THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE REGULATORY LEVIES LEGISLATION AMENDMENT (2011 MEASURES NO. 1) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
GENERAL OUTLINE

The purpose of the Bill is to amend the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003 (the Safety Levies Act) to impose cost-recovery levies on holders of offshore petroleum titles in respect of wells and well-related activities in those titleholders’ title areas. The levies will recover the costs of the National Offshore Petroleum Safety Authority (NOPSA) in undertaking its regulatory functions in relation to structural integrity and safety of wells and well-related equipment.

The Bill also amends the title of the Safety Levies Act to the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003, to reflect the expansion of its content to include levies relating to wells. The Safety Levies Act is therefore referred to as ‘the Regulatory Levies Act’ in the remainder of this explanatory memorandum.

The Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Act 2010, which received Royal Assent on 16 November 2010, amended the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGS Act) in a number of ways, including to:

- Augment NOPSA’s functions to include the functions conferred by the OPGGS Act, and by the regulations, with respect to non-occupational health and safety (non-OHS) structural integrity of facilities, wells and well-related equipment. This addition to its functions gave NOPSA the capacity to regulate (among other things) the structural integrity of wells and well operations over the life of the well.
- Clarify that an OHS duty of care applies to titleholders in relation to wells and well-related equipment; and
- Provide NOPSA with inspection and investigation powers to enable it to investigate suspected breaches of the titleholder duty of care in relation to wells and well-related equipment.

To give effect to NOPSA’s augmented functions under the OPGGS Act, Part 5 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations will provide NOPSA with regulatory functions and powers relating to management of well operations. It is intended that these Regulations will be brought into effect in April 2011.

NOPSA is currently 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. Both of these existing levies are payable by the facility operator. These safety-related levies do not extend to NOPSA’s regulation of wells and well operations under Part 5 of the RMA Regulations or oversight of compliance with the titleholder duty of care in clause 13A of Schedule 3 to the OPGGS Act, as
these provisions are not facility-based and place obligations on titleholders, not facility operators.

To ensure NOPSA is funded to enable it to fulfil its augmented responsibilities under the OPGGS Act and Part 5 of the RMA Regulations, the Bill amends the Regulatory Levies Act to impose a levy on titleholders to fully recover costs associated with undertaking its functions relating to regulation of wells and well-related equipment.

The Bill provides for the imposition of three types of well levies:

- An annual well levy is imposed on the titleholder at the start of each year, with the levy amount based on the number of non-abandoned wells that existed in the title area at the end of the preceding calendar year. This number of wells is deemed to include any wells in the title area that commenced to be drilled during the preceding calendar year and were plugged and abandoned during that year, as such wells would otherwise not be counted, even though NOPSA had exercised regulatory oversight in respect of them.

- A well activity levy is also imposed on a petroleum titleholder when the titleholder makes an application to NOPSA under Part 5 of the RMA Regulations for either acceptance of a well operations management plan, or approval to commence an activity relating to a well (such as well drilling, testing, abandonment, completion, and intervention).

- The Bill also provides for imposition of a well investigation levy. A well investigation levy is imposed on the titleholder where there is a breach or suspected breach of the titleholder duty of care in relation to wells and well-related equipment in clause 13A of Schedule 3 to the OPGGS Act, and the cost of an inspection undertaken by a NOPSA OHS inspector in relation to the breach or suspected breach exceeds the threshold amount of $30,000.

The well levies and well investigation levy are imposed on the registered holders of petroleum titles in Commonwealth waters. Levies are not imposed in relation to greenhouse gas wells, for which NOPSA does not have regulatory responsibility.

Well levies and well investigation levy will also be imposed on the registered holders of titles in the coastal waters jurisdiction of any State or Territory that has made NOPSA the regulator under State/Territory legislation and regulations that substantially correspond to the relevant Commonwealth legislation/regulations.

**FINANCIAL IMPACT STATEMENT**

Nil financial impact on the Australian Government Budget. This Bill will ensure that NOPSA can fully recover its costs from industry associated with undertaking augmented well integrity and well safety functions.

**REGULATORY IMPACT STATEMENT**

This bill does not impose any new regulatory burden on the petroleum industry. Public consultation in relation to the transfer of integrity of wells as a function to NOPSA occurred in conjunction with the 2010 legislative amendments.
NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2 - Commencement

Sections 1 to 3 in the Bill will commence on the day the Regulatory Levies Act receives Royal Assent.

