

THE IMPACT OF RECENT SHIPPING REFORMS ON THE OFFSHORE OIL AND GAS INDUSTRY IN AUSTRALIA

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1 Introduction

It is a formative time for the Australian maritime industry, with the enactment of numerous legislative reforms that will have a significant and lasting impact not only upon shipping within Australia, but also upon the Australian offshore oil and gas industry. The following are the key areas that have been subject to reform:

- (1) the wholesale re-write of the *Navigation Act 1912* (Cth) (*'Navigation Act 1912'*) by the *Navigation Act 2012* (Cth) (*'Navigation Act 2012'*) and the introduction of the *Marine Safety (Domestic Commercial Vessels) National Law Act 2012* (Cth) (*'Marine Safety Act 2012'*);
- (2) the registration (or 'flagging') of ships in Australia and the regulation of coastal trading within Australia (cabotage); and
- (3) the regulation of marine pollution within Australia.

This paper will provide an outline of the key areas of impact that these reforms will have on the offshore oil and gas industry in Australia.

2 The passing of the *Navigation Act 2012*, the *Marine Safety Act 2012* and the Interaction with the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth)

The Australian government has embarked upon a change of the broad legislative framework pertaining to the regulation of vessels under the former *Navigation Act 1912*. The *Navigation Act 2012* and *Marine Safety Act 2012* are the key instruments in this regard.

2.1 Regulatory Framework for Offshore Oil and Gas Facilities

There are two key pieces of legislation of significance in respect of the regulation of offshore oil and gas facilities; the *Navigation Act 1912* and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (*'OPGGSA'*). This legislation applies at different stages of the operation of offshore oil and gas facilities.

Importantly, section 640 of the *OPGGSA* states that, where a vessel is classified as a 'facility' for the purposes of the *OPGGSA*, the *Navigation Act 1912* and other related Commonwealth marine legislation does not apply to that facility. This definition is complex, but broadly speaking, a vessel is considered a 'facility' under the *OPGGSA* when it is being used, or being prepared to be used, in petroleum activities. Accordingly, during mobilisation, demobilisation and any other period in which the vessel is not being used or prepared for use in petroleum operations, the vessel will not be considered a 'facility' under the *OPGGSA*, but rather will be a 'ship' under the *Navigation Act 1912*.

It is also important to note that the *Navigation Act 1912* will not apply to a ship unless it is on an overseas or interstate voyage.¹ This is potentially significant to vessels engaged in the offshore oil and gas industry, for example, floating production storage and offloading ('FPSO') vessels or floating LNG ('FLNG') vessels which disconnect in response to adverse weather and take safe harbour in waters within the same State as the location of the offshore field at which those vessels operate when connected. This is an area of regulatory weakness identified in the June 2009 *Offshore Petroleum Safety Regulation (Marine Issues) Report* of Kim Bills and David Agostini. Typically, the safety cases for ship-like facilities will now require as a condition of acceptance

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¹ *Navigation Act 1912* (Cth), s2.

by the regulator (the National Offshore Petroleum Safety and Environmental Management Authority ('NOPSEMA')), that the facility operator agrees and undertakes that such facility will fall within the regulatory regime of the *Navigation Act 1912* whenever the ship returns to a navigable form irrespective of its voyage.

2.2 Changes Effected by the new *Navigation Act 2012* and *Marine Safety Act 2012*

The *Navigation Act 2012* and the *Marine Safety Act 2012* were passed by Federal Parliament and received Royal Assent on 13 September and 12 September 2012 respectively. At the date of writing, there had not been a proclamation to indicate the commencement date of either Act. However, the Department of Infrastructure and Transport has indicated that the anticipated commencement date is 1 January 2013.

The *Navigation Act 2012* re-writes the *Navigation Act 1912*. The full extent of the changes is beyond the scope of this paper. The key changes include the following:

- (1) certain provisions of the original Act, including the vessels and voyages to which it applies, and the employment provisions have been significantly simplified;
- (2) archaic provisions and concepts have been removed, or modernised where possible;
- (3) a civil penalty scheme has been introduced; and
- (4) the Australian Maritime Safety Authority ('AMSA') has clear jurisdiction to conduct port state control inspections.

