

SUBMISSION No. 2
Inquiry into Bills referred 25 May 2011



Australian Government
**Department of Resources,
Energy and Tourism**

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3 June 2011

Committee Secretary
House of Representatives Standing Committee on
Agriculture, Resources, Fisheries and Forestry
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Sir/Madam,

RE: Committee Inquiry into:

- *Offshore Petroleum and Greenhouse Gas Storage (National Regulator) Bill 2011;*
- *Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measure No 2) Bill 2011;*
- *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011;*
- *Offshore Petroleum (Royalty) Amendment Bill 2011; and*
- *Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011.*

Thank you for the opportunity to provide further explanatory information in support of the above Bills.

Please note that this submission relates only to the *Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011* (PPS Amendment Bill), and a separate submission addressing the National Regulator-related amendment Bills will be provided to the Committee by this Department. As the PPS Amendment Bill deals with matters that are not related to the national regulator reform amendments, this Bill and its objective should be considered separately from the other Bills.

The Department considers this Bill will ensure that necessary safeguards remain in place to enable the regulator to ensure the suitability of entities that potentially are able to exercise control over Australia's offshore petroleum and greenhouse gas storage resources, while maintaining the legal certainty of treatment of those interests, and also will achieve consistency with State/Territory onshore mining legislation. This ensures that Australian Government objectives are met, while the regulatory burden on industry is not increased.

The Bill amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) and the *Offshore Minerals Act 1994* (OMA) to exclude application of the *Personal Property Securities Act 2009* (PPS Act) to registration and approval of offshore petroleum, greenhouse gas and minerals titles and dealings in relation to those titles.

The PPS Act establishes a national personal property securities register (PPS Register) which, while yet to commence operation, is intended to become the primary register of personal property security interests throughout Australia. The PPS Act does not automatically override existing registration requirements in Commonwealth legislation, such as the registration requirements relating to offshore petroleum, greenhouse gas and minerals titles in Chapters 4 and 5 of the OPGGS Act and Chapter 3 of the OMA. However, it is stated Commonwealth policy that, in order to remove duplication and increase clarity, existing approval and registration requirements for personal property securities, and dealings in these securities, should either be removed from Commonwealth Acts so that PPS Act registration requirements only will apply, or that the PPS Act should be expressly excluded from application to personal property under relevant Commonwealth Acts dealing with personal property and interests in personal property.

If no amendments are made to the OPGGS Act and OMA, offshore petroleum, greenhouse gas and minerals titles will be “personal property” for the purposes of the PPS Act, and the registration and other provisions of the PPS Act will apply to these titles, in addition to the requirements of the OPGGS Act and the OMA. This Bill implements the policy decision to expressly exclude application of the PPS Act for the purposes of dealings relating to titles under the OPGGS Act and the OMA. As a result of the proposed amendments, all types of title and licence granted under either piece of legislation, or various types of rights and interests acquired in relation to those titles and licences, are not personal property for the purposes of the PPS Act.

Unlike Commonwealth legislation, State and Territory legislation will be automatically overridden by the PPS Act if it contains inconsistent personal property security registration requirements. State and Northern Territory governments have advised the Commonwealth, through consultation, that they are electing to opt out of or exclude the operation of the PPS Act for their onshore mining schemes. Therefore excluding application of the PPS Act to the OPGGS Act and the OMA will ensure consistency between the onshore and offshore mining regimes, and minimise a potential regulatory burden and costs to the mining industry and its investors in complying with different registration requirements, potentially skewing investment between onshore and offshore, and having to keep abreast of developments.

In addition, and more significantly in terms of the Commonwealth offshore regulatory regime, under the registration requirements in the OPGGS Act, the regulator (currently the Designated Authority (DA)) has the ability to refuse to approve a dealing in relation to a petroleum title, and the responsible Commonwealth Minister has the ability to refuse to approve a dealing in relation to a greenhouse gas title. In addition, if a petroleum title is a “referable title”¹, the responsible Commonwealth Minister also has the power to issue a direction to the DA in relation to the exercise of the DA’s power to approve or refuse to approve a dealing in relation to the petroleum title. The DA must comply with any such direction.

¹ A “referable title” is a petroleum title over a block or blocks that are the subject of a greenhouse gas assessment permit, a greenhouse gas holding lease, or a greenhouse gas injection licence – see definition in section 467 of the OPGGS Act.

This ability to refuse approval and registration of an interest in a title underpins the purpose of the registration requirement, which is to enable the regulator to ensure the suitability of the entities that potentially are able to exercise control over the exploitation of Australia's offshore petroleum resources. The type of property interest of most concern to the Commonwealth in the offshore regulatory regime is one that gives someone else the ability to control how the rights under a title are exercised, effectively enabling them to control exploitation of offshore resources without otherwise having been vetted, such as through primary titles administration measures. Given there will be no similar 'approval' or 'vetting' facility under the PPS Act for dealings to be refused, and instead upon registration of the interest on the PPS Register it will automatically come into force, it is necessary to maintain and distinguish OPGGS Act registration of interests as deferral to the PPS Act would raise serious policy questions about the management and security of national resources.

Excluding application of the PPS Act will also avoid the potential situation whereby a dealing refused under the OPGGS Act could be registered on the PPS Register, which could lead to legal confusion over the standing of the security interest. The Department considers that the amendments are necessary to meet the Australian Government's ongoing commitment and objective to ensure regulatory certainty while keeping the regulatory burden on industry to a minimum.

Under the proposed national regulator reform amendments, the entity responsible for approving and registering a dealing in relation to offshore petroleum titles and offshore greenhouse gas titles will be the National Offshore Petroleum Titles Administrator (the Titles Administrator). This important oversight/vetting role will be exercised by the Titles Administrator to continue to meet the Australian Government's objective of ensuring the suitability of entities that potentially are able to exercise control over Australia's offshore petroleum and greenhouse gas storage resources.

The Department will make officials available to attend a public hearing should that be required. The contact officers in the Department on the proposed personal property security amendments is Ms Jessica Brown (ph 02 6213 7974, and on the proposed national regulator reform amendments is Mr Peter Livingston (ph 02 6213 7974,

Yours sincerely,

Chris Lloyd
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Resources Division
Department of Resources, Energy and Tourism