



Australian Government

Department of Industry, Innovation and Science

Submission from the Department of Industry, Innovation and Science
to the Senate Economics Legislation Committee Inquiry into the

*Offshore Petroleum and Greenhouse Gas Storage Amendment
(Miscellaneous Amendments) Bill 2018*

and the

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory
Levies) Amendment Bill 2018*

July 2018

Table of Contents

1	Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018	3
2	Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2018.....	5
3	Offer to provide further information.....	6

1 Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018

The Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018 (the Miscellaneous Bill) contains important measures making amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act).

Transfer regulatory oversight for offshore greenhouse gas storage operations

The Miscellaneous Bill transfers regulatory oversight for offshore greenhouse gas environmental management and well operations from the responsible Commonwealth Minister to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). Currently, NOPSEMA is the regulator for offshore petroleum occupational health and safety, environmental management and well operations matters, and occupational health and safety for offshore greenhouse gas injection and storage operations.

The reason for the division of petroleum and greenhouse gas regulatory responsibilities is largely historical. NOPSEMA did not have well integrity or environmental management functions in 2008, when the greenhouse gas regulatory provisions were introduced into the OPGGS Act. With the potential for an increase in greenhouse gas storage activities in future, there is a renewed focus on the adequacy of regulatory arrangements.

NOPSEMA has developed expertise in the regulation of offshore environmental management and well operations through its responsibility for regulation of offshore petroleum activities. The Miscellaneous Bill therefore proposes to transfer regulatory oversight for offshore greenhouse gas environmental management and well operations from the Minister to NOPSEMA. This ensures Australia has an experienced and independent regulator for the day to day management of offshore greenhouse gas operations. The Minister will retain responsibility for major resource related decisions concerning the granting of greenhouse gas titles, the imposition of title conditions and the cancellation of titles, as well as core decisions about resource management and resource security.

Coastal water boundary changes – greenhouse gas titles

With provisions similar to those progressed a few years ago for petroleum, the Miscellaneous Bill contains amendments to remove doubt that greenhouse gas titles may be renewed in the event of a change to the boundary between Commonwealth waters and state coastal waters.

Strengthen and clarify NOPSEMA powers

The amendments in the Miscellaneous Bill will also strengthen and clarify the powers of NOPSEMA inspectors to determine whether regulated entities are compliant with their obligations under the OPGGS Act and associated regulations.

The amendments expand and clarify the categories of premises that inspectors may enter, without a warrant, to monitor compliance. This includes premises of a body corporate that is related to a titleholder, such as a parent company which may make decisions about operations carried out under the title. It also includes premises of titleholders' contractors or other linked

entities, such as entities who have agreed to provide response equipment in the event of an oil spill.

The amendments in the Miscellaneous Bill will also enable inspectors to undertake inspections without a warrant to monitor compliance by titleholders with well integrity-related obligations under the OPGGS Act and regulations, equivalent to existing powers that inspectors may exercise to conduct environmental or occupational health and safety inspections. In the context of a high-hazard industry, it is particularly important that the regulator has sufficient powers to ensure regulatory obligations are being complied with. Non-compliance may increase risks to health or safety or to the environment, with potentially serious consequences. Given the difficulty in accessing offshore facilities and changes to titleholders' operational decisions on the timing of well activities, the requirement to obtain a warrant may impede NOPSEMA's ability to conduct inspections. It would also impede NOPSEMA's ability to respond quickly in an emergency. Inspectors will still be required to obtain a warrant before exercising any powers to search for, or gather evidence of, contraventions of provisions.

Introduction of enforceable undertakings

The Miscellaneous Bill further amends the OPGGS Act to introduce enforceable undertakings. This will enable the Minister, the National Offshore Petroleum Titles Administrator and the CEO of NOPSEMA to accept and enforce undertakings in relation to compliance with provisions of the OPGGS Act and regulations, as part of a graduated enforcement framework.

