



Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies (Consequential Amendments) Bill 2011

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Law and Bills Digest Section

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Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies (Consequential Amendments) Bill 2011

Date introduced: 24 February 2011

House: House of Representatives

Portfolio: Resources and Energy

Commencement: Sections 1 to 3 on Royal Assent. Schedule 1 will commence at the same time as Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 1) Act 2011*.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and given Royal Assent they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies (Consequential Amendments) Bill 2011 (the Bill) is to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) to enable the calculation and collection of three new well levies and any associated late payment penalties.

The relevant well levies were introduced by the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No.1) Bill 2011 (the companion Bill) which should be read in conjunction with this Bill.¹

Background

The levies to which this Bills Digest refers are the well investigation levy, annual well levy and the well activity levy. The well levies were introduced to ensure that the National Offshore Petroleum Safety Authority (NOPSA) 'is adequately resourced to fulfil its well-related responsibilities under the Act and associated regulations'.²

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1. M Coombs, *Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 1) Bill 2011*, Bills Digest, no. 77, 2010–11, Parliamentary Library, Canberra, 2011, viewed 9 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F612313%22>
 2. M Ferguson (Minister for Resources and Energy and the Minister for Tourism), 'Second reading speech: Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 1) Bill 2011',

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National Offshore Petroleum Safety Account

This Bill sets out the mechanisms by which the money paid to the Commonwealth by means of the new levies and late penalty payments will then be credited to the National Offshore Petroleum Safety Account. The times that levy payments fall due, and how the levies are worked out, will be in accordance with the regulations.

Division 7 of the Act deals with the National Offshore Petroleum Safety Account, specifically sections 682–684.

Industry levies are paid to NOPSA to enable it to fulfil its functions under the *Offshore Petroleum and Greenhouse Gas and Storage Act 2006*. The NOPSA Account is established to provide a financial mechanism for this to occur and is used for the receipt of moneys and payments in relation to NOPSA's functions and staffing (sections 682; 683 and 684 of the Act).³

Cost Recovery

An addendum to NOPSA's 2008 Safety Case Levies Cost Recovery Impact Statement briefly summarises the requirements of the policy:

In December 2002, the Australian Government adopted a formal cost recovery policy to improve the consistency, transparency and accountability of its costs recovery arrangements and promote the efficient allocation of resources. The underlying principle of the policy is that entities should set charges to recover all the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group and where charging is consistent with Australian Government policy objectives. Cost recovery policy is administered by the Department of Finance and Deregulation and outlined in the Australian Government Cost Recovery Guidelines (Cost Recovery Guidelines).

The policy applies to all *Financial Management and Accountability Act 1997* agencies and to relevant Commonwealth Authorities and Companies Act 1997 bodies that have been notified, In line with the policy, individual portfolio ministers are ultimately responsible for ensuring entities' implementation and compliance with the Cost Recovery Guidelines.⁴

House of Representatives, *Debates*, 24 February 2011, pp. 5–6, viewed 9 March 2011,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-02-24%2F0013%22>

3. National Offshore Petroleum Safety Authority, 2008 Review of Cost Recovery Arrangements and Cost Recovery Impact Statement, September 2009, p. 13, viewed 7 March 2011, <http://www.nopsa.gov.au/document/Review%20of%20NOPSA%20Cost%20Recovery%20Arrangements%20and%20Cost%20Recovery%20Impact%20Statement%202008.pdf>
4. National Offshore Petroleum Safety Authority, addendum to the 2008 Safety Case Levies Cost Recovery Impact Statement, September 2010, pp. 3-4, viewed 7 March 2011, <http://www.nopsa.gov.au/document/Addendum%20to%20the%202008%20Cost%20Recovery%20Impact%20Statement.pdf>

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In accordance with that policy, 'NOPSA is fully funded through cost recovery with general provisions for the collection of levies set out in the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003* and the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004*.'⁵

Committee consideration

At its meeting of 2 March 2011, the Selection of Bills Committee resolved that the Bill not be referred to Senate committee for inquiry and report.⁶

Similarly, the Senate Standing Committee for the Scrutiny of Bills had no comment to make on this Bill.⁷