The *Navigation Act 2012* now covers 'regulated Australian vessels' which is defined as follows:²

- (1) the vessel is registered or required to be registered as an Australian vessel under the *Shipping Registration Act 1981* (Cth);³ and
- (2) the vessel is not a recreational vessel; and
- (3) any of the following apply:
 - (a) the vessel is proceeding on an overseas voyage or is for use on an overseas voyage;
 - (b) a certificate issued under the *Navigation Act 2012*, other than a non-Convention tonnage certificate or a certificate prescribed by the regulations, is in force for the vessel;
 - (c) an opt-in declaration is in force for the vessel.

There is a tension in the statutory drafting of the *Navigation Act 2012*, in that vessels may only apply for a certificate under the Act if they are classified as a 'regulated Australian vessel'. Read strictly, it would not be possible to obtain a certificate under the *Navigation Act 2012* unless the vessel already satisfies the definition of 'regulated Australian vessel'.

This confusion is exacerbated by the drafting of the clause reading that a vessel can only be considered a regulated Australian vessel with 'a certificate issued under this Act, other than a non-Convention tonnage certificate or a certificate prescribed by the regulations'. On a plain reading, this excludes non-Convention tonnage certificates and certificates prescribed by the regulations from the definition.⁴

To compare this with the requirements that currently apply, under Division 2 of Chapter 3 of the *Navigation Act 1912*, certificates issued under the regulations include safety certificates (pursuant to Australia's implementation

² *Navigation Act 2012* (Cth), s15.

³ Cf *Shipping Registration Act 1981* (Cth), s13.

⁴ Note that these regulations had not yet been released at the time of writing.

of the requirements under the *International Convention for the Safety of Life at Sea* ('SOLAS').⁵ This includes the requirement under the *Navigation Act 1912* that vessels will be compliant with the Document of Compliance ('DOC') and Safety Management Certificate ('SMC') requirements under the *International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention* ('ISM Code'). Under the ISM Code (applying to Australia pursuant to the *United Nations Convention on the Laws of the Sea* and SOLAS and implemented under Marine Order Part 58 and Marine Order 31), a DOC is required to be obtained by the vessel operator and a SMC is required to be obtained for the vessel itself.

Notwithstanding this tension in the drafting, AMSA have indicated during recent discussions that they are taking an inclusionary approach and interpreting the new definition of 'regulated Australian vessel' in the *Navigation Act 2012*, specifically 'a certificate issued under the *Navigation Act 2012*', to include SOLAS certification issued to vessels (currently issued under the regulations). Accordingly, as a matter of practical reality, AMSA intends to regulate vessels engaged in the offshore oil and gas industry (such as disconnectible FPSOs or FLNGs) through the application of the *Navigation Act 2012*. In that regard, AMSA's intended approach is not inconsistent with the legislative intent in the Explanatory Memorandum to the *Navigation Bill 2012* (Cth) that such a certificate issued under the *Navigation Act 2012* is a 'relevant AMSA certificate, for example, a SOLAS or MARPOL certificate' in force in relation to the vessel.

Conversely, the *Marine Safety Act 2012* covers 'domestic commercial vessels', being a vessel capable of being used in navigation by water, however propelled or moved, that is for use in connection with a commercial, governmental or research activity.⁶ Importantly, it does not include any vessel which is regulated by the *Navigation Act 2012* (for example, regulated Australian vessels or foreign vessels), and there is no particular voyage requirement. The significant change is in relation to those vessels that are on an intrastate voyage. Whereas those vessels were excluded from the operation of the *Navigation Act 1912*, they will now fall within the operation of the *Marine Safety Act 2012* once it comes into effect.

2.3 Demarcation between the OPGGSA and each of the Navigation Act 2012 and Marine Safety Act 2012

Of particular importance to operators of offshore industry vessels, the current demarcation between the *Navigation Act 1912* and the *OPGGSA* has remained in place under the *OPGGSA* in relation to the *Navigation Act 2012*. Therefore, if an offshore industry vessel is a 'facility' for the purposes of the *OPGGSA*, then the *Navigation Act 2012* will not apply to that vessel for such time as it is a facility.

