D9D781CCD35AA70423.asp>. However the media statement referred to above does not assist matters as it does not mention petroleum at all. It is arguable, but the issue of offshore petroleum control presumably therefore remains with the WA Department of Industry and Resources, until the
Commonwealth offshore areas covered under the *Offshore Petroleum Act 2006* (Cth). However, as discussed above, the newly formed NOPSA is expected to take over the administration of occupational safety and health issues. All other regulatory aspects of these facilities and operations (e.g. environment, resource management, royalties and titles) are expected to be retained by the WA Department of Industry and Resources.

Prior to the *Petroleum Legislation Amendment and Repeal Act 2005* (WA) amendment to the *Petroleum (Submerged Lands) Act 1982* (WA), the legislation provided for a joint authority arrangement with the Commonwealth under which the WA Department of Industry and Resources administers the area known as ‘Western Australian Coastal Waters’ for the State Minister, as the ‘Designated Authority’.

The *Petroleum (Submerged Lands) Act 1982* (WA) referred to the ‘Schedule of General Requirements for Occupational Health and Safety – 1993’ (sometimes referred to in the industry as the ‘green book’). This legislation also applied a ‘Schedule of Specific Requirements as to Offshore Petroleum Exploration & Production 1995 (with Amendments 1T/96-7 and 2T/96-7)’. In conjunction with this were some guidelines referred to as ‘Guidelines for the Preparation and Submission of Facility Safety Cases’ produced by the Federal Government, yet it appears from the Western Australian Department of Consumer and Employment Protection website to have some influence on the state legal provisions. However, once the 2005 amendments to the *Petroleum (Submerged Lands) Act 1982* (WA) are implemented, these schedules and guidelines will presumably no longer operate.

**Petroleum Act 1967 (WA)**

Before the yet to be proclaimed 2005 amendments to the *Petroleum Act 1967* (WA), the *Petroleum Act 1967* also applied to Western Australian internal waters, namely up to the continental shelf and to onshore petroleum activities. Before 18 May 2005, the administration of this legislation was by the WA Department of Industry and Resources, but it is now administered by Resources Safety in the WA Department of Consumer and Employment Protection.

The thrust and main purpose of this Western Australian legislation is to provide for a two stage system to regulate petroleum onshore. The first stage allows for an exploration permit to be issued under s 38, which allows for the permit holder to explore for petroleum onshore. The second stage allows for a production licence to be issued under Part III of the Act. This licence allows for the production of petroleum onshore. In practice the exploration licences tend to deal with larger physical areas, compared to the area covered by petroleum licences.

Section 5 of the *Petroleum Act 1967* (WA) defines the term ‘petroleum’ in the terms discussed earlier in this

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paper, but excludes oil shale and limits the application of this legislation to petroleum activities onshore within the jurisdiction of Western Australia, except for pipelines.

Section 91(1) of this legislation refers to some very general occupational safety and health requirements when it says:

A permittee, holder of a drilling reservation, lessee or licensee shall carry out all petroleum exploration operations and operations for the recovery of petroleum in the permit area, drilling reservation, lease area or licence area in a proper and workmanlike manner and in accordance with good oil-field practice and shall secure the safety, health and welfare of persons engaged in those operations in or about the permit area, drilling reservation, lease area or licence area.

Section 91(3) follows this up by saying:

A person who is the holder of a special prospecting authority or an access authority shall carry out all petroleum exploration operations in the area in respect of which the special prospecting authority or access authority is in force in a proper and workmanlike manner and in accordance with good oil-field practice and shall secure the safety, health and welfare of persons engaged in those operations in or about that area.

The penalty for a contravention of subsection (1) or (3) is a maximum of $10 000.

These sections have to be read with a document known as ‘Schedule of Onshore Petroleum Exploration and Production Requirements – 1991’. The status of this document remains a little unclear as another document referred to as ‘The Schedule of General Requirements for Occupational Health and Safety 1993’ also exists. The 1991 document contains 801 fairly specific requirements, while the 1993 document contains provisions much more akin to the general duty provisions and other aspects of the Occupational Safety and Health Act 1984 (WA). The introduction contained in this latter document explains that the schedule is the subject of directions issued to holders of petroleum titles in Western Australia and by its action applies to all workplaces at which oil and gas exploration and production are undertaken. Laing in his 2002 report stated:

Safety onshore, it appears, is at least partly contingent on either Ministerial notice generally, by condition of licence, condition of approval or by agreement with the operator. That is cumbersome and potentially unreliable should steps in the notification process be missed. Clearly, it has not yet presented as a major issue because the industry parties are aware of, and committed to, ongoing safety, and generally have safe workplaces and procedures in place. Occupational safety and health is an element of the safety management system required under the safety case regime. In the longer term however it is not a satisfactory arrangement as changing circumstances rather than the legislation could control ongoing industry performance.

