



Australian Government

**Department of Industry, Science,
Energy and Resources**

Submission by the Department of Industry, Science, Energy and
Resources
to the Senate Economics Legislation Committee

***Inquiry into the
Offshore Petroleum and Greenhouse Gas Storage Amendment
(Benefit to Australia) Bill 2020***

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1. Overview

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

The department's submission provides an overview of the offshore petroleum regulatory and administrative framework as set out in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act). The submission also outlines the department's views of the proposed amendment to the OPGGS Act as set out in the Bill.

Geoscience Australia was consulted in the preparation of the submission.

2. The *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Offshore petroleum (oil and gas and greenhouse gas storage) activities beyond state and territory coastal waters are governed by the OPGGS Act. The object of the legislation is to provide an effective regulatory framework for petroleum exploration and recovery and the injection and storage of greenhouse gas substances in offshore areas, being three nautical miles from the territorial sea baseline to the edge of the outer limits of the continental shelf.

The legislation articulates the framework of rights, entitlements and responsibilities of governments and industry and is objective-based.

2.1 Functions

The OPGGS Act sets up a framework for regulating certain offshore activities with a focus on operational matters including safety, environment, well integrity, worker occupational health and resource management.

The OPGGS Act provides for the grant and administration of offshore petroleum and greenhouse gas storage titles by the responsible Joint Authority for the offshore area. The Joint Authority for a State or Territory (other than Tasmania or the Territory of Ashmore and Cartier Islands) is constituted by the responsible State or Territory Minister and the responsible Commonwealth Minister. The Joint Authority for Tasmania and the Territory of Ashmore and Cartier Islands is solely constituted by the responsible Commonwealth Minister; the responsible Commonwealth Minister is also the Joint Authority for the administration of greenhouse gas injection and storage provisions.

The department's role is to provide support for the responsible Commonwealth Minister; provide policy advice in relation to matters arising under the OPGGS Act; and provide titles administration advice in relation to the Title Administrator's functions.

The OPGGS Act also establishes two key regulatory and administrative bodies:

- The National Offshore Petroleum Safety and Environmental Management Authority is responsible for the administration of occupational health and safety, structural integrity and environmental management provisions.

- The National Offshore Petroleum Titles Administrator is responsible for assisting and advising the Joint Authority and the responsible Commonwealth Minister; keeping registers of titles; data and information management; and ensuring petroleum resource management in order to secure optimal petroleum recovery for the benefit of the Australian community.

2.2 Offshore petroleum titles

The OPGGS Act has established a regime that enables titleholders to progress from exploration through to production and decommissioning. Offshore petroleum titles provide exclusive rights to apply for permission to undertake petroleum-related activities, within the title area. Proposed activities are subject to approvals for environmental and safety matters, and technical title assessments based on resource management.

An exploration permit is the first major title under the OPGGS Act regime. If a permit holder makes a discovery through drilling (and a location is declared), an application for a production licence can be made. If the discovery is not commercial, but is likely to become commercial within 15 years, permit holders can apply for a retention lease.

Retention leases provide titleholders the time to improve the economic viability of the resource and explore a range of development concepts. Common activities under a retention lease include:

- reducing uncertainty of the size and accessibility of the resource
- refining project economics
- appraisal activities
- addressing technological barriers; and
- commercial and infrastructure access agreements.

There are currently 82 active petroleum retention leases in Commonwealth waters. The OPGGS Act requires regular five-yearly reviews of the commercial viability of oil and gas resources under retention lease, with discretion for government to initiate a commerciality review within the five year period if required. Commerciality reviews relating to the North West Shelf area and the South East Australia area have been initiated in recent years.

Once the discovery becomes commercial, the title progresses to a production licence.

3. The proposed amendment

The Bill proposes introducing an additional object into the object clause of the OPGGS Act “*to ensure that the exploitation of these natural resources is for the benefit of the Australian community*”.

The object clause of a legislative enactment gives a general intent of the legislation and can be called upon to clarify the meaning of a provision where its meaning is unclear. The proposed amendment is worded broadly and it is unclear what benefit is being measured or how it could be quantified.

In the department’s view, the beneficial nature of the OPGGS Act is derived from the safe and responsible operation of offshore oil and gas activities, that reduce risks to safety and the environment to as low as reasonably practicable and meet the requirements of good oil field practice and optimal recovery of the petroleum.

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.

The supporting Explanatory material suggests that the Bill is focussed on retention lease decisions and taxation of Australia's oil and gas resources as a measure for community benefit. The department makes the following observations:

- The proposed amendment would not impact on taxation outcomes as the OPGGS Act does not impose fiscal (taxation) obligations on petroleum titleholders. It only imposes cost recovery fees and levies associated with the administration of petroleum titles and activities. Royalty requirements are imposed and payable under separate legislation.
- The OPGGS Act framework seeks to facilitate timely and efficient exploration and development through a coherent and integrated approach. It seeks to provide the industry with sufficient certainty and flexibility to minimise regulatory risk and compliance costs.
- Given the broad wording of the proposed amendment, there is a risk that sub-optimal outcomes may arise if safety, well-integrity and environmental outcomes are at the expense of the benefits to be achieved.

4. Related matters

The supporting material suggests that the Bill is focussed on retention lease decisions and based on three issues: taxation of Australia's oil and gas resources; treatment of (foreign) oil and gas companies; and domestic gas reservation policies. It also comments on the levels of scrutiny on retention lease renewals and foreign investment.

The department notes:

- Resource tax arrangements applicable to offshore oil and gas projects are primarily administered under the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRT). PRRT is payable by the holder of a project interest in a production licence within the meaning of the OPGGS Act. The North West Shelf project is subject to a unique fiscal scheme under the *Offshore Petroleum (Royalty) Act 2006*. The department administers this scheme in partnership with the Western Australian Government.
- The Government is currently considering domestic gas reservation and completed consultation on an issues paper in November 2020. The department is preparing advice on the policy options in the first half of 2021.
- Through the Foreign Investment Review Board, the Government reviews foreign investment proposals against the national interest on a case-by-case basis.
- Retention leases cover offshore oil and gas resources that are not currently commercially viable, but are likely to become commercially viable within 15 years. Retention lease holders are prohibited from undertaking petroleum recovery operations other than on an appraisal basis, and are therefore unable to generate revenue or profit from the petroleum while under lease.
- The effectiveness of the retention lease regime was highlighted by the Noetic Group Review, which reported to the COAG Energy Council in 2018. This report reviewed all onshore and offshore petroleum regimes in Australia to ensure Australia's resources are being commercialised as soon as possible and that the retention lease frameworks are fit for purpose. The review found no evidence of gas 'warehousing'.

5. Conclusion

In the department's view, the proposed amendment in the Bill is unlikely to achieve the goals identified in the supporting material because the OPGGS Act is not a taxation mechanism or a test for foreign investment. Rather, the beneficial nature of the OPGGS Act is derived from the safe and responsible operation of offshore oil and gas activities, that reduce risks to safety and the environment to as low as reasonably practicable and meet the requirements of good oil field practice and optimal recovery of the petroleum.

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.