Although regulators currently have access to a range of enforcement tools, enforceable undertakings offer a unique benefit. While existing tools can require a duty holder to cease an activity or reach a minimum standard of compliance, enforceable undertakings can go beyond this to effect meaningful changes to overall compliance culture. Enforceable undertakings can, where appropriate, allow the regulator to secure more timely and cost effective outcomes than pursuing a prosecution in court. For example, a prosecution may take months or years to achieve a punitive result, whereas an enforceable undertaking can require the duty holder to take positive steps to comply as soon as the undertaking has been accepted by the regulator.

Enforceable undertakings add to the extensive range of compliance and enforcement responses available to Government. They will enable an appropriately targeted and tailored enforcement response, taking specific titleholder and broader industry considerations into account.

Retrospective designation of 'frontier areas'

The Miscellaneous Bill also amends the OPGGS Act to retrospectively designate particular areas as 'frontier areas' for the purposes of the Designated Frontier Area tax incentive, to correct a recently discovered historical administrative oversight.

The tax incentive was designed to encourage petroleum exploration in Australia's remote offshore areas. It was active between 2004 and 2009. Under the scheme, the Resources Minister could designate up to 20 per cent of each year's offshore petroleum acreage release areas as 'frontier areas'. Where a permit was awarded over an area designated as a frontier

area, the registered holder or holders of the permit could claim up to 150 per cent of exploration expenditure as a tax deduction.

Under the *Petroleum Resource Rent Tax Assessment Act 1987*, the Resources Minister was required to formally designate frontier areas in writing. Due to an administrative oversight, this requirement was not met for the 2005 acreage release. As a result, four petroleum exploration permits were awarded over areas promoted in 2005 as frontier areas which were not validly designated.

The Miscellaneous Bill retrospectively designates these areas as frontier areas. This will remove any doubt that the relevant titleholders are entitled to the uplifted tax deduction. No persons will be disadvantaged by retrospective application.

In summary

Overall, this suite of measures underscores an ongoing commitment to the maintenance and continuous improvement of a strong and effective regulatory framework for offshore petroleum and greenhouse gas storage. The measures also serve to enhance the regime's currency and alignment with international best practice.

2 Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2018

The Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2018 (the Levies Bill) amends the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act) as a consequence of related amendments to the OPGGS Act to transfer regulatory oversight for offshore greenhouse gas storage well operations from the responsible Commonwealth Minister to NOPSEMA.

NOPSEMA operates on a fully cost-recovered basis through levies and fees payable by the offshore petroleum and greenhouse gas storage industries. To ensure NOPSEMA can also recover the cost of its oversight of well operations under greenhouse gas titles, the Levies Bill will amend the Levies Act to extend the application of the well-related levies to greenhouse gas wells.

The Levies Bill also amends the Levies Act as a consequence of amendments made to well-related regulations under the OPGGS Act which commenced on 1 January 2016.

Prior to the amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the Wells Regulations), a new 'well operations management plan' was required to be submitted every five years. The amended Wells Regulations instead provide for a plan to cover all stages of the life of a well, and require revision of that plan every five years. Currently, under the Levies Act, well activity levies are only imposed on applications for acceptance of a new plan. To ensure NOPSEMA continues to be fully cost-recovered, the Levies Bill will amend the Levies Act to also impose a well activity levy on submission of five-yearly revisions of plans.

The 2016 amendments to the Wells Regulations also removed the requirement for a titleholder to apply to NOPSEMA for approval to commence an individual well activity. The

Levies Bill therefore removes well activity levies that related to those now redundant applications.

3 Offer to provide further information

The department extends an offer to provide, either verbally or written, any further requested information on the proposed amendments, including to address any specific concerns the Senate Economics Legislation Committee may have or clarification the Committee may feel is needed.

Any specific requests can be met by contacting Jessica Brown (Manager, Strategic Policy, Offshore Resources Branch, Resources Division) on [REDACTED] or [REDACTED]