
Juli Tomaras
Law and Bills Digest Section
Dr Alexander St John
Science, Technology, Environment and Resources Section

Contents

Purpose of the Bill ................................................................. 2
Background ........................................................................... 2
   Regulation of offshore petroleum and greenhouse gas storage operations in Australia ........................................ 3
Committee consideration ................................................... 5
Policy position of non-government parties/independents .... 5
Position of major interest groups ....................................... 5
Financial implications ......................................................... 5
Statement of Compatibility with Human Rights ............... 6
Key issues and provisions.................................................... 6
Jurisdiction over offshore petroleum activity ................ 6
Miscellaneous Measures Bill ............................................. 7
   Extension of area in which powers may be conferred on NOPSEMA .......................................................... 7
   Using the corporations power to support NOPSEMA’s activities in state and territory waters ....................... 8
Other provisions ................................................................ 9
Regulatory Levies Bill ............................................................ 9

Date introduced: 3 December 2014
House: House of Representatives
Portfolio: Industry
Commencement: The day after Royal Assent.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Bill 2014 and the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Designated Coastal Waters) Bill 2014 or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
Purpose of the Bill

The purpose of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Bill 2014 (the Miscellaneous Measures Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGS Act) to:

• amend the meaning of ‘designated coastal waters’ within the OPGGS Act, to allow the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to operate within the territorial coastal waters of a state or the Northern Territory and
• provide that where several parties are registered holders of an offshore petroleum title, certain voluntary administrative activities may be undertaken jointly by the parties, rather than only by a nominee of the title holders.

The purpose of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Designated Coastal Waters) Bill 2014 (the Regulatory Levies Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 (the Regulatory Levies Act) to confine the area that the Regulatory Levies Act operates in, to prevent it operating in the internal waters of a state or the Northern Territory.

Background

The framework governing marine regulation in Australia is complex and informed by Australia’s constitutional structure and the respective powers of the Commonwealth, state and territory governments, agreements made under that constitutional structure, and Australia’s obligations under international law, in particular, those relating to the law of the sea.

Figure 1  Maritime zones and rights under the 1982 United Nations Convention on the Law of the Sea (UNCLOS)


In terms of offshore minerals resources, under international law, the Commonwealth has sovereignty in respect of the territorial sea5 and sovereign rights in respect of both the continental shelf6 and the exclusive economic zone for the purpose of exploitation of their natural resources. This means that the sovereignty over minerals of states and the Northern Territory only extends to the baseline (which is normally the low water mark) and it is

---

the Commonwealth which is entitled under international law to exercise sovereignty over minerals in the territorial sea, within the exclusive economic zone and on the Continental shelf.7

The Seas and Submerged Lands Act 1973 (Cth) (the SSL Act), passed under the Whitlam Labor Government, attempted to clarify the position of the Commonwealth and the states in relation to marine areas, to reflect developments in the international law of the sea. The SSL Act gave sovereignty of Australian territorial seas (save internal waters of states) and resources to the extent of the continental shelf such as existed immediately prior to Federation, to the Commonwealth. The SSL Act also aimed to give effect to the provisions of the 1958 Territorial Sea and Continental Shelf Conventions, and made provision for Proclamations for territorial sea baselines, the breadth of the territorial sea and the limits of the continental shelf. The states challenged the constitutional validity of the legislation in the High Court.8 The Court found in favour of the Commonwealth and held that the Commonwealth had the power to deal with all maritime areas that were not part of a state—all waters, and seabed beyond the low water mark (save certain internal waters) fell into this category.9

**Offshore Constitutional Settlement (OCS)**

The High Court’s decision in the Seas and Submerged Lands Case continued to be a source of concern to the states. Under the Fraser Government, negotiations commenced between the Commonwealth and state governments on jurisdiction in offshore areas. In 1979, the negotiations concluded in the Offshore Constitutional Settlement (OCS) which handed over to the states plenary jurisdiction over the sea and seabed for areas within three nautical miles of the territorial sea baseline. This meant the states hung onto the traditional control they had over the territorial sea prior to the SSL Act.

