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Date introduced: 29 May 2014
House: House of Representatives
Portfolio: Industry
Commencement: The Bills commence on a number of different dates, which are outlined in subclause 2(1) of each Bill.


When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
History of the Bills

In December 2012, the Government introduced the Regulatory Powers (Standard Provisions) Bill 2012 into the House of Representatives. This Bill was designed to progressively harmonise regulatory monitoring, investigation and enforcement procedures across all Commonwealth regulatory agencies. However, the Bill was not passed by the end of the 43rd Parliament, and lapsed when Parliament was prorogued prior to the 2013 Federal election.

In anticipation of the passage of the Regulatory Powers (Standard Provisions) Bill 2012 (which became the Regulatory Powers (Standard Provisions) Bill 2013, and is hereafter referred to as the Standard Provisions Bill 2013), the Government passed two other Bills that relied on provisions contained within the Standard Provisions Bill 2013. These Bills became the Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 1 Act) and the Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2 Act). The text of these Acts refer to, and the commencement provisions for Schedules 1 and 2 of the Compliance Measures No. 1 Act and Schedule 1 of the Compliance Measures No. 2 Act rely on, the Regulatory Powers (Standard Provisions) Act 2013, which was never enacted. As a result, Schedules 1 and 2 of the Compliance Measures No. 1 Act and Schedule 1 of the Compliance Measures No. 2 Act could not commence operation.

Purpose of the Bills

The purpose of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2014 (the Regulatory Levies Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 to clarify that regulatory levies are imposed on petroleum title holders for every year that a petroleum title is in force, regardless of whether the title is extended beyond its nominal term or is not in force for the entire year. The Regulatory Levies Bill also makes minor, consequential amendments to clarify certain cost-recovery arrangements for the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) associated with the submission of environmental plans for certain types of offshore petroleum and greenhouse gas storage activities.

The purpose of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Regulatory Powers and Other Measures) Bill 2014 (the Regulatory Powers Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGS Act) and the Compliance Measures No. 1 Act to replace references to the Regulatory Powers (Standard Provisions) Act 2013 with references to the Regulatory Powers (Standard Provisions) Act 2014, which is currently before the Parliament. The Regulatory Powers Bill also contains a provision that is related to the amendments to the annual titles administration levy made by the Regulatory Levies Bill. This provision allows regulations to be made to provide for the remittal or refund of part or all of an amount of annual titles levy, if the title is not held for the entire year. The Bill also makes relatively minor, administrative amendments to the OPGGS Act to clarify certain administrative procedures of the National Offshore Petroleum Titles Administrator (NOPTA) and NOPSEMA.

Structure of the Bills

The Bills have several parts which make different administrative amendments to offshore petroleum and greenhouse gas storage legislation.

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7. Ibid., Schedule 1, Items 3 to 20.
In the Regulatory Powers Bill:

- Schedule 1, Part 1 amends *Compliance Measures No. 1 Act* to reflect the new title and structure of the proposed *Regulatory Powers (Standard Provisions) Act 2014*. This section commences on the day after the Regulatory Powers Bill receives Royal Assent.  

- Schedule 1, Part 2, amends the *OPGGS Act* to reflect the new title and structure of the proposed *Regulatory Powers (Standard Provisions) Act 2014*. This section commences when the following have occurred:
  - commencement of Part 4 of the proposed *Regulatory Powers (Standard Provisions) Act 2014*, which enables
  - commencement of Schedule 2 of the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013*, which, in turn, enables
  - commencement of Schedule 1 of the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Act 2013*.

- Schedule 2 makes minor administrative amendments to the *OPGGS Act* to amend technical errors in that Act and clarify certain administrative procedures undertaken by the offshore petroleum regulators. It also allows regulations to be made to allow the remittal or refund of some or all of an amount of annual titles levy. **Items 1–6 and 12–13** of this Schedule commence the day after Royal Assent, **items 7–11 and 14** commence at the same time as **items 1 and 2** in Schedule 1 of the Regulatory Levies Bill.

