

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Inquiry into the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 [Provisions] and Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 [Provisions]

Division: Corporate and International Tax Division
Topic: Levy legislation
Reference: Written (8 November 2021)

Question:

4. The Bill gives the Resources Minister the right to reduce the levy and end it early:
- a) Does the Treasury administer any other legislation, which is currently in force, that similarly authorises a Minister to unilaterally reduce the rate of a levy, tax or duty etc established by Parliament, or terminate it altogether?
 - i. If so, can the Treasury please provide a list of that legislation?
 - ii. If the answer is “no”, can the Treasury please provide a list of any legislation the Department previously administered, but which is no longer in force, that similarly authorised a Minister to unilaterally reduce the rate of a levy, tax or duty etc established by Parliament, or terminate it altogether?
 - b) Under the Bill, is the Minister’s decision to reduce or terminate the levy early subject to Parliamentary oversight?
 - c) Is the Minister’s decision to reduce or terminate the levy early disallowable by the Parliament?
 - d) If the Parliament is dissatisfied with the decision to reduce or terminate the levy it has established by enacting this Bill, what power will the Parliament have to intervene?

Answer:

4 a) Subsection 8(2) of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 (the Bill) does not give the Resources Minister the right to unilaterally reduce the levy. Subsection 8(2) provides that the Resources Minister may make a determination in relation to the Commonwealth’s unrecovered costs for a levy year. Where a determination has been made in relation to the Commonwealth’s unrecovered costs for a levy year, the Commissioner of Taxation will use this information to calculate the distributed levy rate in accordance with the formula provided in the section 11 of the Bill.

Similarly, the Resources Minister may only terminate the levy before the 2029-30 financial year if the circumstances provided for in subsection 7(4) of the Bill have been satisfied. Broadly, these circumstances are that the Commonwealth has recovered its costs in relation to decommissioning the Northern Endeavour floating production storage and offtake facility and remediating the Laminaria and Corallina oil fields.

This legislative framework is consistent with other Commonwealth cost recovery levies such as the ASIC Supervisory Cost Recovery Levy where the levy rate is calculated by reference to amounts and formulas provided through subordinate legislation.

4b) Yes. Determinations made by the Resources Minister under subsections 7(2) and 8(2) of the Bill are a legislative instrument and subject to disallowance in accordance with the *Legislation Act 2003*. Furthermore, section 12 of the Bill provides that an instrument made by the Resources Minister under these provisions does not take effect until after the disallowance period has passed.

4c) Yes. As per our response to question 4(b), the determination made by the Resources Minister is made by legislative instrument and subject to disallowance by the Parliament in accordance with the requirements outlined in the *Legislation Act 2003*.

4d) If either House of Parliament passes a resolution disallowing the instrument, the instrument does not take effect.