Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Act 2012

No. 2, 2012

An Act to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006, and for other purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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No. 2, 2012

An Act to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006, and for other purposes

[Assented to 6 March 2012]

The Parliament of Australia enacts:
1 Short title

This Act may be cited as the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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<tr>
<td>Provision(s)</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td>6 March 2012</td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Parts 1 and 2 of Schedule 2 to the <em>Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011</em>. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</td>
<td>7 March 2012 (paragraph (a) applies)</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.
3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments


1 Section 7 (paragraphs (h), (ha) and (i) of the definition of title)
   Repeal the paragraphs, substitute:
   (ga) when used in Chapter 5—has the meaning given by section 519; or
   (h) when used in section 574—has the meaning given by subsection 574(1); or
   (ha) when used in section 574A—has the meaning given by subsection 574A(1); or
   (i) when used in Division 2A of Part 6.2—has the meaning given by subsection 576A(3); or

2 Section 7 (after paragraph (b) of the definition of title area)
   Insert:
   (ba) when used in Division 2A of Part 6.2—has the meaning given by subsection 576A(3); or

3 Paragraph 569(8)(c)
   Omit “or 574A”, substitute “, 574A or 576B”.

4 At the end of subsection 569(8)
   Add:
   Note 1: A general direction may be given to a petroleum titleholder under section 574 (by NOPSEMA) or 574A (by the responsible Commonwealth Minister).
   Note 2: A direction may be given by NOPSEMA to a petroleum titleholder under section 576B in relation to a significant offshore petroleum incident in the petroleum title area.

5 Paragraph 572(7)(c)
   After “574A”, insert “, 576B”.

6 At the end of subsection 572(7)
Add:

Note 1: A general direction may be given to a petroleum titleholder under section 574 (by NOPSEMA) or 574A (by the responsible Commonwealth Minister).

Note 2: A direction may be given by NOPSEMA to a petroleum titleholder under section 576B in relation to a significant offshore petroleum incident in the petroleum title area.

7 Section 573

After “other persons.”, insert:

- If there is a significant offshore petroleum incident in a petroleum title area, NOPSEMA may give a specific direction to the titleholder to deal with the escape of petroleum resulting from the incident, whether within or outside the title area.

8 At the end of subsection 574(2)

Add:

Note 4: A direction under this section also has no effect to the extent of any inconsistency with a direction under section 576B (which relates to significant offshore petroleum incidents): see subsection 576C(2).

9 At the end of subsection 574A(2)

Add:

Note 3: For inconsistency between directions under this Division and Division 2A (which relates to significant offshore petroleum incidents), see subsection (12) of this section and subsection 576C(2).

10 After Division 2 of Part 6.2

Insert:
Division 2A—Directions for significant offshore petroleum incidents

576A Directions for significant offshore petroleum incidents—definitions for Division 2A

Significant offshore petroleum incidents

(1) In this Division, 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).

Note: For inquiries into significant offshore petroleum and greenhouse gas incidents, see Part 9.10A.

(2) Paragraph (1)(f) does not, by implication, limit paragraph (1)(a), (b), (c), (d) or (e).

Titles and title areas

(3) In this Division, the table has effect:

| Item | A title is any of the following: | The title area for the title is ...
|------|---------------------------------|---------------------------------
| 1    | a petroleum exploration permit   | the permit area.                |
| 2    | a petroleum retention lease      | the lease area.                 |
| 3    | a petroleum production licence   | the licence area.               |
| 4    | an infrastructure licence        | the licence area.               |
## Amendments Schedule 1

### Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Act 2012

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### 576B Directions for significant offshore petroleum incidents—NOPSEMA power to give directions

#### Power to give direction

(1) If a significant offshore petroleum incident has occurred in a title area that has caused, or that might cause, an escape of petroleum, NOPSEMA may, in accordance with this section, give a direction by written notice to the registered holder of the title.

