THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (PETROLEUM POOLS AND OTHER MEASURES) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Northern Australia, Senator the Honourable Matthew Canavan)
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (PETROLEUM POOLS AND OTHER MEASURES) BILL 2016

OUTLINE

The purpose of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Bill 2016 (the Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGS Act) to:

- ensure the ongoing validity of apportionment agreements, where it becomes apparent that an agreement relates to an area which contains multiple petroleum pools, rather than a single discrete pool; and
- ensure legislative support for regulations that provide for refunds and remittals of environment plan (EP) levies and safety case levies.

Apportionment agreements

The Bill responds to a limitation that has been identified in section 54 of the OPGGS Act, which provides for apportionment of petroleum between Commonwealth and State or Territory jurisdictions. Section 54 applies where a petroleum pool straddles a jurisdictional boundary, and the relevant Commonwealth and State titles on both sides of the boundary are held by the same titleholder. The provision enables the proportion of petroleum that is taken to be recovered on either side of the boundary to be determined by agreement between the titleholder, the Joint Authority and the responsible State Minister.

The purpose of the apportionment is to provide certainty for the titleholder and government parties, into the future, as to the revenue regimes that will apply to the petroleum once it is recovered. In the case of a titleholder whose resource straddles a Commonwealth-State boundary, an up-front apportionment between jurisdictional revenue regimes (Commonwealth petroleum resource rent tax and State royalty) may be a key factor in the titleholder’s commercial decision whether to commit to further investment in the project at that point in time.

Currently, section 54 of the OPGGS Act contemplates that an apportionment agreement relates to a single discrete pool that straddles a boundary. However, this assumes there is a greater level of knowledge about the particular pool than is often available at the early stages of a project, which is when section 54 agreements are negotiated. If it subsequently becomes apparent that the area specified in the apportionment agreement contains multiple petroleum pools, as may be the case when fuller technical information is obtained as the resource is developed, the apportionment agreement would fail. This would negate the revenue certainty for both Commonwealth and State governments as well as commercial certainty for the titleholder. Yet the number of pools involved is not necessarily of significance. What is important is that an area of potential migration of petroleum across a boundary is the subject of an agreed apportionment.

The amendments in this Bill will expand section 54 of the OPGGS Act to ensure the ongoing validity of apportionment agreements if it becomes apparent that an agreement relates to an area which contains multiple petroleum pools, rather than a single pool. The amendments also enable the making of a section 54 agreement about a specified part of the seabed that...
contains a common pool, but where connectivity between jurisdictions is not necessarily confined to the pool. The amendments in this Bill are intended to provide greater flexibility to the development of, and ongoing certainty to the life of, an apportionment agreement, in order to support investment decisions.

The amendment will apply equally to existing and future agreements.

Refunds and remittals of EP levies

The regulatory functions of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) are funded on a fully cost-recovered basis through fees and levies collected from the offshore petroleum and greenhouse gas storage industries. For the purpose of cost-recovering NOPSEMA’s environmental management regulatory functions, the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 (the Levies Act) imposes an EP levy on the submission of an EP (or a revision of an EP) in respect of particular activities authorised by Commonwealth petroleum titles.

The Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004 (the Levies Regulations) set out matters required to enable the full and effective collection of EP levies, including regulations setting out the amount of levy imposed and when the levy is due and payable. The Levies Regulations include provision for remittal or refund of an amount of an EP levy (the ‘compliance amount’) in circumstances where:

- a) NOPSEMA refuses to accept an EP or revision of an EP;
- b) an EP is withdrawn by the titleholder; or
- c) NOPSEMA accepts a revision of an EP, and one or more instalments of the compliance amount in respect of the original plan are not yet due.

The policy intent of a remittal or refund in the first two circumstances is that titleholders should only be required to pay the compliance amount of an EP levy if they are undertaking an activity in relation to which NOPSEMA undertakes environmental management regulation. The intent of a remittal in the third circumstance is that a titleholder should not be required to pay instalments of the compliance amount of an EP levy in respect of both an original EP and a revision that supplants that original EP, in relation to the same activity.

The amendments in this Bill are necessary to ensure there is a clear regulation-making power to support the regulation that provides for the refund and remittal of an amount of an EP levy. Retrospective commencement of the amendments will ensure the validity of refunds of amounts of EP levies previously made to titleholders in accordance with the Levies Regulations.