The *Marine Safety Act 2012* also provides that it does not apply to a 'facility' under the *OPGGSA* and, accordingly, a similar demarcation exists with respect to domestic commercial vessels.

The legislation does not provide a discrete point at which a vessel will commence and cease to be a 'facility' in practice under the *OPGGSA* (nor is there any case law or relevant commentary to shed light on the issue). However, applying the relevant legislative provisions, particularly clause 4 of Schedule 3 of the *OPGGSA*, a vessel will likely be characterised as a facility after arriving at the project site and activities have begun to make it operational and it will return to being a ship under the *Navigation Act 1912* / *Navigation Act 2012* / *Marine Safety Act 2012* once it has been completely unhooked from the project site so that it can be towed or moved to another place. The 2009 Memorandum of Understanding between AMSA and the National Offshore Petroleum Safety Authority (now NOPSEMA) recognised that the jurisdiction of AMSA and NOPSEMA is not always clear cut and there is provision for joint audits and inspections of facilities as well as joint investigations of incidents.

2.4 Safety Regulations Applicable under the Navigation Act 1912 and the OPGGSA

Notwithstanding the demarcation that currently applies between the *OPGGSA* and the *Navigation Act 1912*, there is some consistency between the safety regulations applicable under the *Navigation Act 1912* and the *OPGGSA* as a result of the usual conditions and requirements that are typically set out within a facility's safety case.

⁵ International Convention for the Safety of Life at Sea (SOLAS), 1974, 1184 UNTS 3.

⁶ *Marine Safety (Domestic Commercial Vessels) National Law Act 2012* (Cth), s7.

It is a requirement under the *Navigation Act 1912* that vessels will comply with the DOC and SMC requirements under the ISM Code. The ISM Code provides an international standard for the safe management and operation of ships and for pollution prevention and is also incorporated into SOLAS. As mentioned above, a DOC is required to be obtained by the vessel operator and a SMC is required to be obtained for the vessel itself. This is administered by AMSA with the assistance of an approved Classification Society and, amongst other things, requires compliance with the survey requirements of the Classification Society. Furthermore, the *Navigation Act 1912*, Marine Order — Part 58: International Safety Management Code, Issue 2 (Order No 10 of 2002) also implements the ISM Code in respect of ‘ships’, including mobile offshore drilling units propelled by mechanical means of 500 gross tonnage or more. The AMSA ISM Code Guidelines state that any lapse in these certificates will be reported by AMSA to NOPSA (now NOPSEMA).

The *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth) require that a facility must have a ‘safety case’ before it is constructed, installed, operated, modified, decommissioned or any other work performed on it.⁷

A safety case must include a description of:

- (1) the facility;
- (2) the formal safety assessment on the facility; and
- (3) the Safety Management System on the facility.

In order to obtain and maintain a SMC for the facility, the inclusion of a description of a Safety Management System will need to give effect to the requirements under the ISM Code.

2.5 Regulations under the *Navigation Act 2012*

In relation to the anticipated regulatory regime to apply under the new *Navigation Act 2012*, pursuant to section 339 of the *Navigation Act 2012* the Governor-General may make regulations prescribing matters:

- (1) required or permitted by *Navigation Act 2012* to be prescribed; or
- (2) necessary or convenient to be prescribed for carrying out or giving effect to the *Marine Safety Act 2012*.

This is stated to include the following:

- (1) design and construction of vessels;
- (2) machinery and equipment to be carried on board vessels; and
 - (i) machinery and equipment for sending or receiving distress, urgency and other signals;
 - (ii) radio installations, radio navigational aids communications equipment;
 - (iii) compasses; and
 - (iv) lights;
- (3) marking of load lines on vessels;
- (4) the stability of vessels including information about, and testing of, the stability of vessels;
- (5) operating watertight doors;

⁷ *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth), r 2.44.

