



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Offshore Petroleum and Greenhouse Gas
Storage Amendment (National Regulator) Bill
2011, Offshore Petroleum and Greenhouse Gas
Storage (Registration Fees) Amendment Bill
2011, Offshore Petroleum (Royalty) Amendment
Bill 2011, Offshore Resources Legislation
Amendment (Personal Property Securities)
Bill 2011, Offshore Petroleum and Greenhouse
Gas Storage Regulatory Levies Legislation
Amendment (2011 Measures No. 2) Bill 2011**

Second Reading

SPEECH

Thursday, 25 August 2011

BY AUTHORITY OF THE SENATE

SPEECH

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Questioner
Speaker Brandis, Sen George

Source Senate
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Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (13:10): These bills will amend the Offshore Petroleum and Greenhouse Gas Storage Act. They will establish two new regulatory bodies to administer and regulate petroleum and greenhouse gas storage operations in Commonwealth waters in the Australian offshore area. The new bodies will replace the designated authorities, which are the state and Northern Territory ministers who, through their departments, have performed the functions and exercised powers conferred directly on them by the Offshore Petroleum and Greenhouse Gas Storage Act 2006 and its predecessor act, the Petroleum (Submerged Lands) Act 1967.

There will be no change to the joint authority arrangements with respect to petroleum titles that have taken place since 1980. The joint authority 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.

In the case of greenhouse gas titles the corresponding decision maker will continue to be the responsible Commonwealth minister. The two new regulatory bodies are the National Offshore Petroleum Safety and Environmental Management Authority, known by the elegant acronym NOPSEMA, and the National Offshore Petroleum Titles Administrator. NOPSEMA will be an expanded version of the National Offshore Petroleum Safety Authority, or NOPSA. NOPSA, which is a body corporate, will continue to exist under the new name and will have an extended range of functions in relation to petroleum and greenhouse gas operations. Its principal functions will be occupational health and safety, structural integrity of facilities, wells and well related equipment, environmental management and regulation of day-to-day petroleum operations. NOPSEMA will appoint and deploy OHS inspectors and petroleum and greenhouse gas project inspectors. NOPSEMA, like NOPSA, will be fully funded by cost recovery levies and fees managed by means of a special account under the Financial Management and Accountability Act 1997.

The titles administrator will be the holder of an APS office within the Department of Resources, Energy and Tourism and will be assisted principally by APS employees within the department. The titles administrator's principal functions will be to provide information, assessments, analysis, reports, advice and recommendations to members of the joint authorities and the responsible Commonwealth minister in relation to the performance of those ministers' functions and the exercise of their powers, the collection and management and release of data, titles administration, approval and registration of transfers and dealings, and the keeping of the register of petroleum and greenhouse gas titles.

NOPSEMA and the titles administrator will each have an express function of cooperating with the other in matters relating to the administration and enforcement of the act and regulations. While it is an important aspect of the new regime that the two bodies will act entirely independently of each other in their decision making and regulatory practices, a level of administrative coordination between the agencies will assist in minimising any potential impact on the industry of having offshore operations regulated by two different entities.

The objective of the Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011 is to amend the Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006 to correctly reference the new National Offshore Petroleum Titles Administrator. The objective of the Offshore Petroleum (Royalty) Amendment Bill 2011 is to amend the Offshore Petroleum (Royalty) Act 2006 to correctly reference the proposed National Offshore Petroleum Titles Administrator. The objective of the Offshore Resources Legislation Amendment (Personal Property Securities) Bill is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 and the Offshore Minerals Act 1994 to exclude application of the Personal Property Securities Act 2009. The objective of the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Bill 2011 is to amend the Offshore Petroleum and Greenhouse Gas Storage (Regulatory

Levies) Act to impose new cost-recovery levies on holders of offshore petroleum and greenhouse gas storage titles. The levies will recover the costs of the National Offshore Petroleum Titles Administrator and the National Offshore Petroleum Safety and Environment Management Authority.

