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Law and Bills Digest Section

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## Glossary

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<td>CCS</td>
<td>Carbon capture and storage</td>
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<td>CSLR</td>
<td>Carbon Sequestration Leadership Forum</td>
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<td>NOPSA</td>
<td>National Offshore Petroleum Safety Authority</td>
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<td>NOPSEMA</td>
<td>National Offshore Petroleum Safety and Environmental Management Authority</td>
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<td>NOPTA</td>
<td>National Offshore Petroleum Titles Administrator</td>
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<tr>
<td>Primary Act</td>
<td><em>Offshore Petroleum and Greenhouse Gas Storage Act 2006</em></td>
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<td>Safety Levies Act</td>
<td><em>Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003</em></td>
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Date introduced: 25 May 2011
House: House of Representatives
Portfolio: Resources and Energy


Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/bills/. 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/.

Purpose

The Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Bill 2011 (the Bill) proposes amendments to the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 (the Act) to impose new cost recovery levies on offshore petroleum and greenhouse gas title holders. It is proposed that these new levies would recover the costs of:

- the new NOPTA in undertaking its regulatory functions relating to titles administration, and
- the new NOPSEMA in undertaking its regulatory functions relating to environmental management.1

Background


The Act had been known as the Safety Levies Act.

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The Safety Levies Act was amended and renamed the ‘Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003’ by the Amendment Act, Schedule 1 of which commenced on 17 June 2011.  

Collection of offshore petroleum Bills

The Bill was introduced into Parliament with four other Bills related to the administration and regulation of offshore petroleum and greenhouse gas storage. These Bills are:

- the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011
- the Offshore Petroleum (Royalty) Amendment Bill 2011
- the Offshore Petroleum and Greenhouse Gas Storage Amendment (Registration Fees) Bill 2011, and
- the Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011.  

NOPTA

The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011 (the National Regulator Bill) proposes to amend the Primary Act to establish NOPTA, among other things.

It is proposed that NOPTA would be responsible for assisting and advising the Joint Authority, as well as keeping registers of titles. The Joint Authority:


3. For copies of these Bills, see: Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011 - http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F4589%22

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... for each State and the Northern Territory comprises the 'responsible Commonwealth Minister' (currently the Minister for Resources and Energy) and the relevant State or Northern Territory Minister. The Joint Authorities make the major decisions under the Act 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.\(^4\)

NOPTA would 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 the existing NOPSA.\(^5\)

**NOPSEMA**

The National Regulator Bill, mentioned above, also proposes to amend the Primary Act to establish NOPSEMA, which would be an expanded version of NOPSA.

It is proposed that NOPSA’s functions would expand from occupational health and safety; and structural integrity; to include environmental management—hence the rename to NOPSEMA.\(^6\)

Currently, NOPSA is funded on a full cost recovery basis with levies raised from the offshore petroleum industry. However, it is stated that as none of its existing levies, including levies proposed by the Amendment Act, extend to regulating environmental matters—the Bill proposes to amend the Act to impose a levy on title holders to fully recover costs of regulating environmental matters so as to ensure that NOPSEMA is funded to fulfil its proposed environmental management responsibilities.\(^7\)

**Policy commitment**

The Bill is part of regulatory reform relating to the administration and regulation of the Offshore Petroleum and Greenhouse Gas Storage industry, which gained momentum in 2003 when Australia became a founding member of the CSLR, an international group of governments, non government organisations, industry and researchers collaborating on CCS.\(^8\)

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In 2005, the Ministerial Council on Mineral and Petroleum Resources endorsed a set of regulatory principles relating to CCS in Australia to achieve a nationally-consistent framework for CCS activities in each Australian jurisdiction.9

In August 2007, the House of Representatives Standing Committee on Science and Innovation (the Science and Innovation Committee) published a report from its inquiry into the science and economics of CCS, concluding that CCS technology would potentially be important in the global effort to reduce carbon dioxide emissions.10 In order to realise that potential, the Science and Innovation Committee emphasised the importance of encouraging investor confidence in undertaking large scale CCS activities and recommended that Commonwealth, state and territory governments should develop appropriate legislative and regulatory CCS frameworks.11