In the Regulatory Levies Bill:

- Schedule 1, Part 1, **items 1 and 2** amend the provision that imposes the offshore petroleum title annual administration levy, so that it is imposed on an eligible title, regardless of whether that title is in force for the entire year. These items commence on a day to be fixed by proclamation, or six months after Royal Assent, whichever is the earlier and

- Schedule 1, Part 1, **items 3 to 20** extend the imposition of the offshore petroleum environmental plan levy to persons who submit an environmental plan under recently amended regulations. **These items commence on the day after Royal Assent.**

**Background**

**Regulatory Powers Bill**

In 2012, the Government introduced into the House of Representatives the *Regulatory Powers (Standard Provisions) Bill 2012*, which was intended to standardise regulatory powers exercised by Commonwealth regulatory agencies. Examples of these powers include investigation of compliance with Commonwealth law, gathering of evidence, use of infringement notices, civil penalties, injunctions and undertakings.

In anticipation of the passage of that Bill, the Government enacted the *Compliance Measures No. 1 Act*, which conferred upon the NOPSEMA investigative and enforcement powers that relied on the proposed *Regulatory Powers (Standard Provisions) Act 2013*. These measures were designed to establish NOPSEMA as the single national regulator of safety and environmental management matters in relation to offshore petroleum developments, implementing a recommendation of the *Montara Commission of Inquiry*.  

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11. *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013*, section 2, **table item 3**.
The **Compliance Measures No. 2 Act** provides for regulatory enforcement procedures, and also relies on the proposed **Regulatory Powers (Standard Provisions) Act 2013**. Further background information on this legislation can be found in the Library’s previous Bills Digests for the **Regulatory Powers (Standard Provisions) Bill 2012** and the **Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012**.

As stated above, the Regulatory Powers (Standard Provisions) Bill lapsed at the end of the 43rd Parliament. That being the case, the Schedules of the **Compliance Measures No. 1 Act** and the **Compliance Measures No. 2 Act** that were related to that Bill have not come into effect.

An updated **Regulatory Powers (Standard Provisions) Bill 2014** is currently before the Parliament. Information is provided in the **Bills Digest** for that Bill. The amendments in the Regulatory Powers Bill (which is the subject of this Bills Digest) are dependent on the passage of the Regulatory Powers (Standard Provisions) Bill 2014. The Regulatory Powers Bill also contains a number of other minor, administrative measures to correct inconsistencies in the **OPGGS Act**, clarify administrative procedures and make minor amendments to cost-recovery procedures for the offshore petroleum regulatory regime.

As part of the Coalition’s policy to streamline environmental approvals, NOPSEMA will assess and approve the safety and environmental impacts of all offshore petroleum activity legislation, including where states and territories have referred their coastal waters petroleum jurisdiction to the Commonwealth (part of the so-called ‘one stop shop’ approach). This includes approvals required under the **Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)**. Previously, offshore petroleum developers were required to submit an environmental plan to NOPSEMA, and also seek separate approval under the **EPBC Act** (where necessary) from the Department of the Environment. The Bills clarify cost recovery arrangements for the assessment of environmental plans under this new scheme. Although this move has been less controversial than the plan to delegate some other **EPBC Act** approval functions to the states and territories, some environmental groups have reportedly criticised the initiative.

**Committee consideration**

**Senate Standing Committee for the Selection of Bills**

The Senate Selection Committee resolved in its **Sixth Report of 2014** that these Bills should not be referred to any committee.

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights considers that neither Bill appears to give rise to human rights concerns.

**Policy position of non-government parties/independents**

These Bills have received bipartisan support to date, and no concerns or issues have been raised by non-government parties or independents.