- (6) saving of life at sea, including:
 - (i) the equipment to be carried on board vessels; and
 - (ii) measures to be carried out for the purpose of saving life at sea;
- (7) prevention, detection and extinguishment of fires at sea, including:
 - (i) equipment to be carried on board vessels; and
 - (ii) measures to be carried out for the purpose of preventing, detecting and extinguishing fires at sea;
- (8) maintenance, testing, survey and certification of vessels;
- (9) special purpose vessels;
- (10) nuclear vessels;
- (11) logbooks;
- (12) records relating to compliance with this Act;
- (13) the exercise of powers, and performance of functions, of issuing bodies under this Act; and
- (14) matters of a transitional nature (including matters of an application or saving nature) arising out of the enactment of this Act or the repeal of the *Navigation Act 1912* or the *Lighthouses Act 1911*.

Although the consultation drafts of the regulations and marine orders under the new *Navigation Act 2012* are yet to be issued, it is anticipated that these regulations and marine orders will need to substantially replicate the same regulatory regime as currently apply to ships under the *Navigation Act 1912* to minimise any significant disruption or dislocation to the offshore industry.

2.6 Possible Further Legislation

It should also be noted that in the Discussion Paper to the exposure draft of the *Navigation Act 2012*, the Government stated the following as a key policy imperative:

Consistent with the Government response to the Montara Commission of Inquiry, issues relating to the disapplication of the *Navigation Act 1912* from the *OPGGSA* will be addressed by introducing legislation to amend the *OPGGSA* and relevant regulations to require ship-like petroleum facilities to comply substantively with requirements concerning seaworthiness and pollution prevention in line with requirements under international conventions and the *Navigation Act 1912*.

The new *Navigation Act 2012* and the *Marine Safety Act 2012* have not changed the current disapplication of the *Navigation Act 1912*, therefore it is anticipated that further legislation may be forthcoming to address this specific policy imperative. Indeed, recent discussions with AMSA have indicated that such changes are currently being contemplated. AMSA have indicated that the changes to the *OPGGSA* that are currently being considered would largely involve the following amendments:

- (1) Transposing the requirements for certification under the *Navigation Act 2012* and regulations to the *OPGGSA*, so that it will be clear that this certification is statutorily required even where the vessel is classified as a 'facility' under the *OPGGSA*.
- (2) AMSA will be given jurisdiction to exercise regulatory oversight in relation to the maintenance of this certification even when vessels are 'facilities' under the *OPGGSA*.

3 The New Shipping Registration / Cabotage Arrangements in Australia under the Recent Coastal Trading Legislation

The Australian Government's *Stronger Shipping for a Stronger Economy* shipping reform package aims to position the Australian shipping industry to take advantage of opportunities provided by an expanding export market and is implemented by the following pieces of legislation:

- (1) *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth);
- (2) *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments) Act 2012* (Cth);
- (3) *Shipping Registration Amendment (Australian International Shipping Register) Act 2012* (Cth);
- (4) *Shipping Reform (Tax Incentives) Act 2012* (Cth); and
- (5) *Tax Laws Amendment (Shipping Reform) Act 2012* (Cth).

The new coastal trading legislation implements various changes. The two key initiatives are:

- (1) to clarify the regulation of vessels engaged in coastal trading in Australia; and
- (2) to encourage the registration of vessels in Australia through taxation incentives.

3.1 Application to the Offshore Oil and Gas Industry

'Offshore industry vessels' are specifically excluded from the operation of the new coastal trading licensing regime⁸ and these are defined as those vessels that are used wholly or primarily in, or in any operations or activities associated with or incidental to, exploring or exploiting the mineral and other non-living resources of the seabed and its subsoil.⁹

If any offtake tankers are used on offshore oil and gas project to offtake product from the offshore project site and to carry and discharge the product at an Australian port(s), then those offtake tankers will be engaging in coastal trading (as defined) and will need to be licensed under the new regime.

If an offtake tanker proceeds directly from the offshore project site to an overseas port, then it will not be engaging in coastal trading in Australia and will not need to be licensed under the new regime.

Arguably, construction vessels used during the development phase of an offshore oil and gas project should be excluded from the new regime because these vessels are engaged in 'operations or activities associated with or incidental to, exploring or exploiting the mineral and other non-living resources of the seabed and its subsoil'. However, the new regime is in its infancy and it remains to be seen whether the requirement for such vessels to hold a permit under the old *Navigation Act 1912* system might be sought to be continued to be applied under the new regime.