Refunds and remittals of safety case levies

The Levies Act imposes safety case levies for each offshore petroleum facility in respect of which a safety case is in force under the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009. Subsections 687(1) and (2) of the OPGGS Act provide for the ‘remittal’ of a safety case levy in prescribed circumstances. The Levies Regulations establish the machinery (pursuant to subsections 687(1) and (2) of the OPGGS Act) for the ‘remittal’ of amounts of a safety case levy.
There is some uncertainty whether ‘remittal’ in these provisions has the narrow meaning of refraining from exacting a charge or fee, or also encompasses the notion of giving back an amount that has already been paid (i.e. refunding). This is significant because NOPSEMA relies on the Levies Regulations to authorise refunds by the Commonwealth of safety case levies. The practice of refunding reflects Australian Government policy with relation to cost recovery, in that industry participants should not be charged for regulatory services that they do not receive. NOPSEMA may not have all of the information necessary to determine the amount of safety case levy that is actually payable in respect of a facility that operates on an intermittent basis until a provisional amount of levy has already been paid by the facility operator in accordance with regulatory timeframes.

To ensure regulatory clarity and certainty, the Bill will amend the OPGGS Act to make it clear that regulations can provide for the remittal (in the narrow sense) and refund of safety case levies.

**FINANCIAL IMPACT STATEMENT**

The amendments to ensure the ongoing validity of apportionment agreements will provide certainty for the Commonwealth Government as to the likely flow of revenue receipts from petroleum development projects that are the subject of an agreement. This is particularly important in the case of large projects, where long-term Commonwealth revenues can be substantial, potentially amounting to billions of dollars over the life of a multi-decade project.

Further, in the case of a titleholder whose resource straddles a Commonwealth-State boundary, an up-front apportionment between jurisdictional revenue regimes (Commonwealth petroleum resource rent tax and State royalty) may be a key factor in the titleholder’s commercial decision whether to commit to further investment in the project at that point in time. The ongoing certainty that the amendments will provide may therefore assist to encourage investment in Australian offshore petroleum projects, providing associated taxation revenue for government. However, it is not possible to provide an estimate of the direct impact of these amendments on the fiscal balance.

The amendments to ensure a clear regulation-making power regarding remittals and refunds of EP levies will commence retrospectively, in order to provide certainty that refunds previously given to offshore petroleum titleholders are valid. The amount refunded since 1 January 2012, when the relevant provision commenced, is less than $500,000. The amendments will have zero net impact on the fiscal balance.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Bill 2016 (the Bill)

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the bill

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

- ensure the ongoing validity of apportionment agreements, where it becomes apparent that an agreement relates to an area which contains multiple petroleum pools, rather than a single discrete pool; and
- ensure legislative support for regulations that provide for refunds and remittals of EP levies and safety case levies.

Human rights implications

The amendments in this Bill are mechanical in nature and do not engage any of the applicable rights or freedoms.

Conclusion

The Bill is compatible with human rights as it does not raise any human rights issues.
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NOTES ON CLAUSES

Clause 1: Short title

This is a formal provision specifying the short title of the Act.

Clause 2: Commencement

The table in this clause sets out the commencement date for when the Bill’s provisions commence.

Sections 1 to 3 of the Bill will commence the day the Bill receives Royal Assent. The remainder of the Bill will commence the day after Royal Assent, with the exception of Schedule 2, Part 2, Division 1 which will commence on 7 December 2011.

The retrospective commencement of Schedule 2, Part 2, Division 1 is to eliminate any doubt about whether regulations to which that Division relates were validly made by the Governor General on 7 December 2011. The reasoning for retrospective application is outlined in the discussion of item 3 of Schedule 2, Part 2, Division 1 below.

Clause 3: Schedules

This clause gives effect to the provisions in the Schedule to this Act.

Schedule 1—Petroleum pools

Part 1—Amendments


Item 1: After subsection 54(1)

Section 54 of the OPGGS Act provides for the apportionment of a petroleum (oil or gas) pool that is common to a Commonwealth petroleum title and one or more State or Territory titles, held by the same titleholder. Section 54 of the OPGGS Act is concerned with a shared resource. A shared resource has the potential to migrate from one jurisdiction to another as a result of changes in pressure in the seabed, most obviously as a consequence of production of petroleum through a well or wells in one jurisdiction or the other. The purpose of section 54 of the OPGGS Act is to have the affected parties — i.e. the Commonwealth, the State/Territory and the titleholder, agree on the proportions of the shared resource that underlie the different jurisdictions at the time the agreement comes into force.