The OCS was achieved by state and Commonwealth legislation which came into effect in 1983.10 However, the Commonwealth still exercises responsibility over coastal waters in matters related to its constitutional powers, including defence and foreign affairs.

**Regulation of offshore petroleum and greenhouse gas storage operations in Australia**

In terms of the regulation of offshore petroleum activities in Australian waters, responsibility is divided between the Australian Government and state and territory governments. Under the OSC the states have jurisdiction over petroleum activity in their own internal waters, and in the zone of ‘coastal waters’, which extends three nautical miles seaward of the territorial sea baseline. Thus state legislation for offshore mining is limited to the coastal waters of states. Outside these waters (that is, beyond the three nautical mile limit) the Commonwealth is responsible for legislation over offshore petroleum.11

Offshore mining beyond designated state and territory coastal waters is governed by the Commonwealth OPGGS Act and related Acts and Regulations.12 The offshore petroleum legislation, regulation and guidelines address several issues pertaining to the exploration and development of operations and are intended to ensure orderly exploration and production of petroleum and greenhouse gas resources, setting out a framework of rights, entitlements and responsibilities of government and industry.13 ‘Within this legal framework, Australian Government entities administer the regulatory regime [with respect to the offshore area] together with [relevant adjacent] state and Northern Territory government involvement through Joint Authority arrangements.’14

---

9. Petroleum is any naturally occurring, or mixture of naturally occurring hydrocarbons or mixture of hydrocarbon accumulations, which can be for example, in the form of a solid, liquid or gas. Hydrocarbon compounds are found naturally underground. The liquid form of petroleum is called crude oil.
10. The Commonwealth, on the request of the states, enacted the *Coastal Waters (State Title) Act 1980* (Cth) and the *Coastal Waters (State Powers) Act 1980* (Cth), accessed 24 February 2015. The validity of the OSC and its enabling legislation were upheld by the High Court in the case of *Port Macdonnell Professional Fishermen’s Association Inc v South Australia*, (1989) 168 CLR 340, [1989] HCA 49. The OSC’s legislative framework was held to be a valid exercise of power under section 51(ixxvii) of the *Constitution*, accessed 24 February 2015.
There is a Joint Authority for the offshore area of each state, the Northern Territory, the external territories and Eastern Greater Sunrise. The Joint Authorities for the offshore area of each state and the Northern Territory comprise the responsible Commonwealth Minister and the relevant state and Northern Territory Resources Minister. The responsible Commonwealth Minister is the Joint Authority for the offshore areas of the External Territories and Eastern Greater Sunrise.\textsuperscript{15}

The Joint Authority makes the major decisions under the \textit{OPGGS Act}\textsuperscript{16} concerning the granting of petroleum titles, the imposition of title conditions and the cancelling of titles, as well as core decisions about resource management and resource security. The \textit{OPGGS Act} also deals with the significant issue of health and safety. A complexity of the offshore jurisdiction is that a special regime for occupational health and safety (OHS) is established under the \textit{OPGGS Act} in offshore waters.\textsuperscript{17} In relation to the coastal waters (that is, within the three nautical mile limit) the Commonwealth OHS laws do not apply if the adjacent state or Northern Territory laws ‘substantially correspond’ to the listed Commonwealth ones.

In relation to the offshore OHS regime, the \textit{OPGGS Act} originally provided for a National Offshore Petroleum Safety Authority (NOPSA) (already established in 2005) whose main function was to promote and to regulate the occupational health and safety of persons engaged in offshore petroleum operations. The Act had made provision for states to be referred powers under this regime.

