

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE
REGULATORY LEVIES LEGISLATION AMENDMENT
(2011 MEASURES NO. 2) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM, MP)

**OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE
REGULATORY LEVIES LEGISLATION AMENDMENT
(2011 MEASURES NO. 2) BILL 2011**

GENERAL OUTLINE

The purpose of the Bill is to amend the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Regulatory Levies Act) to impose new cost-recovery levies on holders of offshore petroleum and greenhouse gas storage titles. The levies will recover the costs of the National Offshore Petroleum Titles Administrator (NOPTA) in undertaking its regulatory functions in relation to titles administration and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) in undertaking its regulatory functions in relation to environmental management.

The *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011* (the National Regulator Bill) proposes to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) in a number of ways, including to:

- Extend NOPSA's functions beyond occupational health and safety and structural integrity to include environmental management, consequently renaming it to NOPSEMA; and
- Establish the National Offshore Petroleum Titles Administrator which is responsible for assisting and advising the Joint Authority; and keeping registers of titles.

To give full effect to NOPSEMA's additional functions under the OPGGS Act, the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations) will be amended to provide NOPSEMA with regulatory functions and powers relating to environmental management. It is intended that these Regulations will be brought into effect in conjunction with the proclamation of relevant Schedules in the National Regulator Bill which propose to extend NOPSA's functions and rename it NOPSEMA.

NOPSA is currently funded on a full cost-recovery basis with levies raised from the offshore petroleum industry. The Regulatory Levies Act currently provides for imposition of a safety investigation levy and a safety case levy for offshore petroleum and greenhouse gas facilities which are payable by the facility operator, and a well investigation levy, annual well levy, and a well activity levy for offshore petroleum titles which are payable by the titleholder. None of the existing levies extend to the regulation of environmental matters.

To ensure NOPSEMA is funded to enable it to fulfil its new environmental management responsibilities under the OPGGS Act and the Environment Regulations, the Bill amends the Regulatory Levies Act to impose a levy on titleholders to fully recover costs associated with undertaking its functions relating to regulation of environmental matters.

NOPTA is being established to undertake a national titles administration role, and is proposed to be funded on a full cost-recovery basis with levies raised from the offshore petroleum and greenhouse gas storage industry in a similar way to NOPSA/NOPSEMA. To this end the Bill amends the Regulatory Levies Act to impose an annual titles administration levy on eligible titles payable by the titleholder.

The Bill provides for the imposition of two types of well levies:

- An annual titles administration levy is for an eligible title in force, for each year of the term of the title.
- An environment plan levy is imposed on a titleholder when an application is made to NOPSEMA under the Environment Regulations for either acceptance or revision of an environment plan.

The levies are imposed on the registered holders of petroleum and greenhouse gas storage titles in Commonwealth waters.

The environment plan levy will also be imposed on the registered holders of titles in the coastal waters jurisdiction of any State or Territory that has made NOPSEMA the regulator under State/Territory legislation and regulations that substantially correspond to the relevant Commonwealth legislation/regulations.

FINANCIAL IMPACT STATEMENT

Nil financial impact on the Australian Government Budget. This Bill will ensure that NOPTA and NOPSEMA can fully recover their costs from industry associated with undertaking titles administration and environmental regulation in relation to the offshore petroleum and greenhouse gas storage activities.

REGULATORY IMPACT STATEMENT

This Bill does not impose any new significant regulatory burden on the petroleum industry. The reforms relating to NOPTA and NOPSEMA in fact reduce and streamline unnecessary regulatory burdens on the petroleum industry without compromising policy objectives related to safety, environment and resource management. The reforms will ensure consistent regulation of all offshore exploration and development activities in Commonwealth waters.

This Bill assists in the move towards a full cost recovery approach which will, in the long term, reduce overall costs on industry due to the proposed replacement of the current ad valorem registration fee on transfers and dealings with a suite of efficient cost recovery levies. The reforms are intended to ensure that relevant regulatory expertise is available in offshore areas on a cost recovery basis from industry. This approach will help to ensure that not only is the true cost of regulation and administration captured but that the calculation and use of the levies is transparent.