An apportionment must be made on the basis of a good faith best estimate of recoverable petroleum in place, in reliance on information that provides a rational basis for that estimate. Section 54 does not permit the parties to agree on an apportionment that unjustifiably favours
one jurisdiction over another, in order for the Commonwealth or the State/Territory to achieve a particular revenue outcome, or to place the titleholder in a favourable position with respect to its tax or royalty obligations.

Notwithstanding the above, there is still the possibility of significant benefits for the parties from entering into an agreement under section 54. For the Commonwealth and relevant State or Territory, it provides certainty as to the likely future flow of revenue receipts. It also promotes the orderly development of the resource to maximise total recovery of the shared resource, by removing any incentive for governments to promote competitive drilling. For the titleholder, it provides certainty as to the future applicability of revenue regimes, which can be critical to the making of investment decisions.

The purpose of the amendments to section 54 of the OPGGS Act is to improve its functionality so that it can form the basis of a valid apportionment agreement relatively early in the project, when information about the geological formation in which the petroleum is located is incomplete. This may be the case, for example, in respect of a large or geologically complex deposit of petroleum before there is much, if any, production information available.

Currently, section 54 of the OPGGS Act assumes there is a substantial level of knowledge about the particular petroleum pool to be apportioned. It requires that there be sufficient information about the resource to ensure that:

- the parties can make a reasoned assessment that there is a pool that crosses a jurisdictional boundary, and to apportion the petroleum in the pool;
- the assessment that it is a single pool does not turn out to be incorrect, at least in the short term, when more information becomes available.

If the original assessment is proved wrong and it turns out that the ‘pool’ is in fact multiple pools, not all of which cross the boundary, then the agreement will fail, as the legislation currently stands, because it no longer meets the requirements of section 54 of the OPGGS Act. This could occur quite soon after production commences, or it might not occur until years later.

At the early stage of a petroleum project, information is typically sparse. This is especially true of a large resource, which is the very circumstance in which predictability of revenue receipts is most important to government, and certainty of tax and royalty liabilities into the future is important for titleholders making investment decisions.

Item 1 of Schedule 1 to the Bill inserts two new sets of provisions that provide options for persons entering into apportionment agreements under section 54 of the OPGGS Act. The new provisions enable an agreement to validly operate into the future, despite information becoming available after the commencement of the agreement that creates uncertainty about or alters the factual assumptions upon which the agreement was founded. In each case, once the apportionment provision comes into effect, the agreed proportions will continue to be applied despite subsequent information becoming available that shows that the apportionment is no longer accurate. Once production commences, petroleum will tend to migrate towards producing wells. It is the function of these new provisions to ensure that the original apportionment remains in force despite any subsequent movement of petroleum from one jurisdiction to another as a result of production operations.
Parties may elect not to take up either option and can still enter into agreements under subsection 54(1) of the OPGGS Act, which remains unchanged. Application of the new options require particular kinds of provisions to be included in the agreement. If they are not included, the default position is that subsection 54(1) of the OPGGS Act is the applicable provision.

The need to provide a more practical mechanism for apportioning petroleum from a resource shared between Commonwealth and State or Territory jurisdictions first became apparent when negotiations commenced for an apportionment agreement about the Torosa petroleum pool in the Browse title areas that straddle the Commonwealth and Western Australian offshore waters. The Torosa resource is extremely large and will be of considerable economic significance to both the Commonwealth and Western Australian economies. At the time of negotiations, there had been a recent reassessment of the maritime boundary between Commonwealth and Western Australian waters in the vicinity of the Torosa resource. All parties – the Commonwealth, the State and the Browse Joint Venture – wished to reach an understanding of the relative proportions of the resource that underlay Commonwealth and State jurisdiction. The Commonwealth and Western Australia wished to establish their likely future revenue streams from the project, and the titleholders wished to establish their likely future State royalty and Commonwealth tax exposure.