Serious incidents, such as the explosion at Varanus Island in 2008 and the blowout at the Montara oil platform in 2009 (and to a lesser extent, the 1988 Piper Alpha explosion in the North Sea), led the Commonwealth to reconsider its previous stance on regulation of offshore petroleum activity, and push for a single national regulator.\textsuperscript{18} Although a single national workplace health and safety regulator had been established in 2005 for offshore petroleum operations (the NOPSA), the day-to-day regulation of actual petroleum development activities (such as well integrity supervision) remained wholly the responsibility of state and territory governments.\textsuperscript{19}

The report of the Montara Commission of Inquiry suggested that this was a sub-optimal arrangement, and particularly singled out the regulatory supervision of the Northern Territory Department of Resources (the responsible authority in the case of the Montara accident) as inadequate. The report stated that the failure of the regulator to properly oversee the Montara operations meant that sub-standard oilfield practice was employed (which was a significant cause of the accident).\textsuperscript{20} In response, in 2010 and 2011 the federal Parliament passed several packages of legislation that transferred the regulatory functions of NOPSA to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), which was established on 1 January 2012 as a single national regulator for all offshore petroleum activities, explicitly including the function of offshore environmental management. NOPSEMA now regulates all aspects of offshore petroleum development in Commonwealth waters, including issuing safety and environmental approvals under Commonwealth legislation.\textsuperscript{21} Until early 2014, approvals under the Commonwealth’s \textit{Environment Protection and Biodiversity Conservation Act 1999} for offshore petroleum activities were issued separately by the Department of the Environment – this is now undertaken by NOPSEMA as well.\textsuperscript{22}

\begin{flushleft}
\footnotesize
\textsuperscript{15} Department of Industry and Science, \textit{‘Offshore Petroleum Regulatory Regime’}, Department of Industry and Science website, accessed 17 February 2015.

\textsuperscript{16} The \textit{OPGGS Act} in its current form, incorporating both petroleum and greenhouse gas storage activities, entered into force in 2008, having previously undergone a re-write and modernisation when introduced in 2006 as the \textit{Offshore Petroleum Act 2006} (OPA) which superseded and repealed the previous offshore petroleum legislation, the \textit{Petroleum (Submerged Lands) Act 1967} (PSLA).

\textsuperscript{17} \textit{OPGGS Act}, Part 6.8 and Schedule 3.


\textsuperscript{19} Ibid. Although the Commonwealth had jurisdiction beyond state coastal waters, it exercised that jurisdiction in joint authority with the adjacent state or territory. That joint authority then delegated regulatory responsibility to the relevant state or territory department – the designated authority.


\end{flushleft}
In addition, the Government encouraged the states and territories to use NOPSEMA as the safety and environmental management authority for offshore petroleum in state waters, by inviting the states to confer upon NOPSEMA the regulatory powers established in their own coastal waters legislation.23 As of the time of writing, the only state to have conferred the regulation of safety functions in state coastal waters on NOPSEMA was Victoria, with no states having conferred environmental management functions.24 Western Australia actively withdrew from the previous NOPSA regime in 2012.25

This package of legislation makes amendments to the OPGGS Act to ensure the ability of states to confer powers to regulate offshore petroleum activity in state waters to NOPSEMA, and well as making other minor, administrative amendments.

Committee consideration
The Senate Standing Committee for the Scrutiny of Bills examined both the Miscellaneous Measures Bill and the Regulatory Levies Bill. The Committee highlighted a potential ‘Henry VIII’ clause in the Miscellaneous Measures Bill, which could allow primary legislation to be amended by secondary legislation, but noted that the Explanatory Memorandum to the Miscellaneous Measures Bill contained a detailed justification for the clause and made no further comment. The Committee made no comment on the Regulatory Levies Bill.26

Policy position of non-government parties/independents
At the time of writing, non-government parties had not commented on the Bill. In general, reforms to the offshore petroleum regulatory regime since the Montara and Varanus disasters have been supported in a bipartisan fashion. However, the Abbott Government’s policy of streamlining environmental approvals through NOPSEMA has attracted criticism from environmental groups and the Greens, especially with regards to a perceived lack of transparency in environmental approvals issued through NOPSEMA.27

Position of major interest groups
To date, these Bills do not appear to have raised public concern or commentary from 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 do not appear to have attracted public interest.