3.2 New Regime that Applies to Vessels Engaged in Coastal Trading

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth) ('*Coastal Trading Act*') implements a three tier licensing regime for vessels involved in the coastal trade in Australia and replaces the old regime that applied under Part VI of the *Navigation Act 1912*, which previously required vessels to hold either a licence, single voyage permit or a continuing voyage permit. The *Coastal Trading Act* provides that a vessel is engaged in 'coastal trading' and will thus require a licence, if, for or in connection with commercial activity, the vessel transports passengers or cargo between one or more States and/or Territories.¹⁰

⁸ *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth), s 10.

⁹ *Ibid*, s6.

¹⁰ *Ibid*, s7.

As of 1 July 2012, the new system means that vessels will no longer be able to access the Australian coastal trade through the use of permits, but will have to hold one of the following licences:

- (1) **General Licence:** for Australian registered vessels providing unrestricted access to the coastal trades for up to five years;
- (2) **Temporary Licence:** for foreign registered vessels (either under the Australian International Shipping Register ('AISR') (see below) or the law of a foreign country) to operate in the coastal trades subject to time, trade and/or voyage conditions for up to 12 months; or
- (3) **Emergency Licence:** for cargo or passenger movements in emergency situations only ie during natural disasters.

3.2.1 Transitional Registration

Foreign flagged vessels which held a general licence under the old system will be able to apply for a transitional licence under the new system, which provides them with a time frame of five years to transition to a general licence (and Australian registration). However, holding a transitional licence will exclude these vessels from accessing the tax incentives of the new package.

The new regime also prescribes different reporting requirements for each type of licence. General and temporary licence holders will be required to provide information on port, cargo and passenger activity during the financial year within 10 business days after the end of the financial year.

Importantly, the *Coastal Trading Act* introduces substantial civil penalties for failure to comply with these new reporting and licencing requirements, including civil penalties of up to \$275,000 for a body corporate and \$5,500 for an individual, in some cases.

3.3 Encouraging Registration of Vessels in Australia

There are two key mechanisms which encourage the registration of vessels in Australia. First, registration in Australia provides the ability to obtain a general licence under the new system (see above) and second, there are various taxation incentives for vessels registered in Australia.

At this point it is worth mentioning the establishment of the Australian International Shipping Register ('AISR') which is designed to increase Australia's involvement in the international shipping trade by offering Australian registration which is globally competitive and highly regarded. In order to be registered on the AISR vessels:

- (1) must be Australian owned or operated by companies which have their principal place of business in Australia;
- (2) must be at least mixed manned, requiring the employment of a minimum of 2 Australian citizens in the positions of Master and Chief Engineer;
- (3) must comply with any training obligations set out in the regulations in order to access tax incentives;
- (4) will be covered by Australian workplace legislation whilst engaged in trading in Australian coastal waters, but exempt whilst on overseas voyages (except for the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth)); and
- (5) must maintain the same safety and environmental standards as primary register vessels.

4 Legislative Changes to the Liability Regime for Marine Pollution

There have been significant developments in the regulation of marine pollution in Australia. For the purposes of this paper, the most pertinent changes are the amendments promulgated through the *Maritime Legislation Amendment Act 2011* (Cth) ('*Maritime Legislation Amendment Act*'). The *Maritime Legislation Amendment Act* is the Federal Government's response to recent serious pollution incidents in Australian waters and increases the deterrence to shipping companies and their crews against unsafe or careless conduct within Australian waters.

The amendments under the *Maritime Legislation Amendment Act* are intended to comply with Australia's commitments as a signatory to the *International Convention for the Prevention of Pollution from Ships* ('MARPOL'), Article 4(4) of which states that 'the penalties specified under the law of a Party pursuant to the present Article shall be adequate in severity to discourage violations of the present Convention and shall be equally severe irrespective of where the violations occur'.