During negotiations, it became apparent that section 54 of the OPGGS Act required a relatively detailed understanding of the geology of the Torosa resource, and that, at the early stage of the Torosa project, and given the very large and complex nature of the resource, the requirements of the section could not be met with any degree of certainty. In particular, while current knowledge of the geology indicated that the entire resource was contained within a single pool, it was possible that when future information became available, particularly once production commenced, the current outer bounds of the pool might be found to comprise two or more pools. If that occurred, the agreement would fail and the benefits to all parties of the agreed apportionment would be lost.

While these amendments have been developed as a consequence of difficulties encountered in negotiating a particular agreement, the benefits of the amendments are not limited to that agreement. There will be other boundary changes identified within the next few years and it is possible that these will require apportionment of a resource that is bisected by a relocated jurisdictional boundary. In that event, governments and the titleholder will be able to choose the apportionment mechanism that best suits their situation.

Multiple petroleum pools
New subsection 54(1A) of the OPGGS Act applies if the following prerequisites in new paragraphs (a), (b), (c) and (d) are met in relation to an apportionment agreement:

(a) there is an agreement in force between the titleholder of a Commonwealth title, the Joint Authority and the responsible State or Territory Minister in relation to a petroleum pool that straddles Commonwealth and State/Territory title areas of the same titleholder;

(b) the agreement contains a provision that, for the purposes of section 54, a specified proportion of the petroleum in the pool is to be taken to be recovered in the Commonwealth title area;
(c) the agreement sets out areal and vertical extents of the pool and, assuming that petroleum were recovered from the part of the seabed within those areal and vertical extents, the proportion specified in the agreement would be consistent with the proportion that may reasonably be treated as being derived from the Commonwealth title area, having regard to the nature and probable extent of the petroleum in that part of the seabed. That is, the specified proportion should represent a reasonable estimation of the proportion of petroleum that would be derived from the Commonwealth title, based on information known at the time, and not unjustifiably favour one jurisdiction over another; and

(d) the agreement contains a provision to the effect that if it becomes apparent that the areal and vertical extents of the petroleum pool as specified in the agreement either comprise, or are likely to comprise, more than one petroleum pool – then the apportionment set out in the apportionment provision will apply to the petroleum recovered from any or all of those petroleum pools (regardless of their location within the vertical and areal extents).

New paragraphs 54(1A)(e), (f), (g) and (h) provide that if, following execution of the agreement, it becomes apparent that the areal and vertical extents of the pool comprise, or are likely to comprise, two or more petroleum pools, then, for the purposes of the OPGGS Act, the apportionment specified in the apportionment provision (see 54(1A)(b)) continues to apply to the exclusion of subsection 54(1).

The effect of these provisions is that an agreement which starts as an agreement under subsection 54(1) of the OPGGS Act will, if it contains a provision of the kind referred to in paragraph 54(1A)(d), and the events in paragraphs 54(1A)(e) and (f) occur, continue to have effect in accordance with paragraph 54(1A)(g). When the above occurs, paragraph 54(1A)(h) works to ensure that subsection 54(1) is not applied.

New subsection 54(1B) provides that the question of whether there is, or was, a petroleum pool covered by paragraph (1A)(a) is to be determined on the basis of information known at the time of the making of the agreement.

New subsection 54(1C) provides that the question of whether paragraph (1A)(c) applies – the reasonableness of the apportionment – is to be determined on the basis of information known at the time of the commencement of the apportionment provision.

Generally, there won’t be any difference between the time of the making of the agreement and the time of the commencement of the apportionment provision within the agreement. For future agreements, the apportionment provision is likely to commence at the same time as the agreement is made. However, it was necessary in the case of the Torosa agreement for the apportionment provision within the agreement to commence on a day later than the date of execution of the agreement because, at the time of the making of the agreement, there was no provision in section 54 for an apportionment to remain operative after it had become apparent that the petroleum pool that was the subject of the agreement in fact comprised two or more pools.

New subsection 54(1D) provides that the location of any of the petroleum pools referred to in paragraph 54(1A)(d) ‘is immaterial’. This means that, if the existence of multiple pools
becomes apparent, it is not a requirement, in order for paragraphs 54(1A)(g) and (h) to apply, that any of those pools straddles a boundary. The apportionment agreed between the parties applies to petroleum recovered from any of the ‘newly-apparent’ pools, whether or not it straddles a boundary.

