



Petroleum Legislation Amendment Bill (No. 2) 2022

Summary

The Department of Mines, Industry Regulation and Safety (DMIRS) is proposing amendments to the *Petroleum and Geothermal Energy Resources Act 1967* (PGERA), *Petroleum Pipelines Act 1969* (PPA) and *Petroleum (Submerged Lands) Act 1982* (PSLA) (together referred to as the Petroleum Acts) through the Petroleum Legislation Amendment Bill (No. 2) 2022. The amendments contained within the Bill fall into two distinct streams:

Introducing a number of urgent petroleum operational-based amendments.

1.1 Environmental amendments

- Introduction of 'polluter pays principles' to ensure that registered holders are responsible for making good any escape of petroleum and remediating and monitoring the environment.
- Recognition of care and maintenance, decommissioning and rehabilitation as petroleum operations.

1.2 Calculation of royalties

- Facilitate meters to be installed on third party infrastructure for the assessment of royalties on third party assets.

1.3 Underground storage of petroleum

- Introduce the ability to make regulations for the underground storage of petroleum.

1.4 Permitting additives to petroleum

- Amend the definition of petroleum across each of the three Petroleum Acts to allow certain things or a class of things to be added to petroleum.

Introducing the ability to explore for and produce naturally occurring hydrogen.

2.2 Amendments for naturally occurring hydrogen

- Enable the existing suite of petroleum titles to explore for and produce naturally occurring hydrogen in the PGERA and PSLA through the new concept of 'regulated substances'.

2.1 Use of hydrogen in pipelines

- To enable substances to be added with petroleum and conveyed through petroleum pipelines. This amendment has the potential to be used to enable the blending of hydrogen (of any kind) with petroleum in a PPA or PSLA petroleum pipeline and the conveyance of this mixed substance.

The Petroleum Legislation Amendment Bill (No. 2) 2022 is one of a number of petroleum legislative reform initiatives being progressed by DMIRS. Concurrently with this Bill, DMIRS is also progressing the Petroleum Legislation Amendment Bill 2022, which seeks to introduce amendments to the Petroleum Acts with respect to electronic communications and signatures, and the Petroleum Legislation Amendment (Greenhouse Gas Storage and Transport) Bill 2022, which seeks to amend the Petroleum Acts to enable the storage and transport of greenhouse gases. These Bills will be released for consultation individually which will allow for targeted consideration of each of the bespoke individual amendments. Post-individual consultation, these Bills will be consolidated into a single Bill for Parliament to allow for an efficient parliamentary process.

1. Petroleum operational-based amendments

This Bill seeks to introduce a number of petroleum-specific operational amendments to address existing deficiencies within the Petroleum Acts. The Bill will modernise the Petroleum Acts by addressing a number of anomalies with respect to environmental matters, royalty calculation, underground storage and additives.

1.1. Environmental amendments

A key amendment of this Bill is the introduction of the 'polluter pays principle' which has been adapted from the *Offshore Petroleum Greenhouse Gas Storage Act 2006* (Cth). This provision will complement existing safeguard mechanisms within the Petroleum Acts to ensure that in the unlikely event of an escape of petroleum, registered holders are responsible for eliminating, controlling and cleaning up any escaped petroleum and remediating and monitoring the environment. It will ensure registered holders are financially responsible for making good any escape of petroleum and will mitigate the State's exposure to environmental liability.

The Bill will also ensure that care and maintenance, decommissioning and rehabilitation are recognised as petroleum operations by including specific references in the definitions of petroleum operation, geothermal energy operation, pipeline operation, and offshore resource operation¹. This will ensure care and maintenance, decommissioning and rehabilitation are explicitly captured as recognised operations, meaning titleholders are obligated to properly plan for, report on, and undertake care and maintenance, decommissioning and rehabilitation as would be required for any other recognised petroleum operation. While this is an existing expectation in the industry, this amendment ensures clarity that this expectation is entrenched as a statutory requirement.

1.2. Calculation of royalties

The Bill will amend the Petroleum Acts to allow meters to be installed on third party infrastructure for the assessment of royalties on third party assets. This amendment will enable third party infrastructure to process petroleum ('tolling of petroleum') rather than having to construct individual petroleum infrastructure. The tolling of petroleum is currently not permitted by the PGERA or PSLA as the Acts were drafted on the basis that royalties will be calculated at the wellhead of petroleum recovered in the licence area (e.g. production licences) held by that titleholder; the Acts do not contemplate that titleholders may seek to use third party infrastructure to process petroleum. This amendment will enable existing infrastructure with capacity, such as the North-West Shelf infrastructure, to process third party petroleum.