It was decided that the Offshore Petroleum Act 2006 would be the most appropriate means of implementing a greenhouse gas storage regime in offshore areas, based on a belief that the longstanding petroleum and emerging greenhouse gas storage industries had similarities and would be able to co-exist in offshore areas.12

Since then, there have been other inquiries and reviews, which have informed the policy commitment behind the reform of administration and regulation of the offshore petroleum and greenhouse gas industries. These have included inquiries into the Montara incident in 2009.13

Comprehensive information regarding the policy commitment behind the reform of administration and regulation of the offshore petroleum and greenhouse gas industries, generally, are set out in the Bills Digests related to previous amending legislation and, consequently, will not be repeated in this Digest.14

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9. Ibid., p. 18.
10. Ibid., pp. ix and 18.
11. Ibid., pp. ix–xii.

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Committee consideration

The Bill has been referred to the following Parliamentary committees for inquiry and report:

- the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry (the House of Representatives Committee), and
- the Senate Standing Committee on Economics (the Senate Economics Committee).¹⁵

At the time of writing this Digest, there is no publicly available information as to reporting deadlines for the House of Representatives Committee.

The Senate Economics Committee tabled its report on 16 June 2011.¹⁶ In general, the majority of the Economics Committee recommended that the Bill be passed, along with the other four Offshore Petroleum Bills.¹⁷ However, the Coalition Senators put out a dissenting report, stating that:

the legislation is not reflective of the co-operative negotiations that have been taking place with the WA government in recent months. Indeed, WA was not provided with the amendment Bills until after they were introduced into Federal Parliament on 25 May 2011...

The Commonwealth and Western Australia have also been negotiating a memorandum of understanding for co-operative working arrangements to allow for sharing of expertise and resources on a cost recovery basis...

In light of these talks, it would be far more prudent for the Commonwealth government to delay the legislation’s progression until these negotiations were completed. This would also provide scope for outcomes to be incorporated into relevant parts of the legislation.¹⁸

It is also noted that the Senate Scrutiny of Bills Committee has reviewed the Bill and expressed concern about imposing levies by regulation without setting an upper limit in the Bill itself as this

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creates a risk that the levy may become a tax.\textsuperscript{19} However, the Scrutiny of Bills Committee recognised that:

\begin{quote}

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.\textsuperscript{20}
\end{quote}

The Scrutiny of Bills Committee also noted that a similar issue had been raised in relation to the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 1) Bill 2011 and that it had accepted the Government’s response in relation to that Bill, which set out measures to ensure that levy amounts would not be increased excessively or in an undue manner. However, in the absence of such explanation relating to this Bill, the Scrutiny of Bills Committee sought the Minister’s advice in relation to this issue.\textsuperscript{21}

**Position of major interest groups**

Concerns have been expressed by major interest groups, during the Senate Economics Committee inquiry, about the package of Bills introduced in May 2011. Although most concerns relate to the reforms as a whole, some comments are directly relevant to this Bill itself. Comments by the Western Australian Government, Maritime Union of Australia and Australian Petroleum Production and Exploration Association (APPEA) are set out below. The main concerns include:

- the timing of the introduction of the package of offshore petroleum Bills
- conferral of functions and powers by States and the Northern Territory, and
- full cost recovery being applied to regulatory functions.\textsuperscript{22}

It is noted that the Western Australian Government does not support the introduction of this package of Bills before the Memorandum of Understanding (MOU) between it and the Federal Government has been finalised.

According to the Western Australian Government:

\begin{itemize}
\item \textsuperscript{20} Ibid.
\item \textsuperscript{21} Ibid., p. 39. At the time of writing, there is no Government response in relation to the Scrutiny of Bills Committee’s request.
\item \textsuperscript{22} These concerns are also similar to those expressed in submissions to the House of Representatives Committee inquiry: see House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry, Submissions, Bills referred 25 May 2011, viewed 23 June 2011, [http://www.aph.gov.au/house/committee/arff/petroleum/subs.htm](http://www.aph.gov.au/house/committee/arff/petroleum/subs.htm)
\end{itemize}

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Western Australia (WA) is not supportive of the legislative amendments as they do not reflect the progress made on co-location and WA’s understanding of the continuing role of the Joint Authority.