The use of the word ‘comprise’ in paragraphs 54(1A)(d) and (e) indicates that the areal and vertical extents of the resource, as specified in the agreement, must remain materially the same after the existence of multiple pools becomes apparent. If prospective parties to a section 54 agreement are not confident as to the outer limits of a resource (pool) that straddles a jurisdictional boundary, then new subsection 54(1E) provides a suitable alternative.

Specified part of the seabed

New subsections 54(1E) to (1G) provide an alternative means of apportioning production from a petroleum pool that straddles Commonwealth and State/Territory title areas with the same titleholder. It may be used where there is a common pool, but either the outer bounds of the pool are not currently ascertained or there are indications that there is a broader area of the titles on either, or both, sides of the boundary where petroleum has the potential to move between title areas in response to changes in pressure in the seabed, for example as a result of production of petroleum.

It is possible in certain circumstances to establish that petroleum on both sides of a jurisdictional boundary is contained in the same pool without necessarily knowing how far the pool extends in one or more directions. Where parties wish to conclude an apportionment agreement in such a situation, the parties can agree on the area that is to be apportioned in accordance with new subsection 54(1E).

Apart from the common pool, paragraphs 54(1E)(b) to (h) require that:

(b) there is an agreement between the titleholder, the Joint Authority and the responsible State or Territory Minister;
(c) the agreement specifies a part of the seabed by reference to its areal and vertical extents;
(d) the specified part of the seabed consists of the whole, or a specified part, of the Commonwealth title area and the whole, or a specified part, of the State or Territory title area;
(e) the specified part of the seabed includes the common pool;
(f) the agreement contains an apportionment provision that provides that, for the purposes of section 54, a specified proportion of the petroleum recovered from the specified part of the seabed will be taken to be recovered in the Commonwealth title area;
(g) the specified proportion is consistent with the proportion of petroleum recovered from the specified part of the seabed that may reasonably be treated as being derived from the Commonwealth title area, having regard to the nature and probable extent of the petroleum in the specified part of the seabed. That is, the specified proportion should represent a reasonable estimation of the proportion of petroleum that would be derived from the Commonwealth title, based on information known at the time, and not unjustifiably favour one jurisdiction over another; and
(h) petroleum is recovered from the specified part of the seabed in either title area.
Paragraphs 54(1E)(i) and (j) go on to provide that, if all of the above pre-requisites are satisfied, then for the purposes of the OPGGS Act, the proportion specified in the apportionment agreement is taken to have been recovered in the Commonwealth title area, and subsection 54(1) does not apply to any common pool in the specified part.

Subsection 54(1F) provides that the question of whether there is, or was, a petroleum pool covered by paragraph 54(1E)(a) at a particular time is to be determined on the basis of information known at that time. Subsection 54(1G) provides that the question of whether paragraph 54(1E)(g) applies is to be determined on the basis of information known at the time of commencement of the apportionment provision.

Petroleum Resource Rent Tax Assessment Act 1987

Items 2 and 3: Section 3; At the end of section 3

Division 3 of Part 1.2 of the OPGGS Act enables parties to determine the proportion of petroleum recovered from a petroleum pool that is to be taken to have been recovered from a particular area or particular areas. Where such a determination has been made, section 3 of the Petroleum Resource Rent Tax Assessment Act 1987 (PRRT Act) provides that, for the purposes of application of the PRRT Act, petroleum is to be taken to have been recovered from that area, or from those areas, in the determined proportions.

Item 3 of this Bill adds a new subsection 3(2) to the PRRT Act creating a corresponding provision for apportionment of petroleum recovered from a particular area, or from particular areas, of the seabed, in particular proportions. The new subsection gives effect to apportionments of petroleum from an area that is not, or areas that are not, a petroleum pool, in accordance with the new sections 54(1E) to (1G) of the OPGGS Act.

Part 2 – Application provisions

Item 4: Application of amendments

Item 4 provides that subsections 54(1A) and (1E) of the OPGGS Act apply in relation to an agreement made before, at, or after, the commencement of this item.

This provision is necessary because the Torosa agreement was made before the commencement of Schedule 1 to this Bill, although the apportionment in the Torosa agreement does not commence until after the commencement of Schedule 1.