The continued existence of these two subsections are, however, subject to the Part 10 and more specifically s 92 of the Petroleum Safety Act 1999 (WA), but to date these have not been proclaimed. When Laing reviewed the Occupational Safety and Health Act 1984 (WA) and the Mines Safety and Inspection Act 1994 (WA), he also reviewed the status of the Petroleum Safety Act

31 See above n 4.
32 ‘Oil shale’ is further defined in s 5 of that Act.
35 R. Laing, Review of the Occupational Safety and Health Act 1984, Final Report (2002) at paragraph 794 explained that it was submitted that it had general application to other persons who is given notice of the direction.
He noted that when proclaimed it would provide for some consistency for both offshore and onshore petroleum activity. Since Laing’s two reports, the Petroleum Legislation Amendment and Repeal Act 2005 (WA) has been introduced into the Western Australian parliament and assented to on 1 September 2005. In this Act, the Petroleum Act 1967 (WA) is amended to introduce changes to the occupational safety and health of persons engaged in petroleum operations. It achieves this by introducing a Part IIIA and a new Schedule 1 to the Act that deals with occupational safety and health through introducing general duties and other legislative features that are similar to the Robens approach to occupational safety and health. The Petroleum Legislation Amendment and Repeal Act 2005 (WA) also proposes to repeal the Petroleum Safety Act 1999 (WA).

As previously discussed the motivation for these state amendments was based on changes to the Federal Government’s legislation and the decision to create NOPSA which would regulate occupational safety and health matters on offshore petroleum facilities in both Commonwealth and State waters. The Western Australian Petroleum Legislation Amendment and Repeal Act 2005 (WA) reflects the amendments made by the federal amending legislation to ensure that a consistent regulatory regime operates both onshore and offshore facilities and meets the State’s obligations under a 1967 Offshore Constitutional Settlement, under which the Commonwealth, the States and the Territories agreed that the Commonwealth and States should endeavour to maintain, as far as practicable, common principles, rules and practices in the regulation and control of the exploration for and the exploitation of the petroleum resources in submerged land.

Once the Petroleum Legislation Amendment and Repeal Act 2005 (WA) comes into effect by proclamation, the occupational safety and health laws for onshore operations will be found in Part IIIA and Schedule 1 to the Petroleum Act 1967.

**Petroleum Pipeline Act 1969 (WA)**

The Petroleum Pipeline Act 1969 (WA) applies to petroleum pipelines located onshore that are within the jurisdiction of the state of Western Australia. The definition is found in section 4 and provides for some specific exceptions including pipelines as defined in the Petroleum (Submerged Lands) Act 1982 (WA).

The legislation currently contains two sections expressly dealing with workplace safety:

36A. A licensee shall operate the pipeline specified in the licence of which he is the registered holder in a proper and workmanlike manner and shall secure the safety, health and welfare of persons engaged in operations in connection with the pipeline. Penalty: $10,000.

67(1). The Governor may make regulations for or with respect to —
(a) the construction, maintenance and operation of pipelines and the safety measures to be taken in respect thereof;

The continued existence of these two sections is however subject to the proclamation of Part 10 and more specifically s 92 of the Petroleum Safety Act 1999 (WA). To date these have not been proclaimed. Those amendments would remove the references to safety issues.

In addition to these two sections, under section 41 of the Petroleum Pipeline Act 1969 (WA), the Minister may give the licensee of the pipeline certain ‘directions’ relating to the matters contained in the regulations. It is apparent from the decision in A J Lucas Pty Ltd v

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Fraser\textsuperscript{40} that these directions can include requirements to comply with certain specified occupational safety and health requirements. However, that decision indicates that to be effective, the direction should be brought to the attention of a person before there can be a breach of section 41(9).

It should be noted however that persons operating these pipelines are also currently possibly subject to the ‘Schedule of Onshore Petroleum Exploration and Production Requirements – 1991’\textsuperscript{41} and ‘The Schedule of General Requirements for Occupational Health and Safety 1993’, which were discussed earlier in relation to the Petroleum Act 1967 (WA).

However as explained in the context of the Petroleum Act 1967 (WA), the Petroleum Safety Act 1999 (WA) is itself subject to repeal by the Petroleum Legislation Amendment and Repeal Act 2005 (WA). In the Petroleum Legislation Amendment and Repeal Act 2005 (WA), the Petroleum Pipeline Act 1969 (WA) is amended to introduce changes to the occupational safety and health of persons engaged in petroleum operations by introducing a Part IVA and a new Schedule 1 to the Act. They introduce provisions dealing with occupational safety and health through general duties and other legislative features that are similar to the Robens approach to occupational safety and health as more commonly known throughout Western Australia in the Occupational Safety and Health Act 1984 (WA). The reasons for making these changes are similar to the reasons given above in relation to the changes made to the Petroleum Act 1967 (WA).

When the Petroleum Legislation Amendment and Repeal Act 2005 (WA) comes into effect by proclamation, the occupational safety and health laws for onshore pipeline operations will be found in Part IVA and Schedule 1 to the Petroleum Pipelines Act 1969 (WA).

**Summary**

In summary, the confusing and imprecise nature of the legislation dealing with the petroleum industry in place in early 2006 is undergoing reform. The federal legislation is setting up an authority to deal with offshore petroleum matters and the Western Australian legislation applies similar attributes of the federal legislation to onshore operations. The legislation administered by the state of Western Australia will deal with pipelines in one piece of legislation that differs from the legislation dealing with other petroleum exploration and production activities. However, a common feature of the Western Australian legislation after the 2005 amendments are proclaimed will be an emphasis on the style of legislation found in the Robens approach to occupational safety and health in the workplace.

\textsuperscript{40} Unreported, SC WA, No SJA 1053 of 1998, (SC Library No 980451), 11 August 1998.