The *Maritime Legislation Amendment Act* amends the *Navigation Act 1912* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth)* ('*Protection of the Sea Act*') and creates new offences for oil pollution from ships, widens the scope of liability to include new parties and significantly increases penalties for pollution offences.

4.1 Amendments to the Navigation Act 1912

The *Maritime Legislation Amendment Act* also amends the *Navigation Act 1912* and creates the following new offences:

- (1) the master of a ship must not operate the ship in a negligent or reckless manner that causes pollution or damage to the marine environment in Australian waters (s 267ZZI) or in waters of the high seas outside Australia (s 267ZZL); and
- (2) the master of a ship must ensure that the ship is not operated in a negligent or reckless manner that causes pollution or damage to the marine environment in Australian waters (s 267ZZJ) or in waters of the high seas outside Australia (s 267ZZM).

There are also civil penalty provisions in relation to these offences. Civil penalties are effectively a 'hybrid' penalty — straddling the line between the domain of civil and criminal sanctions.

The Explanatory Memorandum to the *Maritime Legislation Amendment Act* indicates that the civil penalties are intended to extend to corporations. However, there is some tension in the drafting of the legislation which makes it unclear as to whether a court will interpret the provisions as having that effect. The tension arises as the penalty provisions impose primary liability only upon the master. Given that this is a penal provision and is to be construed strictly, it is unlikely that a court would extend the plain meaning of 'master' to a corporation as currently drafted. The recently passed *Navigation Act 2012* still imposes primary liability upon the master, but extends the civil liability provision to any 'person'. It remains unclear as to whether this will be effective to extend liability to corporations as, again, the initial duty is only imposed upon the master.

The *Maritime Legislation Amendment Act* also amends Division 14 of Part IV of the *Navigation Act 1912* and now requires mandatory reporting by the master of a ship in relation to the movement of the ship in prescribed areas, for example, the Great Barrier Reef Particularly Sensitive Area. The amendment creates a strict liability offence where the master fails to report in a mandatory reporting area and as such, the master's state of mind or degree of fault is not needed to be proved.

Importantly, these changes have been maintained within the re-write of the *Navigation Act 1912* by the recently passed *Navigation Act 2012* (see section 2 above).

4.2 Amendments to the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth)

The *Protection of the Sea Act* adopts the definition of 'ship' in MARPOL, namely 'a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms'.¹¹

Accordingly, the *Protection of the Sea Act* applies to vessels in the offshore oil and gas industry.

The key change the *Protection of the Sea Act* that is of particular relevance to the offshore industry is the extension of liability to charterers of ships for any oil or oily mixture discharged from a ship into the sea, in

¹¹ *International Convention for the Prevention of Pollution from Ships (MARPOL)*, 1974, 1340 UNTS 184, art 2.

addition to the master and owner of the ship¹² with the offence being one of strict liability.¹³ There is a defence available for any ‘non-intentional damage’,¹⁴ however, any loss or damage caused recklessly or by the negligence of the master, owner or charterer (as applicable) is specifically excluded from the defence.¹⁵ The term ‘charterer’ is not a defined term in the Act but it is anticipated it is likely to include time and voyage charterers as well as demise charterers.

The penalty for such an offence has also been significantly increased from 500 to 20,000 penalty units, which is an increase from \$55,000 to \$2.2 million.¹⁶ By virtue of s 4B(3) of the *Crimes Act 1914* (Cth), this penalty may increase to a maximum of \$11 million for an offence committed by a body corporate. The Explanatory Memorandum to the *Maritime Legislation Amendment Act* says this increase in penalty is a reflection of the potential harm from marine oil pollution, as well as to bring the Commonwealth legislation in line with the various pieces of State legislation in this area (ie those that apply within the 3 nautical mile limit), which impose significantly higher penalties.

Notably, the *Maritime Legislation Amendment Act* also removes the broader offences that previously existed under the *Protection of the Sea Act* namely, those applicable to ‘persons’. Under the new regime, only masters, owners and charterers will be liable, although they will be liable to a greater extent than previously.

4.3 Recent Prosecutions under the OPGGSA

In addition to the requirements that apply under the *Navigation Act 1912* and the *Protection of the Sea Act*, there are certain requirements and offences that apply under the provisions of the *OPGGSA* and its regulations, in relation to which there has recently been a prosecution for breaches arising out of the 2009 Montara incident.

