



**SENATE STANDING COMMITTEE
FOR THE
SCRUTINY OF BILLS**

**SEVENTH REPORT
OF
2011**

6 July 2011

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M Fifield (Chair)
Senator C Brown (Deputy Chair)
Senator M Bishop
Senator S Edwards
Senator G Marshall
Senator R Siewert

TERMS OF REFERENCE

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
 - (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTH REPORT OF 2011

The Committee presents its Seventh Report of 2011 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bills which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

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Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Bill 2011

Introduced into the House of Representatives on 12 May 2011
Portfolio: Attorney-General

Introduction

The Committee dealt with this bill in *Alert Digest No. 5 of 2011*. The Minister responded to the Committee's comments in a letter dated 21 June 2011. A copy of the letter is attached to this report.

Alert Digest No. 5 of 2011 - extract

Background

This bill is part of a legislative package of three bills. The bill imposes a levy on certain entities regulated by Australian Transaction Reports and Analysis Centre (AUSTRAC). The levy will enable AUSTRAC to recover the costs of its supervisory activities from 1 July 2011.

Possible over-collection of a levy

Clause 8

This bill creates the liability to impose a levy allowing AUSTRAC to recover the costs of its regulatory activities from 1 July 2011. Clause 8 of the bill provides that the levy is payable in accordance with section 7 of the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery (Collection) Bill 2011. The Minister must, pursuant to subclause 9(1) determine the amount of levy payable by a leviable entity by legislative instrument. There is a global statutory limit set for the levy (see clause 7). The explanatory memorandum states at pages 5-6:

The actual amount to be collected will be equal to the costs of AUSTRAC supervisory activities. This will be determined in accordance with the standard budgetary processes applied to all Australian government agencies. The levy components of each financial year will be based on estimates of the reporting entity population profile determined prior to the financial year in which they will apply. The levy will be imposed on leviable entities based on the actual reporting entity population profile on the census day in the relevant financial year. It is possible therefore that due to changes in the leviable entity population, the amount collected will differ to AUSTRAC's supervisory activities for that financial year. The statutory limit is set with a sufficient margin to reduce the risk of breaching the limit.

In circumstances where AUSTRAC over or under collects, the levy in future years will be adjusted

Clearly the intention is that the levy should not amount to a tax, and is to be charged according to a cost recovery basis. Nevertheless, it is of concern that the assurance that over-collection will be adjusted in subsequent years is not reflected in the legislation. The Committee has consistently drawn attention to legislation in which there may be a risk that the levy may in fact become a tax. In the Committee's opinion, it is for Parliament, rather than the makers of subordinate legislation, to set a rate of tax. **The Committee therefore seeks the Minister's advice as to whether consideration has been given to including a safeguard in the legislation to provide that any over-collection will be adjusted.**

The Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Minister's response - extract

In its *Alert Digest No.5 of 2011*, the Committee notes that the Bill's explanatory memorandum states, 'In circumstances where AUSTRAC over or under collects, the levy in future years will be adjusted'. In this context, the Committee has queried 'whether consideration has been given to including a safeguard in the legislation to provide that any over-collection will be adjusted'.

The mechanism for dealing with any over or under collection of the cost recovery levy was considered during the Bill's development. It was decided that the most effective mechanism for dealing with this issue is through the making of the annual determination which will establish the amount of levy payable in a given year. The benefits of this approach are twofold. Firstly, the amount of the annual levy (including any adjustments required to address a prior year's over or under collection) will be subject to industry scrutiny through an annual consultation process. Secondly, these levy determinations are legislative instruments and, as such, will be subject to scrutiny, and disallowance, by the Parliament.

This approach takes account of the relationship between the amount of levy payable and the equivalent AUSTRAC supervisory budget. As this is an annual appropriation through the Commonwealth budgeting process it will change from year to year and may vary within a financial year should AUSTRAC receive additional appropriations or be subject to additional savings measures.

Accordingly, it was not considered appropriate to specify in legislation an over-collection adjustment provision. Rather, the Bill contains a statutory upper limit on the levy of \$33 million (indexed).