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24. I Macfarlane (Minister for Industry) and G Hunt (Minister for the Environment), **Streamlined offshore petroleum and greenhouse gas approvals – a one-stop shop to boost productivity**, media release, 28 February 2014, accessed 24 June 2014.
Position of major interest groups
These Bills do not appear to have raised concern or commentary from major interest groups. The petroleum industry lobby group, the Australian Petroleum Production and Exploration Association has been broadly supportive of the reforms to offshore petroleum regulation in the wake of the Montara disaster, and has welcomed the move to streamline environmental approvals in particular. 28 However, these Bills are largely administrative in nature and have not attracted public interest.

Financial implications
The Explanatory Memoranda to the Bills state that the Bills will have no financial impact. 29 Although both Bills deal with the collection and administration of regulatory levies, the actual amount of money raised by the existing cost-recovery regime would most likely not alter in a significant way.

Statement of Compatibility with Human Rights
As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. 30 The Government considers that the Bills are compatible.

Key issues and provisions
Regulatory Powers Bill
Schedule 1 of the Regulatory Powers Bill principally replaces references in the OPGGS Act and the Compliance Measures No. 1 Act to sections of the Regulatory Powers (Standard Provisions) Act 2013 (which was not enacted) with corresponding sections of the Regulatory Powers (Standard Provisions) Act 2014, which has yet to be passed at the time of writing. These amendments are therefore largely technical in nature.

However, it seems premature to pass legislation to change references from one Bill which was not enacted to another Bill which is, at the time of writing this Bill Digest, also not enacted. The Regulatory Powers (Standard Provisions) Bill 2014 is not assured of passage through the Parliament and if it should fail to pass, a further Bill, similar to this Bill, will be required.

An exception to the technical nature of the Schedule 1 amendments is item 11. It amends paragraph 611E(1)(i) of the OPGGS Act (to be inserted by item 1 of Schedule 1 to the Compliance Measures No. 2 Act) to remove NOPSEMA’s power to issue an infringement notice to a petroleum project operator who failed to have a representative on site when other people were on site. 31 The Bill’s Explanatory Memorandum states that this requirement is in place to ensure that there is an operator’s management representative on site to exercise control over health, safety and environmental issues—and that any failure to do so does not represent a minor infraction that could be dealt with through an infringement notice. Rather, it is a more serious breach which should be prosecuted in court. 32

Schedule 2 of the Regulatory Powers Bill contains a provision that is related to the amendments to the annual titles administration levy made by the Regulatory Levies Bill. This provision allows regulations to be made to provide for the remittal or refund of part or all of an amount of annual titles levy, if the title is not held for the entire year. Schedule 2 also makes relatively minor, administrative amendments to the OPGGS Act to address technical errors and clarify administrative procedures under the OPGGS Act. These amendments do not represent any variation from existing policy.

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30. The Statement of Compatibility with Human Rights can be found at page 5 of the Explanatory Memorandum to the Regulatory Powers Bill, and page 4 of the Explanatory Memorandum to the Regulatory Levies Bill.
31. Ibid.
32. Ibid.
Regulatory Levies Bill

Schedule 1, items 1 and 2 of the Regulatory Levies Bill, clarify that the National Offshore Petroleum Titles Administrator can impose an annual titles administration levy on petroleum title holders for every year or part thereof that a title is in force, on the anniversary of its granting. This ensures that the levy can be collected regardless of whether the title is in force for the whole year.33

The remainder of Schedule 1 allows for the imposition of an environment plan levy on petroleum project applicants, where they are required to submit an environmental plan under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009. These regulations were amended in February 2014 to allow for NOPSEMA to conduct assessments and approvals under the Environment Protection and Biodiversity Conservation Act 1999. The new regulations will require applicants for certain types of petroleum pipeline and greenhouse gas storage research titles to submit environment plans to NOPSEMA, prior to titles being granted. These amendments allow for NOPSEMA to impose an environment plan levy on these applicants when they submit their environment plan.34 Amendments proposed in Schedule 1 also allow for the imposition of this levy when the activity to which the plan relates, occurs in state or territory coastal waters.35

33. Explanatory Memorandum, Regulatory Levies Bill, op. cit., p. 5.
34. Ibid.
35. Regulatory Powers Bill, Schedule 1, items 13 to 20.