Following a High Court decision in 1975 that confirmed that the Commonwealth had jurisdiction and the right to explore for and exploit seabed resources in the territorial sea and the continental shelf—that is, the continental shelf case—in June 1979 the Commonwealth and the states agreed to a division of offshore rights, powers and responsibilities, known as the Offshore Constitutional Settlement. Pursuant to the Offshore Constitutional Settlement, the Commonwealth parliament enacted the Coastal Waters (State Title) Act 1980 and the Coastal Waters (State Powers) Act 1980, and equivalent acts for the Northern Territory, by which the Commonwealth conferred on the states and the Northern Territory the same title to the area and seabed of the three nautical mile territorial sea and the same legislative jurisdiction as the states and the Territory would have had if that part of the territorial sea had been within the limits of the states or the Territory.

Following the Offshore Constitutional Settlement, an amendment confined the application of the Petroleum (Submerged Lands) Act 1967, which is now the Offshore Petroleum and Greenhouse Gas Storage Act 2006, to waters outside the three nautical mile limit. The states and the Northern Territory enacted mirror legislation applying in waters landward of that boundary. Again, as provided by the Offshore Constitutional Settlement, under the Commonwealth act the states and the Northern Territory shared in the administration of the Commonwealth act under the joint authority and designated authority arrangements described in the outline.

Post the Offshore Constitutional Settlement, the most significant legislative development has been the establishment of the National Offshore Petroleum Safety Authority. This followed the 2001 Commonwealth government report on offshore safety *Future arrangements for the regulation of offshore petroleum safety*. The primary conclusion of this report was:

... that the Australian legal and administrative framework and the day-to-day application of this framework for regulation of health, safety and environment in the offshore petroleum industry is complicated and insufficient to ensure appropriate, effective and cost efficient regulation of the offshore petroleum industry.

Much would require improvement for the regime to deliver world-class safety practice.

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 states' and Northern Territory's Petroleum (Submerged Lands) Act—that is, the mirror cooperative legislative scheme.

The Productivity Commission's *Review of regulatory burden on the upstream petroleum (oil and gas) sector* in 2009 identified significant unnecessary regulatory burden on the sector and made 30 recommendations, including the establishment of a national offshore petroleum regulator in Commonwealth waters and the implementation of regulatory best practice. The Varanus Island gas pipeline explosion of 2008 and the uncontrolled release of oil and gas from the Montara wellhead platform in 2009 also highlighted inadequacies in the offshore petroleum regulatory regime. Of particular concern was a shortage of technical staff in the designated authorities' departments with the necessary qualifications, skills and experience. There was also a perceived lack of independence of staff with responsibility for regulatory oversight of well integrity and environmental management, located as they were in the state and Northern Territory departments that were responsible for resource development.

The June 2010 report of the Montara Commission of Inquiry recommended that the Productivity Commission's proposal to establish a national offshore petroleum regulator should be pursued at a minimum. The Montara commission recommended that a single independent regulatory body should be created, looking after safety as a primary objective along with well integrity and environmental approvals. Industry policy and resource development and promotion activity should continue to reside in government departments and not with the independent regulatory agency.

The amendments in the national regulator bill reflect extensive consultation with jurisdictions, industry and NOPSA and will implement the institutional reforms arising from the Productivity Commission review and the Montara Commission of Inquiry. Should these reforms not be progressed, Australia will miss an opportunity to strengthen the regulation of offshore petroleum activities and reduce unnecessary regulatory burden and would

forgo significant potential national income benefits. Reform of the sector is a priority of the COAG National Partnership Agreement to Deliver a Seamless National Economy.

The legislation will enable the Commonwealth to obtain amounts received under the Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006, which are currently required to be paid to the states and the Northern Territory in order to fund the establishment of NOPTA and the expansion of NOPSA to NOPSEMA. After these costs have been funded the legislation will repeal the registration fees act. The bill also repeals the Offshore Petroleum and Greenhouse Gas Storage (Annual Fees) Act 2006. NOPTA and NOPSEMA will operate on a cost-recovery basis with levies raised by the offshore petroleum industry, imposed by the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003.

The primary objectives of this suite of bills are not controversial. Delays in the implementation of the legislation arose from the need to finalise negotiations between the governments of the Commonwealth and Western Australia. Those negotiations having been satisfactorily finalised and implemented by these bills, the coalition supports their passage through the Senate.