



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
(Cross-boundary Greenhouse Gas Titles and Other Measures) Bill
2019***

and the

***Offshore Petroleum and Greenhouse Gas Storage (Regulatory
Levies) Amendment (Miscellaneous Measures) Bill 2019***

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1 Introduction

The Department of Industry, Innovation and Science (the department) is pleased to provide a submission to the Senate Economics Legislation Committee in regards to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Bill 2019 (the OPGGS Bill) and the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019 (the Levies Bill).

2 Background

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and associated regulations provide the legal framework for the ongoing investment in, and development of, Australia's offshore petroleum and greenhouse gas (GHG) storage resources in Commonwealth waters. The framework provides for the orderly exploration for and recovery of offshore petroleum resources, and the injection and storage of GHG substances, and sets out a basic framework of rights, entitlements and responsibilities of governments and industry.

The *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act) provides for the imposition of levies on the offshore petroleum and GHG storage industries. The levies are collected by the regulators of the offshore petroleum and GHG storage industries, the National Offshore Petroleum Titles Administrator (NOPTA) and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), to fund their regulatory operations on a cost-recovery basis.

The Australian Government's vision is to have the world's most advanced, innovative and successful resources sector, which delivers sustained prosperity and social development for all Australians. Against this backdrop, the proposed measures included in the OPGGS Bill and the Levies Bill aim to improve, update and clarify the operation of Australia's offshore petroleum and GHG storage legislative framework, so that it continues to meet the needs of the sector. The proposed measures included in the Bills are outlined below, together with response statements to the reasons for referral/principal issues for consideration.

3 Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Bill 2019

The OPGGS Bill contains a range of important policy measures requiring amendments to the OPGGS Act. These measures are grouped together under two broad categories below.

(a) Greenhouse gas cross-boundary storage

It is a fundamental policy principle that GHG storage formations must be wholly contained within a single title area, to ensure the formation can be effectively regulated.

The current GHG storage legislative framework does not provide for the injection and storage of GHG in geological formations that straddle the boundary between State or Northern

Territory (NT) coastal waters and Commonwealth waters. The OPGGS Bill will amend the OPGGS Act to provide for the grant and administration/regulation of single/unified GHG titles that are partly located in Commonwealth waters and partly located in State/NT coastal waters. Upon the grant of the title, the title area becomes Commonwealth waters for all purposes of the OPGGS Act. This essentially means that cross-boundary titles will be regulated under the OPGGS Act in the same way as other GHG titles located in Commonwealth waters.

Decisions about the granting of cross-boundary GHG titles will be made by a newly established Cross-boundary Authority, consisting of the responsible Commonwealth Minister and the relevant State/NT Resources Minister. This governance model is analogous with current Joint Authority arrangements for petroleum titles in Commonwealth waters.

Decisions about other matters that are now made by the responsible Commonwealth Minister will continue to be made by the Minister, as those decisions have a technical element that might affect the level of long-term risk. Titles administration will be undertaken by NOPTA. NOPSEMA will have regulatory responsibility for environmental management, safety and well integrity. Protections for existing petroleum titles, both in Commonwealth waters and State/NT coastal waters, will be maintained.

After site closing, the Commonwealth will eventually assume long-term civil liability for the whole cross-boundary storage operation and any other operations wholly within the cross-boundary title area. The assumption of long-term liability is subject to a robust monitoring and reporting process, which encourages both industry and governments to ensure GHG storage operations are carried out to the highest standards, thus limiting the assumed risk.

Impact of the OPGGS Bill on current GHG storage requirements

The amendments in the OPGGS Bill that provide for the grant, administration and regulation of cross-boundary GHG titles have no impact on current GHG storage requirements. The existing provisions of the OPGGS Act that apply to GHG titles in Commonwealth waters will continue to apply in the same way as they do now.

