

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Department of Industry, Science, Energy and Resources  
**Inquiry into the Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020**  
18 June 2021

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**AGENCY/DEPARTMENT:** DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

**TOPIC:** Query regarding Departmental Submissions

**REFERENCE:** Question on Notice (Written, 22 June 2021)

**QUESTION No.:** 3

3. The Department in its submission said that to introduce the additional object clause in the OPGGS Act would cause ‘unacceptance unintended ‘consequences. Please provide 10 specific examples drawing on 10 different parts of the Act. More examples would be welcome.

a. The term ‘public interest’ appears 22 times in the OPGGS Act but is not defined. What is the difference in difficulty if interpreting ‘public interest’ and interpreting ‘benefit to the Australian Community’?

**ANSWER**

The Department of Industry, Science, Energy and Resources provided a submission to the original inquiry of the Senate Economics Legislation Committee into the Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020.

To clarify, our submission stated:

*“In the department’s view, the proposed amendment would introduce an unacceptable degree of uncertainty for both decision-makers and titleholders due to the broad wording of the proposed amendment”*

and

*“The broad, unclear wording of the proposed amendment would introduce unacceptable uncertainty for decision-makers and titleholders, and raises the risk that sub-optimal outcomes may arise if safety, well-integrity and environmental outcomes are at the expense of the benefits to be achieved”.*

Under the proposed amendment, an additional object clause would be added to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) “to ensure that the exploitation of these natural resources is for the benefit of the Australian community”.

The purpose of an object clause in legislation is to give a general intent of the legislation, and can be called upon to resolve uncertainty and ambiguity if a general provision is unclear. It is the department’s view that the proposed amendment states a very general purpose and is worded broadly. Further:

- Where the OPGGS Act provides detailed and prescriptive requirements on decision-makers, which are clear and precise, it is not apparent that the proposed amendment would alter the

interpretation of these provisions and deliver on the intent stated in the Explanatory Material; and

- Where the meaning of a provision OPGGS Act is ambiguous, the proposed amendment is a general statement. It is unclear as to what benefit is being measured, and how this benefit is to be quantified. It is uncertain how this should be quantified or measured against other benefits derived from the OPGGS Act, such as ensuring safety, well-integrity and environmental outcomes.

This lack of clarity is likely to result in uncertainty for both decision-makers, such as the Joint Authority, and also for applicants and may result in an increase to review or challenges to decisions under the OPGGS Act.

Examples of the types of decisions that could be impacted include:

1. Application for Work-bid Petroleum Exploration Permit – advertising of blocks (section 104)
2. Grant of a Work-bid Petroleum Exploration Permit (section 105)
3. Renewal of a Work-bid Petroleum Exploration Permit (section 125)
4. Re-evaluation of Commercial Viability of a Retention Lease (sub-section 136(5))
5. Grant of a new Petroleum Retention Lease (section 142)
6. Renewal of a Petroleum Retention Lease (section 154)
7. Offer for a Production Licence (section 171)
8. Grant of a Petroleum-Related Pipeline Licence (section 221)
9. Grant of a Greenhouse Gas-Related Pipeline Licence (section 222)
10. Variation, suspension and exemption relating to petroleum titles (part 2.11)
11. Grant of a Work-bid Greenhouse Gas Assessment Permit (section 298)
12. Renewal of a Greenhouse Gas Assessment Permit (section 309)
13. Grant of a Greenhouse Gas Injection Licence (section 364)

In addition, the OPGGS Act includes provisions relevant to several international agreements and treaties, including the the Bayu-Undan pipeline and Greater Sunrise Special Regime. Further consideration on the impacts to these existing arrangements would need to be considered, including the transitional arrangements under existing treaty arrangements.

The OPGGS Act does not impose fiscal or taxation obligations on petroleum titleholders. Royalty requirements and resource tax arrangements which are applicable to offshore oil and gas activities are imposed and payable under separate legislation. This proposed amendment will not impact the revenue or taxation collected for offshore projects under these arrangements.

1(a)

As noted in the department's submission, the objects clause of legislation gives a general intent of the legislation and can be called upon to resolve uncertainty and ambiguity if a general provision is unclear. The OPGGS Act already has an objects clause which is '...to provide an effective regulatory framework...'. In the department's view, the proposed amendment adds ambiguity and therefore it is unclear to the department what benefit is being measured and how this benefit could be quantified.

This is distinct from the use of the term 'Public Interest' in the Act, which is used in within specific provisions as matter to be taken into account by the decision maker. The term 'Public Interest' is a common term applied in legislation and there is existing case law to guide its interpretation.

In addition, although they are seemingly similar, the two terms would likely be given different meanings, as if the same meaning had been intended, the same term would have been used.