Financial implications
The Government claims that the Miscellaneous Measures and Regulatory Levies Bills are not expected to have any financial impact.29

The larger policy intention behind these Bills is to make NOPSEMA (a Commonwealth agency) responsible for the regulation of safety and environmental management of offshore petroleum activities in state and territory waters, which is consistent with the Government’s desire to realise increases in efficiency as a result of regulatory streamlining.30 However, the purpose of the Regulatory Levies Bill is to prevent NOPSEMA from...
charging cost-recovery regulatory levies in some of these waters. As it would seem the cost from any regulatory activity that NOPSEMA may undertake under in these waters will ultimately be borne by the Commonwealth, unless alternative cost-recovery arrangements can be made. The Government suggests that as there is a ‘lack of activity’ in these waters, there will not be a significant financial impact, but this does not rule out the possibility of a financial impact in the future. Recognising this, the Government has advised that it:

... will bring forward alternative options to ensure that NOPSEMA will be able to fully recover costs associated with the performance of regulatory functions conferred by a state or the Northern Territory.

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. The Government considers that the Bills are compatible.

The Parliamentary Joint Committee on Human Rights considers that the Bills do not raise human rights concerns.

Key issues and provisions

Jurisdiction over offshore petroleum activity
As already pointed out, Australia’s maritime jurisdiction is comprised of a number of zones, in which different bodies of law apply. With respect to offshore petroleum activity, these zones are comprised of:

• internal waters of a state or territory, over which that state or territory has jurisdiction, and its full body of laws apply. Internal waters include those waters within the limits of a state or territory, and are generally all waters landward of the territorial sea baseline. Internal waters normally cover rivers, inland lakes and bays which are closed by drawing a line across the mouth of the bay.

• coastal waters of a state or the Northern Territory extend three nautical miles seaward from the territorial sea baseline. Pursuant to the 1979 Offshore Constitutional Settlement, these coastal waters are within the full jurisdiction of the adjacent state or territory. Petroleum development and occupational health, safety and environmental matters are regulated fully under state law.

• the offshore area of a state or the Northern Territory extends from the edge of coastal waters to the edge of the Continental shelf or the Exclusive Economic Zone. In this area, the Commonwealth has jurisdiction, although the body of laws that apply in this area are a mix of Commonwealth and state law. Nominally for petroleum related activity, the ordinary laws of the adjacent state apply as ‘applied laws of the Commonwealth’, although a number of exceptions apply. With respect to this Bill, the most important exception is that occupational health and safety laws of the adjacent state or the Northern Territory are not applied, nor is that state or territory’s criminal law. Similarly, the process for licencing the development of petroleum is controlled by the Commonwealth law.


33. Ibid.
34. The Statements of Compatibility with Human Rights can be found at page four of the Explanatory Memorandum to the Miscellaneous Measures Bill, and page two of the Explanatory Memorandum to the Regulatory Levies Bill.
36. There are some instances in which waters landward of the territorial sea baseline are technically not internal waters as they are not within the limits of states as granted through the Letters Patent establishing the previous colonial boundaries; however for the purposes of offshore petroleum activity they can be treated as internal waters.
39. Beyond these boundaries is ‘international seabed’. These may be developed under the United Nations Convention on the Law of the Sea (as given force in the OPGGS Act), but petroleum activities in this area are unlikely to be practical in the foreseeable future.
40. OPGGS Act, section 78-94; M White, op. cit. pp. 53–57.
• the post-1990 territorial sea (up to 12 nautical miles from the baseline) and the contiguous zone (the next 12 nautical miles, out to 24 nautical miles from the baseline) are not of substantial relevance for offshore petroleum activity.

These distinctions are important, as they provide for a relatively complex system of regulation of offshore petroleum activity, with different sets of laws covering the same activities undertaken, depending on the distance from the shoreline. For example, on the coastline off north-west Western Australia, no fewer than four separate regulatory regimes apply to petroleum activities. For offshore petroleum in the Commonwealth jurisdiction, the OPGGS Act applies; in coastal waters, the Petroleum (Submerged Lands) Act 1982 (WA) applies; in waters landward of the territorial sea baseline, the Petroleum and Geothermal Energy Resources Act 1967 (WA) applies, and on Barrow Island the Petroleum Act 1936 (WA) applies. This map demonstrates this complex arrangement.41

Miscellaneous Measures Bill

Extension of area in which powers may be conferred on NOPSEMA

The differences in jurisdiction and applied laws set out above mean that the success of the Commonwealth’s agenda to have a single national regulator responsible for all offshore petroleum activity relies upon the co-operation of the states and the Northern Territory. The Miscellaneous Measures Bill makes changes to the OPGGS Act to allow the states and the Northern Territory to confer powers on NOPSEMA for any and all petroleum activity.