Stakeholder consultation was undertaken in April and May 2011 for the recovery of establishment costs of NOPTA and NOPSEMA. Further consultation will be undertaken for the cost recovery of NOPTA and NOPSEMA's ongoing operating costs in the second half of 2011. All cost recovery arrangements are consistent

with the Australian Government's cost recovery guidelines. Regular review of costs and governance arrangements will ensure fees do not become unnecessarily burdensome on the petroleum industry as well as ensuring the cost for the regulator remains neutral to all Australian Governments.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2 - Commencement

Sections 1 to 3 in the Bill will commence on the day the Regulatory Levies Act receives Royal Assent.

Schedule 1 will commence at the same time as Part 1 of Schedule 2 to the National Regulator Bill. This will ensure that the levies are not imposed prior to the establishment of NOPTA and the extension of NOPSA to NOPSEMA. It will also ensure that necessary levies regulations can be prepared for commencement upon the imposition of levies provided for by this Bill.

Clause 3 - Schedules

This clause gives effect to the provisions in the Schedules to this Bill.

Schedule 1 - Amendments

Items 1 to 8 – Section 3

These items insert new or repeal old definitions in section 3 for the key terms that are used in the new provisions of the Regulatory Levies Act which impose the two new levies.

Item 1 – Section 3. This item defines “annual titles administration levy” as a levy imposed by section 10E of the Regulatory Levies Act. See notes under item 7 in relation to annual titles administration levy.

Item 2 – Section 3. This item defines “environment plan levy” as a levy imposed by section 10F or 10G of the Regulatory Levies Act. See notes under item 7 in relation to environment plan levy.

Item 3 – Section 3. This item provides “greenhouse gas holding lease” has the same meaning as in the OPGGS Act.

Item 4 – Section 3. This item provides “greenhouse gas injection licence” has the same meaning as in the OPGGS Act.

Item 5 – Section 3. This item provides “infrastructure licence” has the same meaning as in the OPGGS Act.

Item 6 – Section 3. This item provides “pipeline licence” has the same meaning as in the OPGGS Act.

Item 7 – Section 3. This item specifies that NOPSEMA is used in throughout the Regulatory Levies Act to reference the National Offshore Petroleum Safety and Environmental Management Authority.

Item 8 – Section 3. This item repeals the previous definition of Safety Authority.

Item 9 – Subsection 5(8) (paragraph (b) of the definition of notifiable accident or occurrence)

This item replaces the reference to Safety Authority with that of the NOPSEMA.

Item 10 – Subsection 6(8) (paragraph (b) of the definition of notifiable accident or occurrence)

This item replaces the reference to Safety Authority with that of the NOPSEMA.

Item 11 – Subsection 9(1)

This item replaces the references to Safety Authority with that of the NOPSEMA.

Item 12 – Subsection 10(1)

This item replaces the references to Safety Authority with that of the NOPSEMA.

Item 13 – Subsection 10A(7)

This item replaces the references to Safety Authority with that of the NOPSEMA.

Item 14 – Paragraph 10B(1)(c)

This item replaces the references to Safety Authority with that of the NOPSEMA.

Item 15 – Subsection 10B(7)

This item replaces the references to Safety Authority with that of the NOPSEMA.

Item 16 – Subparagraphs 10C(1)(a)(i) and (ii)

This item replaces the reference to Safety Authority with that of the NOPSEMA.

Item 17 – Paragraph 10C(5)(a)

This item replaces the reference to Safety Authority with that of the NOPSEMA.

Item 18 – Subparagraphs 10D(1)(a)(i) and (ii)

This item replaces the reference to Safety Authority with that of the NOPSEMA.

Item 19 – Paragraph 10D(5)(a)

This item replaces the reference to Safety Authority with that of the NOPSEMA.