(2) The direction may require the registered holder of the title to do any (or all) of the following within a reasonable period stated in the direction:

- (a) to take any action stated in the direction for the purpose of any (or all) of the following:
  - (i) preventing the escape of petroleum;
  - (ii) eliminating the escape of petroleum;
  - (iii) mitigating the effects of the escape of petroleum;
  - (iv) managing the effects of the escape of petroleum;
  - (v) remediating the effects of the escape of petroleum;
- (b) to take any other action stated in the direction in relation to the escape of petroleum and its effects;

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(c) not to take an action stated in the direction in relation to the escape of petroleum and its effects.

(3) The direction may require the registered holder of the title to take an action (or not to take an action) mentioned in any (or all) of paragraphs (2)(a), (b) and (c) in relation to the possible escape of petroleum, or the possible effects of an escape of petroleum.

(4) For the purposes of subsection (2) or (3), the direction may prohibit the doing of an action:
   (a) unconditionally; or
   (b) subject to conditions, including conditions requiring the consent or approval of a person specified in the direction.

Action directed inside or outside of title area

(5) The direction may require the registered holder of the title to take an action (or not to take an action) mentioned in subsection (2) or (3) (or both) anywhere in the offshore area, whether within or outside the title area.

(6) If the direction requires the registered holder of the title to take an action in, or in relation to, a related title area, NOPSEMA must give a copy of the direction to the related titleholder as soon as practicable after the direction is given to the registered holder.

Standing or permanent directions

(7) NOPSEMA must not give a direction under this section of a standing or permanent nature except with the approval of the Joint Authority, but the validity of a direction is not affected by a breach of this subsection.

Note 1: See also section 576C, which provides for matters related to directions made under this section.

Note 2: Breach of a direction under this section is an offence under section 576D.
576C Directions for significant offshore petroleum incidents—related matters

Relationship with other directions and certain laws

(1) A direction under section 576B has effect, and must be complied with, despite:
   (a) any previous direction under section 576B; and
   (b) any other direction under this Part (see sections 574 and 574A); and
   (c) anything in the regulations; and
   (d) the applied provisions.

Note 1: Under section 574, NOPSEMA may give a general direction to a petroleum titleholder. Under section 574A, a general direction may be given by the responsible Commonwealth Minister.

Note 2: For applied provisions, see subsection 80(2).

Note 3: A direction under section 576B also overrides the obligations of the registered holder of the title under sections 569 (work practices) and 572 (structures, equipment and property): see subsections 569(8) and 572(7).

(2) If a direction under section 574 or 574A is inconsistent with a direction under section 576B, the direction under section 574 or 574A has no effect to the extent of the inconsistency.

Former registered holders of titles

(3) A person to whom a direction has been given under section 576B remains subject to the direction even if the person stops being the registered holder of the title.

Codes of practice and standards

(4) A direction under section 576B may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) a code of practice or standard contained in an instrument as in force or existing at the time when the direction takes effect, to the extent that the code of practice or standard is relevant to that matter.

(5) To avoid doubt, subsection (4) applies to an instrument, whether issued or made in Australia or outside Australia.
(6) If a direction under section 576B makes provision in relation to a matter by applying, adopting or incorporating (with or without modification) a code of practice or standard, NOPSEMA must ensure that the text of the code of practice or standard applied, adopted or incorporated is published on NOPSEMA’s website.

(7) Subsection (6) does not apply if the publication would infringe copyright.

Directions are not legislative instruments

(8) A direction made under section 576B is not a legislative instrument.

576D Directions for significant offshore petroleum incidents—compliance

A person commits an offence of strict liability if:

(a) the person is subject to a direction under section 576B; and
(b) the person engages in conduct; and
(c) the person’s conduct breaches the direction.

Penalty: 100 penalty units.

Note 1: For strict liability, see section 6.1 of the Criminal Code.

Note 2: NOPSEMA may do anything required to be done under a direction in the event of a breach of the direction (see section 577).

Note 3: It is a defence in a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to comply with the direction (see section 578).

11 At the end of section 780A

Add:

Note: NOPSEMA may issue directions to petroleum titleholders in relation to significant offshore petroleum incidents (other than those to which subsection (9) relates): see Division 2A of Part 6.2.
Minister’s second reading speech made in—
House of Representatives on 21 September 2011
Senate on 7 February 2012]