The functions of NOPSEMA are set out in section 646 of the OPGGS Act. NOPSEMA’s functions include those conferred under state or territory legislation in relation to the designated coastal waters of the state or territory. Designated coastal waters are currently defined in section 644 of the OPGGS Act as follows:

(1) For the purposes of this Part, designated coastal waters, in relation to a State or the Northern Territory, means:
   (a) so much of the scheduled area for that State or Territory as consists of the territorial sea; and
   (b) any area that:
      (i) is within the scheduled area for that State or Territory; and
      (ii) is on the landward side of the territorial sea; and
      (iii) was, immediately before the commencement of the relevant State or Territory PSLA [Petroleum (Submerged Lands) Act], the subject of a petroleum exploration permit under the repealed Petroleum (Submerged Lands) Act 1967.42

(2) For the purposes of subsection (1), assume that the breadth of the territorial sea of Australia had never been determined or declared to be greater than 3 nautical miles, but had continued to be 3 nautical miles.

(3) Paragraph (1)(b) has effect subject to subsection (4).

(4) For the purposes of this Part, if (whether before or after the commencement of this subsection) an area that is within the designated coastal waters of a State or Territory because it is described in subparagraphs (1)(b)(i), (ii) and (iii) became or becomes an area that is:
   (a) not the subject of a petroleum exploration permit under the relevant State or Territory PSLA; and
   (b) not the subject of a petroleum retention lease under the relevant State or Territory PSLA; and
   (c) not the subject of a petroleum production licence under the relevant State or Territory PSLA; and
   (d) not the subject of an application for a petroleum retention lease or petroleum production licence under the relevant State or Territory PSLA;

   the area is taken to have ceased to be part of the designated coastal waters of that State or Territory.43

41. Department of Mines and Petroleum [Western Australia], Petroleum Act example, map, Government of Western Australia, accessed 30 January 2015.
42. Each state and the NT has a Petroleum (Submerged Lands) Act.
43. OPGGS Act, section 644.
This current definition limits designated coastal waters (that is, the area in which NOPSEMA may exercise functions conferred upon it by state or territory law) to the zone extending three nautical miles seaward from the territorial sea baseline, and in areas where petroleum exploration permits had been issued prior to the Offshore Constitutional Settlement (that is, prior to the commencement of the relevant state or territory Petroleum (Submerged Land) Act). This zone therefore excludes almost all state internal waters – such as considerable portions of the zone between Exmouth and Dampier off Western Australia, where significant petroleum activity is occurring (although it is likely that some of the activity in these areas would be captured by paragraph 644(1)(b)). The definition would also exclude all such waters as lie within the territorial limits of a state, such as Spencer Gulf and St Vincent’s Gulf in South Australia, to which the OPGGS Act and its predecessor legislation (the Petroleum (Submerged Lands) Act 1967) have never applied.44

Under the current definition of designated coastal waters, therefore, NOPSEMA would not be able to exercise powers conferred on it by a state or the Northern Territory in internal waters, presenting a significant hurdle to achieving the Commonwealth’s goal of a single national offshore petroleum regulator.

**Item 10** of Schedule 1 in the Miscellaneous Measures Bill is the key provision in achieving the Commonwealth’s objective. It repeals and replaces section 644 of the OPGGS Act to create a new definition of designated coastal waters, so that the term refers to ‘all waters of the sea landward of the offshore area’.45 In practical terms, this means any waters in, or landward of, the original three-mile territorial sea.

The proposed definition of designated coastal waters would permit NOPSEMA to exercise powers conferred on it by state or Northern Territory legislation in all waters of the sea in the conferring jurisdiction.