Australia is in the midst of a boom in LNG developments involving multi-billion dollars in investment and multi-billions in export earnings with significant impacts on our national and state/NT economies. Within WA, the most active petroleum jurisdiction in Australia, five LNG developments with onshore LNG processing plants are at various stages of development, from engineering to construction. These projects will have a large impact on the State’s economy and span across Commonwealth and State jurisdiction.

WA has already stated that it does not support such important regulatory functions within State waters, islands and onshore to be incorporated into both NOPTA and NOPSEMA. Already, several regulators are involved in approvals for aspects of these projects. It should be noted that under the amendments, a form of the Joint Authority (Commonwealth and State participation in decision making) is preserved, thus giving the State some information from NOPTA regulation. However, there is no provision for consultation or notice provided in the amendments for giving the State information from NQPSEMA regulation.

Despite the Western Australian Government’s position regarding the creation of NOPTA and NOPSEMA, the State has been negotiating with the Commonwealth for more than a year to provide a workable arrangement. Recently, agreement in principle has been reached with the Federal Government for State and Commonwealth petroleum regulators to be co-located to facilitate the transfer of responsibilities and ensure more efficient use of regulatory staff for approvals in State and Commonwealth waters.

However, WA was not provided with the amendment bills until after they were introduced into Federal Parliament on 25 May 2011. Given the work on the collocation proposal and the development of a Memorandum of Understanding (MOU), this development is not an encouraging signal for the cooperation and goodwill required to establish NOPTA and NOPSEMA.

The Western Australian Government is also disappointed that the Federal Government has progressed legislation to introduce a single national offshore regulator without consultation or advice prior to the completion of negotiations with the State Government.

Given that a MOU for this co-location which WA has been negotiating for is almost finalised, it would have been better if the Federal Government had delayed its legislation until negotiations were completed and perhaps reflected in relevant parts of the legislation. ...

It is also noted that the Maritime Union of Australia expressed concerns including the following:

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The Explanatory Memorandum to the National Regulator Bill indicates that since 1 January 2005, NOPSA has been the regulator of occupational health and safety in Commonwealth waters under the Commonwealth Act and in State and Northern Territory coastal waters under the State and Northern Territory Petroleum (Submerged Lands) Acts, but this will only occur on passage and commencement of the Bill if there is a conferral of functions and powers by the States/NT. This does not appear likely in the immediate future given the position taken by the WA Government.

The safety jurisdiction is currently confusing and uncertain, involving at least 3 Commonwealth Acts (OPGGS Act, Navigation Act and Occupational Health and Safety (Maritime Industry) Act and State/NT Acts). This Regulatory uncertainty for OHS in particular will become even more uncertain if NOPSEMA’s jurisdiction is withdrawn from designated coastal waters (in the absence of State/NT conferral).  

APPEA is the peak national body representing the oil and gas exploration and development industry in Australia. In relation to the imposition of the new regulatory levies, APPEA states:

APPEA and its members are strongly opposed to full cost recovery being applied to the regulatory functions associated with the control, administration and technical oversight of the industry’s operations. While there is a benefit to the industry from regulatory third party oversight of the industry’s operations, the industry remains of the view that there are substantial public benefits associated with the regulation and oversight of the industry... that should be recognised through at least some publicly funded contribution.

In addition, in relation to environmental plan levies, APPEA states:

With regard to environment plan levies, APPEA is concerned that, unlike the safety case levy, there is no provision made for an investigations levy. As a result, environmental incident investigations would need to be funded through the environment plan levy, suggesting that those companies that are not the subject of an environmental investigation would be subsidising those that are.

In addition, there is potential for NOPSEMA’s activities to be expanded to include participation in condition setting on environmental approvals to meet the provisions of the Environment Protection and Biodiversity Conservation Act 1999. If this is the case then how this function is to be funded is unclear.

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26. Ibid., p. 6.
Financial implications

The Federal Government states that there will be no financial impact on its Budget and that the Bill would not impose any new significant regulatory burdens on the petroleum industry.27

According to the Federal Government, all cost recovery arrangements are consistent with its cost recovery guidelines and there will be regular reviews of costs and governance arrangements to ensure fees do not become unnecessarily burdensome on industry.28

Key provisions

Items 6 and 8–19 propose amendments to various sections of the Act related to expanding NOPSA’s functions and renaming it as NOPSEMA, as discussed earlier in this Digest.