1.3. Underground Storage of petroleum

The Bill will revise the manner in which approvals for the underground storage of petroleum are administered. Currently approvals for the underground storage of petroleum must occur through the execution of formal deeds with the Minister for Mines and Petroleum. Over time, this mode of approval has become problematic, as deeds must be individually prepared, are time intensive to draft, administratively uncertain and difficult to amend. Instead, this Bill will introduce the ability to make regulations for the underground storage of petroleum. DMIRS intends to introduce standardised criteria and requirements for applications for the underground storage of petroleum through ensuing regulation amendments to establish a 'Petroleum Storage Management Plan' in a similar manner to Well Management Plans and Field Management Plans, which will be a more efficient and streamlined manner of approval compared to the use of formal deeds. The criteria for a Petroleum Storage Management Plan will be developed in ensuing regulation amendments following the passage of this Bill.

This amendment is limited to revising the manner in which approvals for the underground storage of petroleum are administered; it does not extend underground storage to hydrogen or any other prescribed regulated substance.

1.4. Permitting additives to petroleum

This Bill will amend the definition of petroleum across each of the three Petroleum Acts to allow certain things or a class of things to be added to petroleum. The primary intent of this amendment is to provide an express provision to permit the addition of certain additives such as odorants and anti-corrosive chemicals to be added to petroleum. While both Government and industry recognise these substances are essential in petroleum operations, this amendment will remove any ambiguity for their incorporation into petroleum.

¹ 'Offshore resource operation' is a new term proposed to be incorporated into the PSLA as an update to the existing term 'offshore petroleum operation'. The term is being updated to refer to petroleum and the new concept of regulated substances in the context of the PSLA. See section 2 for further information.

2. Amendments for naturally occurring hydrogen

The Western Australian Government, with JTSI as lead agency, is considering a number of initiatives to support the emerging hydrogen industry in Western Australia. JTSI is currently reviewing relevant existing legislation, regulations, and standards affecting the hydrogen industry in Western Australia to reduce barriers for the renewable hydrogen industry. Related to this work with the Department of Planning, Lands and Heritage is the proposed Land and Public Works Legislation Amendment Bill 2022 which seeks to introduce diversification leases into the *Land Administration Act 1997* to allow more flexible use of Crown land, including large scale green energy generation.

In parallel, Energy Policy WA is engaged at the National Level in making amendments to extend the national gas regulatory framework to hydrogen and other renewable gases, which will allow for economic regulation of and third party access to pipelines carrying these gases. While JTSI is leading initiatives relating to renewable hydrogen, DMIRS, through this Bill, proposes to enable PGERA and PSLA's regulatory framework to enable the exploration and production of naturally occurring hydrogen.

Naturally occurring hydrogen shares a number of similarities with petroleum and accordingly DMIRS considers that the legislative framework within the PGERA and PSLA are appropriate to regulate the exploration and production of naturally occurring hydrogen. This Bill seeks to enable the existing suite of petroleum titles to explore for and produce naturally occurring hydrogen in the PGERA and PSLA through the new concept of 'regulated substances'. Regulated substances are substances that are naturally occurring, found within a natural geological formation and prescribed in the various Petroleum Regulations. It is envisaged that following the passage of this Bill, naturally occurring hydrogen will be prescribed as a regulated substance in ensuing amendments to the Petroleum Regulations.

Naturally occurring hydrogen activities will be permitted on an opt-in basis whereby existing or prospective titleholders can elect to apply to the Minister responsible for PGERA and PSLA for additional rights for a prescribed regulated substance. When the Minister is satisfied with an application, additional rights for a prescribed regulated substance may be granted on a petroleum title. In granting any additional rights, the Minister can impose new, or vary or remove conditions so as to appropriately regulate this new resource. In effect, where additional rights are granted, that authorised petroleum title will provide rights to exploit petroleum and a prescribed regulated substance (e.g. naturally occurring hydrogen). This amendment will result in the introduction of the term 'offshore resource operation' in the PSLA to refer to petroleum and prescribed regulated substance operations occurring offshore.

Existing titleholders who are not interested in pursuing naturally occurring hydrogen (or other regulated substances) will not be automatically impacted by these amendments and may continue their existing activities unencumbered. Existing titleholders will only be impacted if they elect to opt-in and pursue a prescribed regulated substance.

2.1. Use of hydrogen in pipelines

This Bill has the potential to enable the blending of hydrogen (of any kind) with petroleum in a PPA or PSLA petroleum pipeline and the conveyance of this mixed substance. The Bill will amend the definition of 'petroleum' to also permit additives (as prescribed in the various Petroleum Regulations) to be added with petroleum. This amendment is primarily to ensure that certain additives such as odorants and anti-corrosive chemicals are able to be added to petroleum, but could also be used to enable the blending of hydrogen and petroleum through PPA and PSLA pipelines.

The Government is considering whether the PPA is the appropriate mechanism for the conveyance of hydrogen (and derivatives) in isolation through a pipeline.

Government of Western Australia

**Department of Mines, Industry Regulation
and Safety**

8.30am – 4.30pm

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