Item 20

This item inserts a new Part 4C and Part 4D into the Regulatory Levies Act.

Part 4C – Annual titles administration levy

The new Part 4C imposes an annual titles administration levy in relation to Commonwealth petroleum and greenhouse gas titles. The purpose of the annual titles administration levy is to recover from industry NOPTA's full regulatory costs associated with undertaking its functions in relation to titles administration, including maintaining a register, assisting the Joint Authority in relation to titles, regulatory oversight, compliance monitoring and enforcement.

Section 10E sets out the conditions that must be satisfied for the annual titles administration levy to be imposed in Commonwealth waters. Subsection 10E(1) provides that for every year of the term of an eligible title that is in force, the levy is imposed. Subsection 10E(3) provides that the levy is payable by the registered holder of the title.

The new subsection 10E(4) provides that the amount of the titles administration levy is the amount specified in or calculated in accordance with the regulations, which will be titled *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (currently titled *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004*). Subsection 10E(5) allows for different amounts to be imposed or different methodologies for calculating those amounts to be used in relation to different types of title, and that these amounts and methodologies will be specified in the regulations.

The new subsection 10E(7) provides definitions for key terms used in the new section 10E, including "eligible title".

Subsection 10E(8) imports the same method of determining "year of the term of an eligible title" as used in section 10 of the OPGGS Act.

Part 4D – Environment plan levy

The new Part 4A imposes an environment plan levy in relation to petroleum and greenhouse gas storage titles in Commonwealth waters (section 10F) and titles in State/Territory coastal waters (section 10G). Section 10G is only operative in State or Territory coastal waters where NOPSEMA has functions and powers under regulations of that State or Territory that substantially correspond to the Commonwealth Environment Regulations.

The purpose of the environment plan levy is to recover from industry NOPSEMA's full regulatory costs associated with undertaking its new functions in relation to environmental management, including regulatory oversight, compliance monitoring and enforcement.

The new section 10F of the Regulatory Levies Act imposes an environment plan levy on titleholders in Commonwealth petroleum and greenhouse gas storage title areas. Subsection 10F(1) sets out the conditions that must be satisfied for the environment plan levy to be imposed in Commonwealth waters. The levy imposition is triggered by submission of an environment plan for either acceptance (regulation 9 of the Environment Regulations) or revision (regulation 17, 18 or 19 of the Environment Regulations) by NOPSEMA, in relation to an authorised activity under a title. The levy is payable by the registered holder or holders (if the activity relates to more than one title) of the title or titles, to which the activity requiring an accepted environment plan relates (subsection 10F(3)).

The new subsection 10F(4) provides that the amount of the environment plan levy is the amount specified in or calculated in accordance with the regulations, which will be titled *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (currently titled *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004*). Subsection 10F(5) allows for different amounts to be imposed or different methodologies for calculating those amounts to be used in relation to different circumstances, and that these amounts and methodologies will be specified in the regulations.

The new subsection 10F(7) provides definitions for terms used in the new section 10A.

The new section 10G of the Regulatory Levies Act imposes environment plan levy on titles in State/Territory coastal waters. In substance, the levy on State or Territory titles is imposed under the same conditions and in the same manner as the levy imposed on Commonwealth titles. However, the levy on State/Territory titles is imposed in relation to activities located in and authorised by State or Territory titles granted under State or Territory offshore petroleum legislation. In addition, the levy is imposed only where NOPSEMA has functions or powers under regulations of the State or Territory that substantially correspond to Commonwealth Environment Regulations. This will ensure that the levy is imposed to recover the costs of NOPSA's regulatory functions, and is not applicable to recover costs associated with the regulatory activities of other regulators.

Item 21 – Section 11

This item amends section 11 to provide that the Governor-General may make regulations for the purposes of the new sections 10E, 10F and 10G of the Regulatory Levies Act, in addition to the regulation-making power currently provided for the existing sections 7, 8, 9, 10, 10A, 10B, 10C and 10D of the Regulatory Levies Act.