However, the OPGGS Bill does include a separate measure to allow for the unification of two adjacent Commonwealth GHG titles. As stated above, it is a fundamental policy principle that GHG storage formations must be wholly contained within a single title area, to ensure the formation can be effectively regulated. Therefore the OPGGS Act requires GHG injection and storage activities to be conducted wholly within a single title area. The OPGGS Act does not provide for injection and storage of GHG in geological formations that straddle adjacent Commonwealth title areas. However it is a reality that it can be discovered, through exploration, that a suitable GHG formation extends outside of and across more than one existing permit area. The OPGGS Bill therefore proposes to amend the OPGGS Act to enable the holder of two adjacent Commonwealth GHG titles to apply for a single title across the two areas, where the holder has reasonable grounds to suspect that there is a geological formation that straddles the two titles.

Further, the OPGGS Bill includes an amendment to enable a second renewal of a GHG assessment permit. Currently, a permit can only be renewed once for a period of three years. The OPGGS Act provides petroleum exploration permit holders with the ability to apply for

two permit renewal periods. Noting that petroleum and GHG projects undertake almost identical exploration activities (seismic surveys, geotechnical studies, and drilling of exploration and appraisal wells) with long lead times and equipment and infrastructure requirements, it is considered reasonable to provide for a second three year renewal period for GHG assessment permit holders.

Impact of a GHG storage regime extending across State and Commonwealth jurisdictions

The CarbonNet and Hydrogen Energy Supply Chain projects

The CarbonNet project is investigating the potential for a commercial-scale, multi-user carbon capture and storage (CCS) network in Gippsland, Victoria. CarbonNet is managed by the Victorian Government Department of Jobs, Precincts and Regions, and is funded by both the Australian and Victorian governments.

The most significant proposed GHG storage site under CarbonNet's project straddles the boundary between Commonwealth waters and Victorian coastal waters. Without the amendments in the OPGGS Bill, CarbonNet will be unable to progress to a declaration of identified storage formation, which is a legislative precursor to obtaining a licence to inject and store a GHG substance in the storage site.

The CarbonNet project is highly interdependent with the Hydrogen Energy Supply Chain (HESC) project. The HESC project is a world-first pilot project to safely and efficiently produce and transport clean hydrogen from Victoria's Latrobe Valley to Japan. The HESC project relies on suitable CCS that the CarbonNet project will provide. This is the cheapest way to produce clean hydrogen.

The Australian Government has invested heavily in both the CarbonNet and HESC projects, providing total funding of almost \$150 million.

The recently announced National Hydrogen Strategy highlights the economic opportunity the hydrogen export industry has for Australia. Australia's abundant natural resources mean it could be one of the first countries to create a hydrogen export industry, helping to generate a significant number of Australian jobs and lay the foundations for a new hydrogen industry. The amendments in the OPGGS Bill will further realise the benefits of Australia's resources sector and unlock the development of future resource projects that identify potential storage formations which straddle the jurisdictional boundary.

Application of the cross-boundary GHG title scheme to States and the NT

The department worked closely and extensively in cooperation with the Victorian Government in developing the policy framework for the administration and regulation of cross-boundary GHG titles. While the scheme envisaged through the amendment bills is generic in application, Victoria is currently the only jurisdiction that has identified a potential GHG storage formation that straddles the boundary between State coastal waters and Commonwealth waters.

As it is generic, the cross-boundary GHG title scheme may be used with respect to any or all State/NT jurisdictions in the future if additional GHG storage formations that straddle the boundary between Commonwealth waters and State/NT coastal waters are identified.

However, the cross-boundary GHG title scheme is not a unilateral imposition by the Commonwealth on any State/NT jurisdiction. A State or the NT Government must actively opt in at the outset, and in an ongoing sense through critical points in the life of the title, for the scheme to operate in their jurisdiction.