**Using the corporations power to support NOPSEMA’s activities in state and territory waters**

**Item 13** of Schedule 1 in the Miscellaneous Measures Bill creates new subsections 646A(1A) and (1B) in the OPGGS Act, which provide that within the territorial limits of a state or territory, regulatory functions can only be conferred on NOPSEMA in connection with the activities of constitutional corporations. The Explanatory Memorandum suggests that the decision in the case of R v Hughes requires that wherever the Commonwealth exercises a duty conferred upon it by state law, it must be supported by a constitutional head of power.46 Broadly, Hughes suggests that in regulatory schemes that operate in a co-operative fashion between the Commonwealth and the states, the mere conferral of regulatory powers by state law is insufficient for the Commonwealth to exercise authority; the Commonwealth’s authority must be supported by power accorded to it by the Constitution.47

Previously, as NOPSEMA’s operations were limited to areas outside of the territorial limits of the states and territories, the operation of NOPSEMA was considered to be fully supported by the external affairs power (section 51(xxix) of the Constitution).48 However, as **item 10** of the Bill expands the area in which NOPSEMA can operate to areas within state territorial limits, NOPSEMA’s operations would no longer be external to some areas of states and therefore require support from a different constitutional head of power. The Explanatory Memorandum notes that entities that would come under the control of NOPSEMA are exclusively foreign or trading corporations, making the corporations head of power sufficient.49

Although on the surface the corporations power provides ample constitutional support for NOPSEMA’s actions in designated coastal waters, it is possible that other entities could conduct offshore petroleum activities in which NOPSEMA may be interested. For example, the New South Wales Aboriginal Land Council, which is a statutory body established by part 7 of the Aboriginal Land Rights Act 1983 (NSW), has been active in attempting to obtain onshore petroleum exploration permits in New South Wales.50 It is therefore conceivable that such a group could apply for offshore petroleum titles, particularly as the concepts of marine native title and

---

44. Department of Industry, op. cit. See section 5 of the OPGGS Act for delineation of these areas.
49. Explanatory Memorandum, Miscellaneous Measures Bill, op. cit., p. 11.
indigenous sea country evolve at law. Whether such a group would be found to be a constitutional corporation is not entirely clear, but the possibility exists that an entity involved in petroleum activities in designated coastal waters could be an entity other than a constitutional corporation, in which case the corporations power would be insufficient to support NOPSEMA’s regulatory operations in those areas.

However, the current lack of conferral of powers on NOPSEMA by states and territories, and the exclusive participation in offshore petroleum activities by constitutional corporations, make this possibility sufficiently remote to conclude that the corporations power would appear to be an appropriate and practical head of power for the moment.

**Further comment**

The use of the corporations power in the Miscellaneous Measures Bill (and the OPGGS Act more generally) creates an interesting dimension in the policy agenda of the Government to unite all offshore petroleum activities under a single national regulatory regime. Should states remain reluctant to confer powers on NOPSEMA voluntarily, a future course of action by the Commonwealth might be to legislate for a national offshore petroleum regime by regulating all offshore petroleum activities undertaken by constitutional corporations. Since operational offshore petroleum activity is undertaken almost exclusively by corporations, this may provide a practical way of capturing all offshore petroleum activity, and achieving a national safety and environmental management scheme. However, the Commonwealth has not as yet indicated that it is of a mind to do so.

**Other provisions**

Other sections of Schedule 1 of the Miscellaneous Measures Bill are largely administrative in nature, and are satisfactorily explained in the Explanatory Memorandum.

Schedule 2 of the Miscellaneous Measures Bill makes an administrative change to the OPGGS Act to allow multiple titleholders to undertake certain voluntary activities jointly, rather than just through a nominee. The Explanatory Memorandum to the Miscellaneous Measures Bill suggests that in some cases, where a title has multiple interested parties, those parties have been creating additional work for themselves and the regulator. As they have only been able to undertake these voluntary activities through a nominee, rather than jointly, some have taken the approach of nominating a person to take an action, having that person take the action, and then immediately revoking the nomination. This approach is taken to safeguard against the nominee taking unauthorised action. Item 10 of Schedule 2 of the Miscellaneous Measures Bill amends subsection 775C(5) of the OPGGS Act to allow actions to be taken either jointly, or through a nominee. The Bill also amends the OPGGS Act to require titleholders that revoke nominations to inform other titleholders of the revocation, as revocations may be made by one of the titleholders acting individually (items 6 and 11).