It should also be noted that the legislative scheme comprising the Bill, the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Bill, and the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill, when taken as a whole, is designed to minimise the chance of any over or under collection arising. Two key elements of the legislative scheme which will assist in this regard are the use of historical transaction data in calculating the levy and the improved accuracy of AUSTRAC's data holdings which will be achieved through introduction of the requirement that reporting entities enrol with AUSTRAC and keep their enrolment details up-to-date.

Committee Response

The Committee thanks the Minister for this response and leaves it to the Senate as a whole as to whether the proposed approach is appropriate.

Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011

Introduced into the House of Representatives on 25 May 2011
Portfolio: Resources and Energy

Introduction

The Committee dealt with this bill in *Alert Digest No. 5 of 2011*. The Minister responded to the Committee's comments in a letter dated 28 June 2011. A copy of the letter is attached to this report.

Alert Digest No. 5 of 2011 - extract

Background

This bill is part of a package of five bills. The bill amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to establish two new regulatory bodies to administer and regulate petroleum and greenhouse gas storage operations in Commonwealth waters in the Australian offshore area. The new bodies will replace the Designated Authorities, who are State and Northern Territories Ministers who, through their departments, have performed functions and exercised powers conferred directly on them by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and its predecessor Act the *Petroleum (Submerged Lands) Act 1967*.

Incorporating material by reference

Schedule 2, Part 1, item 333, subsection 574A(7)

Subsection 574A(7) enables a direction to apply, adopt or incorporate a code of practice or standard as in force when adopted or as existing from time to time. The provision thus raises the prospect of changes being made to the law in the absence of Parliamentary scrutiny. In addition, such provisions can create uncertainty in the law and those obliged to obey the law may have inadequate access to its terms. Although the incorporation of instruments into regulations 'from time to time' may be justified in certain circumstances, it is unfortunate that the explanatory memorandum merely repeats the effect of these provisions without any explanation or justification of why this is considered an appropriate delegation of power in this instance. The Committee notes that while subsection 574A(10) requires any instruments applied, adopted or incorporated under subsection 574A(7) to be published on the Department's website, this is subject to copyright restrictions. **The Committee seeks the Minister's advice about the justification for the proposed**

approach and whether it is likely that access to any material to be incorporated 'from time to time' will be restricted by copyright.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.

Minister's response - extract

Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011

The National Regulator Bill amends the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGS Act) and associated legislation to establish two new regulatory bodies to administer and regulate petroleum and greenhouse gas storage operations in Commonwealth waters in the Australian offshore area - the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA).

The OPGGS Act currently provides the Designated Authority (that is, the relevant state Minister) with a broad general power to give directions to petroleum titleholders. The National Regulator Bill will abolish the Designated Authority and give this general power to NOPSEMA and a new section 574A will also give the responsible Commonwealth minister a general power to give directions to petroleum titleholders that relate to resource management, resource security, or data management. This is a reallocation of an existing power and no new power has been created.

The Alert Digest has commented on subsection 574A(7) which would enable the responsible Commonwealth Minister to apply, adopt or incorporate a code of practice or standard as in force when adopted or as existing from time to time. The Committee has sought justification for this approach to incorporating material by reference. The Designated Authority currently has this power under existing subsection 574(7) and the Bill proposes to give the power in that subsection to NOPSEMA. The responsible Commonwealth Minister also currently has this power under existing subsection 580(6) in relation to greenhouse gas storage titleholders.

My Department consulted with the Attorney-General's Department during development of the National Regulator Bill. As a result of feedback provided in relation to subsection 574A(7), subsection 574A(10), which will require any instruments applied, adopted or incorporated in a direction to be published on my Department's website, was included as a safeguard to ensure that persons who are subject to the direction are able to access and

view the instrument, and can be reassured that they are applying the correct version of the instrument.

As noted in the Alert Digest, the requirement in subsection 574A(10) to publish the applicable code of practice or standard on the Department's website is subject to copyright restrictions. I am unable to provide specific advice at this time as to the likelihood that access to any material will be restricted by copyright, as this will depend on the particular codes or standards that may be incorporated in future.

I accept that the Committee has raised a substantive concern about incorporating material by reference in subsection 574A(7). Accordingly, I propose to introduce a Government Amendment to the Bill to remove the provisions enabling a direction given by the responsible Commonwealth Minister or NOPSEMA to apply, adopt or incorporate a code of practice or standard as in force when adopted or as existing from time to time.