In August 2009, the Montara wellhead platform and the West Atlas mobile offshore drilling unit were evacuated due to an uncontrolled release of oil and gas. The incident resulted in a 74 day hydrocarbon leak, releasing between 400-1500 barrels of oil per day and an unknown amount of gas, condensate and water which spread over 90,000 square kilometres. The ‘Montara incident’, as it is commonly referred to, has been described as ‘the Australian petroleum industry’s most significant offshore petroleum incident’, having devastating effects upon community confidence and expectations for the environmental management of offshore facilities. The incident notably sparked the *Montara Commission of Inquiry Report 2009*, which furnished comprehensive recommendations for reform of the Australian offshore petroleum industry.

On 31 August 2012, the Thailand-based petroleum operator of the Montara, PTTEP Australasia (‘PTTEP AA’), pleaded guilty and was convicted and fined for three occupational health and safety offences, including failures to verify barriers in the well, increasing the risk of hydrocarbon release and causing the wellhead platform to be unsafe and a risk to the health of any persons at or near the facility. The company was also prosecuted and fined for a non-OHS offence, namely a failure to carry out operations in a proper and workmanlike manner and in accordance with good oilfield practice. The fines for all offences totalled \$510,000, significantly lower than the maximum of approximately \$1.65 million. PTTEP AA CEO Ken Fitzpatrick stated that the company accepts the decision in its entirety and deeply regrets the incident. Other reports from Mr Fitzpatrick indicate that the environmental impact has cost the company some \$50 million, with ongoing scientific studies into the incident. The case is significant as it marks the first successful prosecution by NOPSEMA under the *OPGGSA*. NOPSEMA CEO Jane Cutler revealed in a recent media release that ‘NOPSEMA is prepared to dedicate significant time and effort to prosecute petroleum operators who have breached the *OPGGSA* and associated regulations.’

5 Conclusion

The significance of these legislative reforms to owners, operators and charterers of vessels in the offshore oil and gas industry can be summarised as follows:

¹² See eg, *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth), s 9(1B).

¹³ *Ibid*, s 9(1C).

¹⁴ *Ibid*, s 9(2).

¹⁵ *Ibid*, s 9(3).

¹⁶ *Ibid*, s 9(1B).

- (1) The *Navigation Act 2012* and the *Marine Safety Act 2012* are significant for the maritime and shipping industry. Amongst other things:
 - (i) owners, operators, masters and crew of vessels need to be aware of the reforms relating to domestic commercial vessels and take steps to avoid being exposed to any penalty under the new regime once it commences operation;
 - (ii) owners, masters, corporations and persons who have ‘assumed responsibility’ for a vessel should ensure they are aware of, and comply with, the duties and related civil penalty and offence provisions under the *Navigation Act 2012* (and note that there is currently no specific definition of a person who has assumed responsibility in relation to a vessel); and
 - (iii) owners and operators of offshore industry facilities should be aware of the requirements under each of the *Marine Safety Act 2012* and the *Navigation Act 2012* to understand whether the obligations under these Acts may apply and require compliance during the mobilisation, operation and demobilisation of facilities.
- (2) Offshore industry vessels are specifically excluded from the operation of the new coastal trading regime. However, offtake tankers will need to comply with the new licensing requirements if those tanker are used to offtake product from the offshore project site and to carry and discharge the product at an Australian port(s). Construction and service vessels should be excluded from the new licensing regime as falling within the definition of ‘offshore industry vessels’. However, as this is a new exclusionary definition, there is a possibility that such vessels may not be excluded from the new requirements.
- (3) The amendments under the *Maritime Legislation Amendment Act* are of key importance to individuals and companies and their insurers involved in the ownership, management, operation and chartering of ships within the Australian offshore oil and gas industry. Risk management systems will need to be scrutinised and updated to reflect the new offences and the significantly increased penalties (both civil and criminal) imposed under each of the *Protection of the Sea Act* and the *Navigation Act 1912* for any marine oil pollution from ships.