Schedule 1 will commence on a day to be fixed by Proclamation. This will ensure that the levies are not imposed prior to the commencement of amendments to Part 5 of the RMA Regulations that transfer regulatory functions and powers relating to management of well integrity and operations to NOPSA. It will also ensure that necessary levies regulations can be prepared for commencement upon the imposition of the well levies and well investigation levy provided for by this Bill. However, if any provision does not commence within a period of 6 months, beginning on the day the Regulatory Levies Act receives Royal Assent, the provision/s will commence on the day after the end of that 6 month period.

Clause 3 - Schedules

This clause gives effect to the provisions in the Schedules to this Bill.

Schedule 1 - Amendments

Item 1 – Title
This item updates the long title of the Regulatory Levies Act so that it accurately reflects the broader range of regulatory levies that are imposed by the Regulatory Levies Act.

Item 2 – Section 1
This item amends the short title of the Regulatory Levies Act so that it accurately reflects the broader range of regulatory levies that are imposed by the Regulatory Levies Act.

Items 3 to 16 – Section 3
These items insert definitions in section 3 for the key terms that are used in the new provisions of the Regulatory Levies Act which impose the three well-related levies.

Item 3 – Section 3. This item defines “annual well levy” as a levy imposed by section 10A or 10B of the Regulatory Levies Act. See notes under item 17 in relation to annual well levy.

Item 4 – Section 3. This item defines “coastal waters”, in relation to a State or Territory.

Item 5 – Section 3. This item defines “construct”, in relation to a well. See item 12.
Item 6 – Section 3. This item provides that “cost” includes part of a cost. See notes under item 17 in relation to well investigation levy.

Item 7 – Section 3. This item provides that “expense” includes part of an expense. See notes under item 17 in relation to well investigation levy.

Item 8 – Section 3. This item defines “offshore area”, in relation to a State or Territory. The offshore areas are the Commonwealth waters where the OPGGS Act applies.

Item 9 – Section 3. This item defines “petroleum exploration permit”.

Item 10 – Section 3. This item defines “petroleum production licence”.

Item 11 – Section 3. This item defines “petroleum retention lease”.

Item 12 – Section 3. This item provides that “prepare”, in relation to a well, includes construct. See item 5. These terms are defined for the purposes of the well investigation levy and have the same meaning as in clause 13A of Schedule 3 to the OPGGS Act.

Item 13 – Section 3. This item defines “well”.

Item 14 – Section 3. This item defines “well activity levy” as a levy imposed by section 10C or 10D of the Regulatory Levies Act. See notes under item 17 in relation to well activity levy.

Item 15 – Section 3. This item defines “well investigation levy” as a levy imposed by section 9 or 10 of the Regulatory Levies Act. See notes under item 17 in relation to well investigation levy.

Item 16 – Section 3. This item defines “well-related equipment”. This term is defined for the purposes of the well investigation levy and has the same meaning as it does when used in clause 13A of the OPGGS Act.

Item 17 – After Part 3
This item inserts a new Part 4, Part 4A and Part 4B into the Regulatory Levies Act.

Part 4 – Well investigation levy
The new Part 4 imposes a well investigation levy in relation to Commonwealth petroleum titles (section 9) where there is a breach or suspected breach of the titleholder’s duty of care in relation to wells and well operations under clause 13A of Schedule 3 to the OPGGS Act. Section 10 imposes an equivalent levy in the coastal waters of a State or Territory where that State or Territory’s offshore petroleum legislation includes a provision that substantially corresponds to clause 13A of Schedule 3. In practice, it is also necessary for the State or Territory legislation to have conferred functions and powers on NOPSA OHS inspectors to carry out the inspection.
The existing sections 5 and 6 of the Regulatory Levies Act impose a safety investigation levy, which is imposed on a facility operator where an OHS inspector has commenced an inspection in relation to a notifiable accident or occurrence relating to a facility and (as provided by the regulations) the amount of the costs incurred by NOPSA in undertaking the inspection exceeds $30,000. The amount of $30,000 is, broadly speaking, the cost to NOPSA of undertaking an ordinary monitoring inspection into compliance with an OHS law. The function of the existing safety investigation levy is therefore to recover extraordinary costs incurred by NOPSA in undertaking a particular investigation.

The well investigation levy in effect mirrors the present safety investigation levy but applies instead to cover extraordinary regulatory costs incurred by NOPSA in investigating a particular inspection into a breach or suspected breach of the titleholder’s duty of care in relation to wells and well operations, The levy is payable by the titleholder. The levy does not apply to suspected breaches of Part 5 of the RMA Regulations, unless the breach would also amount to a breach of the titleholder’s OHS duty of care in clause 13A. (This may well be the case, however, as non-compliance with obligations relating to integrity of wells and well operations can have consequences for the safety of the workforce.)