Committee Response

The Committee thanks the Minister for this response and for his commitment to remove provisions that allow material to be incorporated as existing from time-to-time.

Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No.2) Bill 2011

Introduced into the House of Representatives on 25 May 2011

Portfolio: Resources and Energy

Introduction

The Committee dealt with this bill in *Alert Digest No. 5 of 2011*. The Minister responded to the Committee's comments in a letter dated 28 June 2011. A copy of the letter is attached to this report.

Alert Digest No. 5 of 2011 - extract

Background

This bill is part of a package of five bills and amends the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* to impose new cost-recovery levies on holders of offshore petroleum and greenhouse gas storage titles.

Imposing a levy by regulation

Schedule 1, item 20

This item provides for cost-recovery levies to be set in regulations without setting an upper limit in the bill: see item 20, subsections 10E(4) and 10F(4). The Committee has consistently drawn attention to legislation that provides for the rate of a levy to be set by regulation. This creates a risk that the levy may, in fact, become a tax. In the Committee's opinion, it is for Parliament, rather than the makers of subordinate legislation, to set a rate of tax.

The Committee recognises, however, that circumstances may exist in which the rate of a levy may be better done through amending regulations rather than the enabling statute. Where a compelling case can be made for the rate to be set by subordinate legislation, the Committee expects that there will be some limits imposed on the exercise of this power. For example, the Committee expects the enabling Act to prescribe either a maximum figure above which the relevant regulations cannot fix the levy, or, alternatively, a formula by which such an amount can be calculated. The vice to be avoided is delegating an unfettered power to impose fees.

A similar issue was raised by the Committee in relation to the *Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 1) Bill 2011*. The Minister's response appears in the Committee's *Third Report of 2011* at pages 158-60. It details a number of requirements applying the levies in the earlier bill '...to ensure that levy amounts are not increased in an excessive or undue manner, so that it is not necessary to include an upper limit in the [Bill] on the amount of the levy that may be imposed.' Unfortunately, in relation to the current bill, the explanatory memorandum does not identify whether any similar measures are in place to ensure that the proposed new levies are also not set or increased in an excessive or undue manner. **The Committee therefore seeks the Minister's further advice in relation to this issue.**

Pending the Minister's reply, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Minister's response - extract

Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No.2) Bill 2011

The Regulatory Levies Bill amends 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 NOPTA in undertaking its regulatory functions in relation to titles administration and NOPSEMA in undertaking its regulatory functions in relation to environmental management.

NOPSEMA will be established by expanding the functions and powers of the National Offshore Petroleum Safety Authority (NOPSA). NOPSA is 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 *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, the Regulatory Levies Bill amends the Regulatory Levies Act to impose a levy on titleholders (the "environment plan levy") 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 NOPSAINOPSEMA. To this end the Regulatory Levies Bill amends the Regulatory Levies Act to impose an annual titles administration levy on eligible titles payable by the titleholder.

NOPSEMA and NOPTA's regulatory activities will vary from year to year, in particular in relation to the number of offshore petroleum operations and in ensuring an adequate level of scrutiny for these operations. It may therefore be necessary to vary the amount of levy that can be collected by NOPSEMA or NOPTA on a regular basis to ensure these entities have sufficient funds to meet their costs and expenses in appropriately undertaking their functions and powers.

To ensure that the amount of levy can be amended regularly and expeditiously, I have proposed to include the levy amounts in regulations under the Regulatory Levies Act. Delays in amendments to levy amounts may result in NOPSEMA or NOPTA having a shortfall of funds available to undertake their important regulatory or titles administration functions.

This is consistent with the approach taken for the calculation of the existing safety and well-related levies under the Regulatory Levies Act. The Regulatory Levies Act sets out the conditions for the imposition of these levies and provides that the levy amounts are specified in, or worked out in accordance with, the regulations. The specific levy amounts or method of calculation are set out in the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (Regulatory Levies Regulations).