Similarly, this item gives effect to any other agreement that relies, for its effectiveness, on the provisions of subsection 54(1A) that may be negotiated and entered into before the commencement of Schedule 1 to this Bill.

Schedule 2 – Levies

Part 1 – Safety Case Levy
Items 1 and 2: Subsection 687(1) (heading) and Subsections 687(1) and (2)

Items 1 and 2 allow for regulations to provide for the remittal and refund of safety case levies.

Currently, subsections 687(1) and (2) of the OPGGS Act provide for the ‘remittal’ of a safety case levy in prescribed circumstances. There is some uncertainty whether ‘remittal’ in these provisions has the narrow meaning of refraining from exacting a charge or fee, or also encompasses the notion of giving back an amount that has already been paid (i.e. refunding). This is significant because NOPSEMA relies on the Levies Regulations to authorise refunds of safety case levies by the Commonwealth.

To ensure regulatory clarity and certainty, these amendments to the OPGGS Act make it clear that regulations can provide for the remittal (in the narrow sense) \textit{and} refund of safety case levies.

\textbf{Part 2 – Environment Plan Levy}

\textit{Division 1—Amendments}

\textbf{Item 3: Before subsection 688C(1)}

Section 10F of the Regulatory Levies Act imposes an EP levy on the submission of an EP (or a revision of an EP) in respect of particular activities authorised by Commonwealth petroleum titles. Regulation 59E was inserted into the \textit{Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004} (the Regulatory Levies Regulations) by the \textit{Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Regulations 2011 (No. 2)} (the Regulatory Levies Amendment Regulation) and commenced on 1 January 2012. Regulation 59E provides for the remittal or refund of amounts of an EP levy in particular circumstances.

As neither the Regulatory Levies Act nor the OPGGS Act expressly authorise the making of regulations for the remittal or refund of amounts of an EP levy, there is some uncertainty about the validity of regulation 59E. This is a matter of some practical significance, as NOPSEMA has been remitting and refunding amounts pursuant to regulation 59E since the commencement of that regulation. In the event that regulation 59E were found to be invalid, it would follow that those remittals and refunds would have been made without any legal basis, and, in the case of refunds, would amount to payments from the Consolidated Revenue Fund without a valid appropriation.

Item 3 is intended to place the validity of regulation 59E beyond doubt by expressly providing that regulations may make provision for the remittal or refund of part of an amount of an EP levy imposed by the Regulatory Levies Act. The purpose of commencing items 3 and 4 retrospectively is to ensure that the Governor General had the power to make the amendment in the Regulatory Levies Amendment Regulation to insert regulation 59E on 7 December 2011. Retrospective commencement will also ensure regulation 59E has continued to be valid from its commencement on 1 January 2012, up to the enactment of this
Bill. This will in turn ensure that the remittals and refunds made from 1 January 2012, and up to the enactment of this Bill, are supported by regulation 59E.

Division 2—Payment of offset amount

Item 4: Payment of offset amount

There is some uncertainty about the availability of a valid appropriation for the EP levy refunds made from 1 July 2014 (when the NOPSEMA special account, previously established by section 682 of the OPGGS Act, was abolished) until the enactment of this Bill (from which point the appropriation in section 77 of the Public Governance, Performance and Accountability Act 2013 would be available). Assuming no valid appropriation was available in relation to such refunds, the relevant accountable authority may be obliged to pursue recovery of those amounts under section 11 of the Public Governance, Performance and Accountability Rule 2014, which would be inconsistent with the purpose of ensuring the validity of the refunds.

To avoid this outcome, and because it is not possible to make a retrospective appropriation, this item entitles a titleholder to whom an amount of an EP levy was invalidly refunded (called the ‘refund amount’) to be paid a corresponding amount by the Commonwealth (called the ‘offset amount’). The offset amount may be set off against the refund amount, thereby extinguishing any debt owed by the titleholder to the Commonwealth and relieving the relevant accountable authority from the need to pursue recovery of the refund amount.

The transactions contemplated by this process are notional, in the sense that no money will need to change hands between the titleholder and the Commonwealth. As the provision will formally oblige the Commonwealth to pay the titleholder the offset amount, an appropriation is necessary. Accordingly the Consolidated Revenue Fund is appropriated for the purposes of this item.