For example, a State or NT Government must consent, at the very outset, to being a member of the Cross-boundary Authority for the offshore area of the relevant State or the NT. This ensures that functions are not conferred on a State or the NT without their consent. Further, a decision to grant a cross-boundary title or specify a condition in a cross-boundary title must be made by consensus (both Commonwealth and State/NT Government in agreement). This includes a decision to grant an initial cross-boundary GHG assessment permit (which commences the operation of the scheme); any renewals of that permit; decisions to grant a successor cross-boundary title (e.g. a cross-boundary GHG holding lease or a cross-boundary GHG injection licence), and any renewals of a successor title. A decision to extend the term of a title will also require consensus between the members of the Cross-boundary Authority.

The responsible Commonwealth Minister will have the power to declare, by legislative instrument, a law of a State or the NT to be a “compatible cross-boundary law”. The provision will enable the Minister to ensure that a State or the NT has in place appropriate legislation to support the cross-boundary GHG title scheme, prior to the initial grant of a cross-boundary GHG assessment permit. The Minister will also have to take into account whether a declaration is still in force when deciding, as a member of the Cross-boundary Authority, whether to grant a renewal of or successor title to an initial cross-boundary GHG assessment permit. If the Minister considers that a State/NT no longer has in place appropriate supporting legislation, the Minister can revoke the declaration.

Protections for Commonwealth and State/NT petroleum titles

The OPGGS Act currently provides protections for existing Commonwealth petroleum titles, for example, when a decision is made whether to grant approval to a titleholder to undertake a key GHG operation, or whether to grant a GHG injection licence. This is intended to protect pre-existing rights. Equivalent protections for State petroleum titles are set out in State coastal waters GHG legislation.

Under the cross-boundary GHG titles scheme, these protections for both Commonwealth and State/NT petroleum titles will continue to apply in the same manner.

Consultation

As stated above, the department worked closely and extensively in cooperation with the Victorian Government in developing the policy and legislative framework for the administration and regulation of cross-boundary GHG titles. Even though Victoria is the only jurisdiction intending to participate in the scheme, it is a generic scheme – and therefore consultation on the policy framework was undertaken with the other jurisdictions through the Coalition of Australian Governments’ Energy Council’s Upstream Petroleum Resources Working Group. There were no significant issues raised by the State or NT governments. CarbonNet was also consulted through the policy development process, as well as providing comments on and support of an exposure draft of the legislation.

(b) Strengthen and clarify powers of NOPSEMA inspectors during oil pollution emergencies

The OPGGS Bill will amend the OPGGS Act to enable NOPSEMA inspectors to enter premises used for implementation of oil spill response obligations without a warrant (including an aircraft or vessel), *whether located in Commonwealth or State/Territory jurisdiction*, in the event of an oil pollution emergency arising from operations in Commonwealth waters.

The warrant-free inspection powers will only be exercisable if the CEO of NOPSEMA has declared in writing that there is a “declared oil pollution emergency”. The CEO may make a declaration if they are satisfied that there is an emergency that has resulted, or may result, in oil pollution. This declaration places an important limitation on the activation and use of the warrant-free oil pollution environmental inspection powers. The CEO of NOPSEMA must revoke the declaration if they are satisfied that the emergency no longer exists. This ensures that the inspection powers are only exercisable while an emergency is ongoing.

The OPGGS Bill will also amend the OPGGS Act to extend the operation of polluter pays obligations and the application of significant incident directions that may be given by NOPSEMA to areas of State or Territory jurisdiction.

Impact on environmental law and protection measures

The OPGGS Act does not currently provide adequate powers for NOPSEMA to ensure that a titleholder is fully compliant with oil spill response obligations in the event of an oil pollution emergency originating from operations in Commonwealth waters. Incident response operations are often coordinated or undertaken through premises that cannot be accessed without a warrant or the consent of the titleholder or other persons, such as a forward operating base or a vessel conducting clean-up operations. Other persons may include the master of such a vessel. In particular and of significance, NOPSEMA currently does not have the power to inspect for or enforce compliance by the titleholder in areas of State or Territory jurisdiction, such as in coastal waters or onshore.