I plan to make amendments to the Regulatory Levies Regulations to detail the calculation and composition of the annual titles administration levy and the environment plan levy. NOPSA will undertake a process to determine the amount of environment plan levy that will be imposed to recover the costs of its regulatory functions in relation to environmental management as the expanded NOPSEMA, including preparation of a cost recovery impact statement. Similarly, my Department will undertake a process to determine the amount of annual titles administration levy that will be imposed to recover the costs of NOPTA's titles administration functions, also including development of a cost recovery impact statement to determine initial levy amounts. Industry will be consulted in relation to development of both cost recovery impact statements.

In addition, regulation 61 of the Regulatory Levies Regulations currently requires the Chief Executive Officer (CEO) of NOPSA to conduct periodic reviews of cost recovery in relation to the operations of NOPSA, including a comparison of the fees and levies collected with the regulatory activities undertaken in the period. Under regulation 62, the CEO must also prepare a financial report in respect of each financial year that assesses the cost-effectiveness of NOPSA's operations in that financial year. The report must be audited

by an independent auditor, and be provided at a minimum to industry representatives and operators and titleholders who were required to pay levies during the year.

Furthermore, regulation 63 of the Regulatory Levies Regulations requires the CEO of NOPSA to meet annually with representatives of the offshore petroleum industry to discuss the cost-effectiveness of NOPSA's operations, including presenting information in relation to NOPSA's costs and budget projections, and operating budget for the following year. Previous regulatory amendments to increase levy amounts have been raised with industry in the report required under regulation 62, and discussed at the cost-effectiveness meeting.

These arrangements will continue to apply following the expansion of NOPSA to become NOPSEMA, so that they will relate to NOPSEMA's cost recovery under the environment plan levy, in addition to the existing safety and well-related levies. In addition, NOPSEMA may be subject to a requirement to prepare a new cost recovery impact statement or an addendum to a current cost recovery impact statement in relation to planned levy increases.

It is envisaged that proposed future amendments to the amount of annual titles administration levy would also be subject to similar stakeholder consultation processes, and a potential requirement to prepare a new cost recovery impact statement or an addendum to the current cost recovery impact statement.

I submit that these requirements will be sufficient to ensure that levy amounts are not increased in an excessive or undue manner, so that it is not necessary to include an upper limit in the Regulatory Levies Bill on the amount of annual titles administration levy or environment plan levy that may be imposed.

I trust that this additional information will be sufficient to address the Committee's comments in the Alert Digest.

Committee Response

The Committee thanks the Minister for this detailed response and leaves it to the Senate as a whole as to whether the proposed approach is appropriate.

Senator Mitch Fifield
Chair



THE HON BRENDAN O'CONNOR MP

Minister for Home Affairs
Minister for Justice

MIN-MC11/07017

21 JUN 2011

RECEIVED

22 JUN 2011

Senate Standing C'ttee
for the Scrutiny
of Bills

Senator the Hon Helen Coonan
Chair
Senate Scrutiny of Bills Committee
S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Coonan

**Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy
Bill 2011 ('the Bill')**

I refer to the letter, dated 16 June 2011, from the Secretary of the Standing Committee for the Scrutiny of Bills ('the Committee') to the Attorney-General regarding the above Bill. As this Bill falls within my portfolio responsibilities, the Attorney-General has referred this matter for my consideration and response.

In its *Alert Digest No.5 of 2011*, the Committee notes that the Bill's explanatory memorandum states, 'In circumstances where AUSTRAC over or under collects, the levy in future years will be adjusted'. In this context, the Committee has queried 'whether consideration has been given to including a safeguard in the legislation to provide that any over-collection will be adjusted'.

The mechanism for dealing with any over or under collection of the cost recovery levy was considered during the Bill's development. It was decided that the most effective mechanism for dealing with this issue is through the making of the annual determination which will establish the amount of levy payable in a given year. The benefits of this approach are twofold. Firstly, the amount of the annual levy (including any adjustments required to address a prior year's over or under collection) will be subject to industry scrutiny through an annual consultation process. Secondly, these levy determinations are legislative instruments and, as such, will be subject to scrutiny, and disallowance, by the Parliament.