The new section 9 of the Regulatory Levies Act sets out the conditions that must be satisfied for well investigation levy to be imposed in Commonwealth waters. Well investigation levy is imposed, essentially, where an OHS inspector has begun to conduct an inspection concerning a contravention or possible contravention of clause 13A in relation to a well in a title area and the costs and expenses reasonably incurred by NOPSA in relation to the inspection exceed the threshold amount of $30,000. NOPSA must provide the titleholder with a written notice stating that the cost of conducting the inspection has exceeded the threshold amount. The levy is payable by the titleholder.

The levy is imposed in respect of each 3-month period during which the inspection continues after the threshold amount has been exceeded. The imposition of levy ends on the date that NOPSA sends a brief of evidence to the Commonwealth Director of Public Prosecutions in relation to the inspection.

The new section 9 also provides that the amount of the well investigation levy is the amount specified in or calculated in accordance with the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004 (previously titled Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations 2004).

The new subsection 9(5) provides definitions for terms used in the new section 9.

A new section 688 of the OPGGS Act, inserted by item 6 of Schedule 1 to the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies (Consequential Amendments) Bill 2011, provides that a well investigation levy becomes due and payable at the time specified in or worked out in accordance with the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004.

The new section 10 of the the Regulatory Levies Act sets out the conditions that must be satisfied for well investigation levy to be imposed in State/Territory coastal waters.
The provisions imposing the levy mirror those applying in Commonwealth waters. However, the levy imposed by section 10 applies only in relation to wells located in State or Territory coastal waters petroleum titles where the inspection that triggers the levy is carried out under a provision of the State or Territory offshore petroleum legislation that substantially corresponds to the titleholder duty of care in subclause 13A(1) or (2) of the Commonwealth OPGGS Act. The levy is therefore only imposed where the State or Territory legislation both confers powers of inspection on NOPSA OHS inspectors and contains a provision that substantially corresponds to clause 13A.

**Part 4A – Annual well levy**

The new Part 4A imposes an annual well levy in relation to petroleum titles in Commonwealth waters (section 10A) and petroleum titles in State/Territory coastal waters (section 10B). Section 10B is only operative in State or Territory coastal waters where NOPSA has functions and powers under regulations of that State or Territory that substantially correspond to Part 5 of the Commonwealth RMA Regulations.

The purpose of the annual well levy is to recover from industry NOPSA’s full regulatory costs associated with undertaking its augmented functions in relation to integrity of wells and well operations, including regulatory oversight, compliance monitoring and enforcement. The levy will also cover NOPSA’s costs of monitoring and enforcing compliance with the titleholder duty of care in relation to wells in clause 13A of Schedule 3 to the OPGGS Act.

The new section 10A of the Regulatory Levies Act imposes annual well levy on wells in Commonwealth petroleum title areas. Where a petroleum title has one or more ‘eligible wells’ in the title area for a year, an annual well levy is imposed on those wells in respect of that year. An “eligible well” may be either of the following:

- A non-abandoned well which is situated wholly or partly in a title area at the end of the preceding calendar year (subsection 10A(5)); or
- A well that began to be drilled in a title area during the preceding calendar year and was abandoned during that year (subsection 10A(6)).

Therefore as an example, if, on 31 December 2012, there are three non-abandoned wells in Title Area A, and also during 2012 a fourth well was commenced to be drilled in Title Area A but was abandoned during the same year, an annual well levy would apply to Title Area A on 1 January 2013 in respect of four wells: the three non-abandoned wells plus the well that was drilled and abandoned. Any wells that were commenced to be drilled in a year prior to 2012 and were abandoned during 2012 will not be subject to a levy on 1 January 2013.

For the well to be treated as abandoned, the abandonments must have been approved as a well activity by NOPSA under the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (subsection 10A(7)), and must have been carried out in compliance with any conditions that were imposed.

The new subsection 10A(4) provides that the amount of the annual well levy in respect of one or more wells is the amount specified in or calculated in accordance
with the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*.

The annual well levy is payable by the titleholder (subsection 10A(3)).

Section 10A also includes a transitional provision that provides that the period from the date of commencement of the new section 10A until the next 31 December will be treated as a levy year in its own right. This will ensure that NOPSA can collect the annual well levy on a pro-rated basis, and therefore avoid a gap in the funding available to NOPSA to undertake its well-related regulatory functions in the year that the levy commences to be imposed.

The new subsection 10A(8) provides definitions for terms used in the new section 10A.