Item 20 proposes to insert new sections 10E–10G into the Act related to imposing the new annual titles administration and environmental plan levies.

Proposed section 10E relates to imposing an ‘annual title administration levy’ and provides that an annual titles administration levy would be imposed, in relation to an ‘eligible title’ that is in force, for each year of the term of the title beginning at, or after, commencement of this provision. This levy would be payable by the registered title holder. Under proposed subsection 10E(7), an ‘eligible title’ means:

- a work-bid petroleum exploration permit
- a special petroleum exploration permit
- a petroleum retention lease
- a petroleum production licence
- an infrastructure licence
- a pipeline licence
- a work-bid greenhouse gas assessment permit
- a greenhouse gas holding lease, or
- a greenhouse gas injection licence.

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Proposed subsection 10E(4) provides that the amount of the levy would be specified or worked out according to a formula set out in the regulations. Levy amounts may differ according to the various eligible titles.

The Explanatory Memorandum states:

The purpose of the annual titles administration levy is to recover from industry NOPTA’s full regulatory costs associated with undertaking its functions in relation to titles administration, including maintaining a register, assisting the Joint Authority in relation to titles, regulatory oversight, compliance monitoring and enforcement.

Proposed section 10F relates to imposing an 'environmental plan levy' in relation to activities authorised by Commonwealth titles. Under proposed subsection 10F(7), a ‘Commonwealth title’ means:

- a petroleum exploration permit
- a petroleum retention lease
- a petroleum production licence
- an infrastructure licence
- a pipeline licence
- a petroleum special prospecting authority
- a petroleum access authority
- a greenhouse gas assessment permit
- a greenhouse gas holding lease
- a greenhouse gas injection licence
- a greenhouse gas search authority, and
- a greenhouse gas special authority.

An environmental plan levy would be imposed if:

- both
  - an environmental plan is submitted to NOPSEMA under regulation 9 of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations), and
  - the activities to which the environmental plan relates are authorised by one or more Commonwealth titles, or
- both

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29. Please refer to the Senate Scrutiny of Bills Committee’s comments about providing for rates of levies to be set in regulations without the primary Act setting an upper limit, as mentioned earlier.


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a proposed revision of an environmental plan is submitted to NOPSEMA under regulation 17, 18 or 19 of the Environment Regulations, and
the activities to which the environmental plan relates are authorised by one or more Commonwealth titles.

The environmental levy would be payable by the registered title holder of the Commonwealth title (or titleholders if the activity relates to more than one title).

As with the annual title administration levy, the amount of the environmental plan levy would be specified or worked out according to a formula set out in the regulations. Environmental plan levy amounts may differ according to the circumstances concerned.

**Proposed section 10G** is a provision similar to **proposed section 10F**, but deals with imposing an environmental plan levy in relation to activities authorised by state or territory titles. A ‘**State or Territory title**’ means an instrument under a State or Territory Petroleum (Submerged Lands) Act that confers, in relation to the coastal waters of the state or territory, some or all of the rights that a Commonwealth title (within the meaning of **proposed section 10F**) confers in relation to the offshore area of the State or Territory, as the case may be (**proposed subsection 10G(7)**).

**Comments**

When considering this Bill, Parliament may wish to consider concerns that were raised in the Coalition Senators’ Dissenting Report and in submissions made to the Senate Economics and House of Representatives Committees’ inquiries, mentioned above.

In particular, Parliament may wish to consider that:

- negotiations between the Federal and Western Australian governments relating to a Memorandum of Understanding, which may have relevance to the Bill, are not yet complete
- concern has been expressed about imposing full cost recovery in relation to NOPTA and NOPSEMA, and
- it is proposed that rates of levies would be specified or worked out according to a formula set out in regulations without setting an upper limit to those rates in the Bill.

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31. Please refer to the Senate Scrutiny of Bills Committee’s comments about providing for rates of levies to be set in regulations without the primary Act setting an upper limit, as mentioned earlier.

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