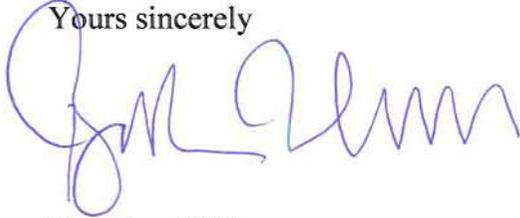
This approach takes account of the relationship between the amount of levy payable and the equivalent AUSTRAC supervisory budget. As this is an annual appropriation through the Commonwealth budgeting process it will change from year to year and may vary within a financial year should AUSTRAC receive additional appropriations or be subject to additional savings measures.

Accordingly, it was not considered appropriate to specify in legislation an over-collection adjustment provision. Rather, the Bill contains a statutory upper limit on the levy of \$33 million (indexed).

It should also be noted that the legislative scheme comprising the Bill, the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Bill, and the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill, when taken as a whole, is designed to minimise the chance of any over or under collection arising. Two key elements of the legislative scheme which will assist in this regard are the use of historical transaction data in calculating the levy and the improved accuracy of AUSTRAC's data holdings which will be achieved through introduction of the requirement that reporting entities enrol with AUSTRAC and keep their enrolment details up-to-date.

I trust that the above information is of assistance to the Committee. The adviser responsible for this matter in my office is Ms Kathryn McMullan who can be contacted on (02) 6277 7290.

Yours sincerely



Brendan O'Connor



RECEIVED

28 JUN 2011

Senate Standing C'ttee
for the Scrutiny
of Bills

THE HON MARTIN FERGUSON AM MP

MINISTER FOR RESOURCES AND ENERGY
MINISTER FOR TOURISM

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

Senator the Hon Helen Coonan
Chair
Senate Scrutiny of Bills Committee
S1.111
Parliament House
CANBERRA ACT 2600

C11/1887

28 JUN 2011

Dear Senator Coonan

I am writing in response to comments contained in the Senate Scrutiny of Bills Committee's *Alert Digest No. 5 of 2011* (Alert Digest) concerning the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011* (the National Regulator Bill) and the *Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Bill 2011* (the Regulatory Levies Bill). Please see below responses to the request for further advice in the Alert Digest in relation to certain provisions in these Bills.

Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011

The National Regulator Bill amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and associated legislation to establish two new regulatory bodies to administer and regulate petroleum and greenhouse gas storage operations in Commonwealth waters in the Australian offshore area – the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA).

The OPGGS Act currently provides the Designated Authority (that is, the relevant state Minister) with a broad general power to give directions to petroleum titleholders. The National Regulator Bill will abolish the Designated Authority and give this general power to NOPSEMA and a new section 574A will also give the responsible Commonwealth minister a general power to give directions to petroleum titleholders that relate to resource management, resource security, or data management. This is a reallocation of an existing power and no new power has been created.

The Alert Digest has commented on subsection 574A(7) which would enable the responsible Commonwealth Minister to apply, adopt or incorporate a code of practice or standard as in force when adopted or as existing from time to time. The Committee has sought justification for this approach to incorporating material by reference. The Designated Authority currently has this power under existing subsection 574(7) and the Bill proposes to give the power in that subsection to NOPSEMA. The responsible Commonwealth Minister also currently has this power under existing subsection 580(6) in relation to greenhouse gas storage titleholders.

My Department consulted with the Attorney-General's Department during development of the National Regulator Bill. As a result of feedback provided in relation to subsection 574A(7), subsection 574A(10), which will require any instruments applied, adopted or incorporated in a direction to be published on my Department's website, was included as a safeguard to ensure that persons who are subject to the direction are able to access and view the instrument, and can be reassured that they are applying the correct version of the instrument.

As noted in the Alert Digest, the requirement in subsection 574A(10) to publish the applicable code of practice or standard on the Department's website is subject to copyright restrictions. I am unable to provide specific advice at this time as to the likelihood that access to any material will be restricted by copyright, as this will depend on the particular codes or standards that may be incorporated in future.

I accept that the Committee has raised a substantive concern about incorporating material by reference in subsection 574A(7). Accordingly, I propose to introduce a Government Amendment to the Bill to remove the provisions enabling a direction given by the responsible Commonwealth Minister or NOPSEMA to apply, adopt or incorporate a code of practice or standard as in force when adopted or as existing from time to time.

Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Bill 2011

The Regulatory Levies Bill amends 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 NOPTA in undertaking its regulatory functions in relation to titles administration and NOPSEMA in undertaking its regulatory functions in relation to environmental management.

NOPSEMA will be established by expanding the functions and powers of the National Offshore Petroleum Safety Authority (NOPSA). NOPSA is 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 *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, the Regulatory Levies Bill amends the Regulatory Levies Act to impose a levy on titleholders (the "environment plan levy") 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 Regulatory Levies Bill amends the Regulatory Levies Act to impose an annual titles administration levy on eligible titles payable by the titleholder.

NOPSEMA and NOPTA's regulatory activities will vary from year to year, in particular in relation to the number of offshore petroleum operations and in ensuring an adequate level of scrutiny for these operations. It may therefore be necessary to vary the amount of levy that can be collected by NOPSEMA or NOPTA on a regular basis to ensure these entities have sufficient funds to meet their costs and expenses in appropriately undertaking their functions and powers.

To ensure that the amount of levy can be amended regularly and expeditiously, I have proposed to include the levy amounts in regulations under the Regulatory Levies Act. Delays in amendments to levy amounts may result in NOPSEMA or NOPTA having a shortfall of funds available to undertake their important regulatory or titles administration functions.

This is consistent with the approach taken for the calculation of the existing safety and well-related levies under the Regulatory Levies Act. The Regulatory Levies Act sets out the conditions for the imposition of these levies and provides that the levy amounts are specified in, or worked out in accordance with, the regulations. The specific levy amounts or method of calculation are set out in the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (Regulatory Levies Regulations).

I plan to make amendments to the Regulatory Levies Regulations to detail the calculation and composition of the annual titles administration levy and the environment plan levy. NOPSA will undertake a process to determine the amount of environment plan levy that will be imposed to recover the costs of its regulatory functions in relation to environmental management as the expanded NOPSEMA, including preparation of a cost recovery impact statement. Similarly, my Department will undertake a process to determine the amount of annual titles administration levy that will be imposed to recover the costs of NOPTA's titles administration functions, also including development of a cost recovery impact statement to determine initial levy amounts. Industry will be consulted in relation to development of both cost recovery impact statements.

In addition, regulation 61 of the Regulatory Levies Regulations currently requires the Chief Executive Officer (CEO) of NOPSA to conduct periodic reviews of cost recovery in relation to the operations of NOPSA, including a comparison of the fees and levies collected with the regulatory activities undertaken in the period. Under regulation 62, the CEO must also prepare a financial report in respect of each financial year that assesses the cost-effectiveness of NOPSA's operations in that financial year. The report must be audited by an independent auditor, and be provided at a minimum to industry representatives and operators and titleholders who were required to pay levies during the year.

Furthermore, regulation 63 of the Regulatory Levies Regulations requires the CEO of NOPSA to meet annually with representatives of the offshore petroleum industry to discuss the cost-effectiveness of NOPSA's operations, including presenting information in relation to NOPSA's costs and budget projections, and operating budget for the following year. Previous regulatory amendments to increase levy amounts have been raised with industry in the report required under regulation 62, and discussed at the cost-effectiveness meeting.

These arrangements will continue to apply following the expansion of NOPSA to become NOPSEMA, so that they will relate to NOPSEMA's cost recovery under the environment plan levy, in addition to the existing safety and well-related levies. In addition, NOPSEMA may be subject to a requirement to prepare a new cost recovery impact statement or an addendum to a current cost recovery impact statement in relation to planned levy increases.

It is envisaged that proposed future amendments to the amount of annual titles administration levy would also be subject to similar stakeholder consultation processes, and a potential requirement to prepare a new cost recovery impact statement or an addendum to the current cost recovery impact statement.

I submit that these requirements will be sufficient to ensure that levy amounts are not increased in an excessive or undue manner, so that it is not necessary to include an upper limit in the Regulatory Levies Bill on the amount of annual titles administration levy or environment plan levy that may be imposed.

I trust that this additional information will be sufficient to address the Committee's comments in the Alert Digest.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. Ferguson', with a long horizontal stroke extending to the right.

Martin Ferguson