Obtaining a warrant or consent (which can subsequently be withdrawn) can significantly impede compliance monitoring in emergency situations. During an offshore incident, NOPSEMA inspectors will need regulatory intelligence in real-time under dynamic situations, including monitoring and enforcing compliance across a number of locations within and outside an offshore area. If an oil pollution incident were to occur and spread into a State/Territory jurisdiction, and the powers to be introduced by the OPGGS Bill were not in place, the Australian Government could be exposed to criticism through the inability to act effectively to address the situation.

In the rare instance of a declared oil pollution emergency, NOPSEMA inspectors will have access to emergency response premises, without a warrant, to monitor compliance by a titleholder with the oil pollution emergency provisions of the titleholder’s environment plan, and/or compliance with a significant incident direction. The OPGGS Bill will geographically extend the functions and enforcement powers of NOPSEMA inspectors, beyond their current limits of Commonwealth waters, into areas of State/NT or designated external Territory jurisdiction, including in coastal waters or onshore.

These environmental law and protection measures will enable NOPSEMA to monitor whether a titleholder is in compliance with its oil pollution response obligations, and take enforcement action if the titleholder is failing to meet its obligations.

It is important to note that States and Territories will continue to have the ability to exercise any relevant powers in their own legislation, including utilising their own spill response capacity in their jurisdiction. The proposed measures do not exclude or limit the operation of a law of a State or Territory, where such a law is capable of operating concurrently during a declared oil pollution emergency.

Consultation

The department consulted with NOPSEMA, the Australian Petroleum Production and Exploration Association, the Attorney-General's Department and all State and NT members of the Upstream Petroleum Resources (UPR) working group of the Council of Australian Governments Energy Council during development of the measure. The department also consulted the Department of Infrastructure, Transport, Cities and Regional Development and the Department of the Environment and Energy on the application of the proposed amendments within the jurisdiction of external Territories.

Overall stakeholders understood the need for, and were supportive of, the policy and amendments.

In summary

Overall, the measures in the OPGGS Bill underscore the ongoing commitment of the Australian Government to the maintenance and continuous improvement of a strong and effective regulatory framework for offshore petroleum and GHG storage. Further, the OPGGS Bill will ensure the regulatory framework's alignment with international best practice and aim to attract investment in new technologies and industries for Australia.

4 Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019

The Levies Bill amends the Levies Act as a consequence of the amendments to the OPGGS Act to allow effective title administration and regulation of a GHG storage formation that straddles the boundary between State/NT coastal waters and Commonwealth waters. The Levies Bill also amends the Levies Act to provide that that Act binds, and is taken to always have bound, the Crown in right of each of the States and the NT.

Impact on levies raised by the Bill

The Levies Bill does not impose any new levies. Rather, the amendments apply in relation to existing levies, and are made for the avoidance of doubt.

NOPSEMA and NOPTA operate on a fully cost-recovered basis through levies and fees payable by the offshore petroleum and GHG storage industries. To ensure NOPSEMA and NOPTA can recover the cost of regulatory oversight of a cross-boundary title, the Levies Bill

will amend the Levies Act to ensure that levies imposed by that Act are effectively imposed on cross-boundary GHG titles.

The OPGGS Bill amends the OPGGS Act to provide that the GHG-related provisions of the Act and regulations apply, and are taken to always have applied, to the States and the NT. The amendments are intended to remove any doubt about the validity of GHG assessment permits that have been granted to the Crown in right of Victoria. The Levies Bill makes consequential amendments to the Levies Act to also ensure that that Act binds, and is taken to always have bound, the Crown in right of the States and the NT. The amendments ensure that levies are imposed in relation to regulatory activities undertaken in respect of GHG titles held by a State or the NT. This will in turn ensure that NOPSEMA and NOPTA continue to be fully cost-recovered for their regulatory operations.

The purpose of retrospective application is to validate past payments of annual titles administration levy by the Crown in right of Victoria under the Levies Act. No person will be disadvantaged as a result of retrospectivity.

5 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.