A new section 688A of the OPGGS Act, inserted by item 6 of Schedule 1 to the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies (Consequential Amendments) Bill 2011, provides that an annual well levy becomes due and payable at the time specified in or worked out in accordance with the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*.

There is no legislative requirement for NOPSA to send out invoices in relation to the annual well levy. However as an administrative matter NOPSA may send out a reminder letter to titleholders prior to 31 December advising the basis of calculation and the due date. It is the titleholder’s responsibility to calculate the annual component.

The new section 10B of the Regulatory Levies Act imposes annual well levy petroleum titles in State/Territory coastal waters. In substance, the levy on State or Territory petroleum titles is imposed under the same conditions and in the same manner as the levy imposed on Commonwealth petroleum titles. However, the levy on State/Territory petroleum titles is imposed in relation to eligible wells located in State or Territory petroleum titles granted under State or Territory offshore petroleum legislation. In addition, the levy is imposed only where, at the start of the year, NOPSA has functions or powers under regulations of the State or Territory that substantially correspond to Part 5 of the Commonwealth RMA Regulations. This will ensure that the levy is imposed to recover the costs of NOPSA’s regulatory functions, and is not applicable to recover costs associated with the regulatory activities of other regulators.

**Part 4B – Well activity levy**

The new Part 4B imposes a well activity levy in relation to Commonwealth petroleum titles (section 10C) and State/Territory petroleum titles (section 10D). Section 10D is only operative where a relevant application is made under the regulations of that State or Territory that substantially correspond to Part 5 of the Commonwealth RMA Regulations.

The purpose of the well activity levy is to recover NOPSA’s costs associated with the regulatory oversight of specific well operations by titleholders.
The new section 10C of the Regulatory Levies Act sets out the conditions that must be satisfied for well activity levy to be imposed on applications in respect of Commonwealth petroleum titles. There are two circumstances in which a well activity levy will be imposed.

Firstly, a well activity levy applies when a titleholder makes an application to NOPSA for acceptance of a well operations management plan (WOMP) under Part 5 of the RMA Regulations (paragraph 10C(a)(i) of the Regulatory Levies Act). The levy is only intended to be imposed in relation to the initial submission of a WOMP and for each five year revision following the original acceptance in accordance with Part 5 of the RMA Regulations. Interim revisions to a WOMP will not be subject to a well activity levy.

Secondly, a well activity levy applies when a titleholder makes an application to NOPSA for approval to commence an activity relating to a well (such as well drilling, testing, abandonment, completion, or intervention) under Part 5 of the RMA Regulations (paragraph 10C(a)(ii) of the Regulatory Levies Act). Each levy payment will cover activities in relation to a well during a period of six months from the date of an application that triggered the levy, during which time any additional applications for approval to conduct an activity in relation to that well will be exempt from the imposition of the levy (subsection 10C(5) of the Regulatory Levies Act).

The new subsection 10C(4) of the Regulatory Levies Act provides that the amount of the annual well levy in respect of an application is the amount specified in or calculated in accordance with the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*.

The well activity levy is payable by the titleholder (subsection 10C(1)(b) and 10C(3) of the Regulatory Levies Act).

The new subsection 10C(6) provides definitions for terms used in the new section 10C.

A new section 688B of the OPGGS Act, inserted by item 6 of Schedule 1 to the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies (Consequential Amendments) Bill 2011, provides that a well activity levy becomes due and payable at the time specified in or worked out in accordance with the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*. Where a well activity levy applies in relation to an application for acceptance of a WOMP, the levy is payable at the time of submission of the WOMP. Where a well activity levy applies in relation to an application for approval of a well-related activity, payment is due within 7 days of the application being made.

The new section 10D of the Regulatory Levies Act describes the conditions that must be satisfied for well activity levy to be imposed on State/Territory coastal waters petroleum titleholders. In substance, the levy on State or Territory petroleum titleholders is imposed under the same conditions and in the same manner as the levy imposed on Commonwealth petroleum titleholders. However, the levy on State/Territory petroleum titleholders is imposed only where an application is made to NOPSA under regulations of the State or Territory that substantially correspond to...
Part 5 of the Commonwealth RMA Regulations. The effect of this is that well activity levy is only imposed in coastal waters jurisdictions where the State/Territory has transferred the regulation of integrity of wells and well operations to NOPSA.

Item 18 – Section 11
This item amends section 11 to provide that the Governor-General may make regulations for the purposes of the new sections 9, 10, 10A, 10B, 10C and 10D of the Regulatory Levies Act, in addition to the regulation-making power currently provided for the existing sections 7 and 8 of the Regulatory Levies Act.