Financial implications

According to the Explanatory Memorandum, there is nil financial impact on the Australian Government Budget. This Bill will ensure that NOPSA can fully recover its costs from industry which are associated with it undertaking augmented integrity and safety-related functions.⁸

Main issues

Key provisions

Part 6.9 of the OPGGS Act relates to NOPSA. **Item 1** of the Bill amends **section 643** of the OPGGS Act by inserting a definition of '**Regulatory Levies Act**', being the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*. The significance of this amendment is that item 2 of the companion Bill to this Bill, changed the name of that Act. **Item 2** repeals from **section 643** the definition which referred to that Act by its former name— the *Safety Levies Act*.

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5. National Offshore Petroleum Safety Authority, Addendum to the 2008 Safety Case Levies, Cost Recovery Impact Statement, September 2011, p. 3, viewed 7 March 2011, <http://www.nopsa.gov.au/document/Addendum%20to%20the%202008%20Cost%20Recovery%20Impact%20Statement.pdf>
 6. Senate Selection of Bills Committee, *Report No. 2 of 2011*, 3 March 2011, viewed 9 March 2011, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0211.pdf
 7. Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 2 of 2011, 2 March 2011, viewed 8 March 2011, <http://www.aph.gov.au/senate/committee/scrutiny/alerts/2011/d02.pdf>
 8. Explanatory Memorandum, *Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies (Consequential Amendments) Bill 2011*, p. 2.

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Sections 682 to 684 of Division 7 of Part 6.9 of the OPGGS Act deal with the National Offshore Petroleum Safety Account.

Item 4 of the Bill amends existing section 683 to specify certain amounts that must be credited to the National Offshore Petroleum Safety Account.⁹ These payments include:

- **proposed paragraph 683(d)** deals with the amounts paid to the Commonwealth by the imposition of the well investigation levy and any late payment penalty for that levy under subsection 688(2)
- **proposed paragraph 683(da)** deals with the amounts paid to the Commonwealth by the imposition of the annual well levy and any late payment penalty for that levy under subsection 688A(2)
- **proposed subparagraph 683(db)** deals with the amounts paid to the Commonwealth under the well activity levy and any late payment penalty for that levy under subsection 688B(2).

Well Investigation Levy

Item 6 inserts **proposed section 688** which relates to the well investigation levy. **Proposed subsection 688(1)** provides that the regulations specify the time when the well investigation levy is due for payment and how it is worked out. If the levy, or part of it, remains unpaid after the time that it was due to be paid, the person who owes the levy is also liable to pay a late payment penalty (**proposed subsection 688(2)**).

Proposed subsection 688(3) provides that the late payment penalty rate is calculated at the rate of 0.333333% per day on the amount that remains unpaid. NOPSA may remit the whole or part of the late payment penalty if it considers that there are good reasons for doing so (**proposed subsection 688(4)**). The term 'good reasons' is not defined. However the late payment penalty provisions are in the same terms as others in Part 6.9 of the OPGGS Act which relate to the safety investigation levy¹⁰ and the safety case levy.¹¹ Although the Bill is silent on whether the decision to remit in whole or in part for 'good reasons' is reviewable, the decision is subject to the *Administrative Decisions (Judicial Review) Act 1977*. A person aggrieved by a decision may make an application under section 5 for the decision to be reviewed and obtain written reasons for the decision under section 13.

Proposed subsection 688(5) provides that the amount of the levy and the late payment penalty is a debt due to NOPSA on behalf of the Commonwealth and is recoverable in a court of competent jurisdiction.

9. Note to section 683, *Offshore Petroleum and Greenhouse Gas Storage Act 2006*: The Account is a Special Account. An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

10. Section 686, OPGGS Act.

11. Section 687, OPGGS Act.

Annual Well Levy and Well Activity Levy

The provisions relating to the annual well levy which are contained in **proposed section 688A** are in the same terms as those contained in **proposed section 688** which relates to the well investigation levy.

Similarly, the provisions relating to the well activity levy which are set out in **proposed section 688B**, are in the same terms as those in **proposed sections 688 and 688A**.

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