**Regulatory Levies Bill**

The Regulatory Levies Bill’s single substantial change is to amend the Regulatory Levies Act to maintain the current definition of ‘designated coastal waters’ that applies to that Act.

In the existing Regulatory Levies Act, the definition of designated coastal waters, in which NOPSEMA collects regulatory levies, is the same as in the OPGGS Act. As set out above, the OPGGS Act’s definition of ‘designated coastal waters’ is to be amended by the Miscellaneous Measures Bill to cover any waters of the sea landward of the territorial sea baseline – which would include internal waters. This would have the effect of imposing regulatory levies into the internal waters of a state, if the state confers regulatory powers on NOPSEMA in relation to activities in this area. Item 4 of the Regulatory Levies Bill inserts a definition of designated coastal waters in the Regulatory Levies Act so that it is no longer linked to the OPGGS Act definition. The definition inserted in proposed section 3A of the Regulatory Levies Act by item 4 of the Regulatory Levies Bill is the definition of designated coastal wasters that currently exists in the OPGGS Act (as set out on page 7 of this

---


52. Explanatory Memorandum, Miscellaneous Measures Bill 2014, op. cit., p. 2. Eligible voluntary activities include making an application, giving a nomination, making a request, giving a notice, giving a plan or giving an objection, where the action may be done but is not required to be done (OPPGGS Act, section 775A).
Digest). The effect of this is that the area of operation of the Regulatory Levies Act will be unchanged by the proposed change to the OPGGS Act.

The Government is concerned that imposing a regulatory levy in these waters could give rise to constitutional invalidity under section 51(ii) of the Constitution, which prohibits the Commonwealth from imposing taxation that discriminates between states or parts of states. The definition proposed by item 4 has the effect of removing coastal waters that do not form part of the pre-1990 territorial sea from consideration, except where those waters are covered by a petroleum title issued by the Commonwealth prior to the Offshore Constitutional Settlement.

Setting aside concerns about constitutional invalidity, the Government maintains that this is of negligible practical impact as there are minimal petroleum operations in these waters. However, there are in fact considerable areas landward of the territorial sea baseline that are highly prospective for petroleum reserves. The Western Australian coast between Exmouth and Karratha contains large areas of sea waters inside the territorial sea baseline, and in fact there is significant petroleum activity occurring in this area. Should the Western Australian Government be of a mind in the future to confer powers under state law upon NOPSEMA, NOPSEMA would not be able to charge regulatory levies and recover its costs in this area. As mentioned earlier, the Government has advised that it is developing options to recover costs in these areas, but no detail has yet been forthcoming.


Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Bill 2014

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.

© Commonwealth of Australia

Creative Commons

With the exception of the Commonwealth Coat of Arms, and to the extent that copyright subsists in a third party, this publication, its logo and front page design are licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia licence.

In essence, you are free to copy and communicate this work in its current form for all non-commercial purposes, as long as you attribute the work to the author and abide by the other licence terms. The work cannot be adapted or modified in any way. Content from this publication should be attributed in the following way: Author(s), Title of publication, Series Name and No, Publisher, Date.

To the extent that copyright subsists in third party quotes it remains with the original owner and permission may be required to reuse the material.

Inquiries regarding the licence and any use of the publication are welcome to webmanager@aph.gov.au.

Disclaimer: Bills Digests are prepared to support the work of the Australian Parliament. They are produced under time and resource constraints and aim to be available in time for debate in the Chambers. The views expressed in Bills Digests do not reflect an official position of the Australian Parliamentary Library, nor do they constitute professional legal opinion. Bills Digests reflect the relevant legislation as introduced and do not canvass subsequent amendments or developments. Other sources should be consulted to determine the official status of the Bill.

Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library’s Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.