

General Policy Review Bulletin # 16

May 2011

Dear Stakeholders,

Welcome to the General Policy Review Bulletin No. 16. The purpose of this series of bulletins is to advise interested parties on policy issues and developments related to the offshore minerals and offshore petroleum and greenhouse gas storage regulatory regime.

This issue of the Policy Bulletin covers the Minister for Resources and Energy's, the Hon Martin Ferguson AM MP, release, on 25 May 2011, of the Australian Government's final response to the Montara Commission of Inquiry Report and its formal response to the Productivity Commission (PC) *Review of Regulatory Burden on the Upstream Petroleum (Oil & Gas) Sector*, as well as introduction of legislative amendment bills into the Australian Parliament.

The Government's final response to the Montara Inquiry's report, as with the draft response to the Report either accepts or notes 102 of the 105 recommendations. The changes in the final response reflect feedback from governments, industry and environmental groups. They provide greater clarification to the Response and more detail about implementation measures. The Montara Inquiry report and the Government's response are available from the Department of Resources Energy and Tourism website: www.ret.gov.au/montarainquiryresponse

The PC Review found the existing regulatory regime is burdensome, slow and lacked consistency across jurisdictions, as such the, principal recommendation was to reduce unnecessary burden on the industry through the establishment of a national offshore petroleum regulator.

Currently, the Commonwealth has legislative responsibility for petroleum operations in Australia's offshore areas beyond three nautical miles; however day-to-day regulation is undertaken by the Designated Authority (DA) in each state and the Northern Territory. The Government is replacing the seven Designated Authorities with an integrated regulatory system, promoting consistency and efficiency across Commonwealth waters.

The administration of titles will be centralised in the new National Offshore Petroleum Titles Administrator (NOPTA), which will replace the Designated Authority system currently in place for Commonwealth waters. However, the Joint Authority, which comprises the Commonwealth Minister and the relevant state or Northern Territory (NT) Minister, will be retained as the decision maker for key petroleum title decisions.

The Commonwealth also proposes to separate offshore regulation and titles administration to avoid any potential or perceived conflicts of objectives. The functions of the National Offshore Petroleum Safety Authority (NOPSA) will be expanded to include environmental plan and day-to-day approvals to become the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

The Government's response to the PC's review is available from the Department of Resources Energy and Tourism website: <http://www.ret.gov.au/Department/responses/pc-review/Pages/pc-review.aspx>

Offshore Resources Legislation Amendments

Establishment of a single national regulator

To implement the Government's response to the PC Report of establishing NOPTA and to expansion to NOPSEMA, Minister Ferguson introduced a package of legislative amendment Bills to Parliament on 25 May 2011. The package includes the following Amendment Bills:

- Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011;
- Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No.2) Bill 2011;
- Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011; and
- Offshore Petroleum (Royalty) Amendment Bill 2011.

Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011

This Bill creates the new NOPTA to replace the Designated Authority system currently in place for Commonwealth waters. The Joint Authority comprising the Commonwealth Minister and the relevant state or Northern Territory (NT) Minister, will be retained as the decision maker for key petroleum title decisions. NOPTA will be a branch within RET and advise the Joint Authority on petroleum titles and administer titles and data.

The Bill also expands NOPSAs existing functions to safety, environment protection and day-to-day operational consents from exploration through to decommissioning, complementing their expanded responsibility for well-integrity regulation which this Parliament passed last year. Safety, environment protection and day-to-day operational consents are all concerned with integrity and it is essential that they be regulated in an integrated manner. The expanded authority will be known as NOPSEMA.

Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No.2) Bill 2011

This Bill imposes cost-recovery levies on holders of offshore petroleum titles in respect of environmental approvals and titles administration under the OPGGS Act to fund the regulatory activities of NOPSEMA and NOPTA.

The two types of cost recovery levies are:

- An annual titles administration levy for an eligible title in force, for each year of the term of the title, to recover the new National Offshore Petroleum Titles Administrator's (NOPTA) costs; and
- An environment plan levy to recover the National Offshore Petroleum Safety and Environmental Management Authority's (NOPSEMA) costs.

Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011

This Bill allows the Commonwealth to retain the monies that are payable under the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006* to recover the establishment costs of NOPSEMA and NOPTA;

Offshore Petroleum (Royalty) Amendment Bill 2011

This Bill makes consequential amendments to the Registration Fees Act and the *Offshore Petroleum (Royalty) Act 2006*; and

The above four Bills were referred to House of Representatives Committee for consideration during June.

The Bills, associated Explanatory Memoranda and Second Reading Speeches can be found at the website for the Australian Parliament by referring to “Bills before Parliament” (<http://www.aph.gov.au/bills/index.htm>).

National Regulator Bills - Stakeholder Information Sessions

Information sessions on these legislative amendments for stakeholders will be held in Melbourne on 14 June and Perth on 15 June, with times and locations to be confirmed.

If you have any questions in relation to the National Regulator Bills, please contact Peter Livingston at the Department of Resources, Energy and Tourism: peter.livingston@ret.gov.au or 02 6213 7974

Exclusion of application of the Personal Property Securities Act 2009 to the Offshore Petroleum and Greenhouse Gas Storage Act 2006 and Offshore Minerals Act 1994

Minister Ferguson also introduced a fifth legislative amendment Bill, the [Offshore Resources Legislation Amendment \(Personal Property Securities\) Bill 2011](#), into Parliament on 25 May 2011 containing proposed amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) and *Offshore Minerals Act 1994* (OMA) to exclude operation of the Commonwealth *Personal Property Securities Act 2009* (PPS Act).

The PPS Act, which received Royal Assent in 2009, establishes a national personal property securities register which is intended to become the primary register of personal property security interests throughout Australia. The PPS Register, established by the PPS Act, is scheduled to commence operation in October 2011. Offshore petroleum, greenhouse gas and minerals titles are presently captured by the definition of “personal property” for the purposes of the PPS Act, and therefore would be subject to the registration regime established under the PPS Act. However, proposed amendments to the OPGGSA and OMA will expressly exclude the operation of the PPS Act in relation to offshore petroleum, greenhouse gas and minerals titles.

Currently, the OPGGSA requires the Designated Authority (DA) for an offshore area to keep a register of petroleum titles awarded in that area. Dealings relating to existing or future titles, including dealings that create or assign an interest in the title, are of no force until the DA has

approved the dealing and made an entry on the Register in relation to that dealing. The responsible Commonwealth Minister also has the ability to intervene by giving a direction to the DA in relation to a proposed approval of a dealing in relation to offshore petroleum titles. Similarly, the responsible Commonwealth Minister is required to keep a register of greenhouse gas titles, and dealings relating to existing or future titles must be approved by the Minister and entered on the Register before they can come into force. The OMA requires the DA for an offshore area to keep a register of offshore minerals titles awarded in that offshore area. Dealings in offshore minerals titles must also be entered on the Register; however there is no requirement for the DA to approve the dealing before it can come into force.

These amendments in the Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011 are proposed for two main reasons. Firstly, the Commonwealth has been advised that all state and territory jurisdictions intend to opt out of or exclude the operation of the PPS Act regime for their onshore mining schemes. Excluding application of the PPS Act to the OPGGSA and the OMA will therefore ensure consistency between the onshore and offshore mining and petroleum regimes, minimising a potential regulatory burden and costs to the resources industry and its investors in complying with different registration requirements. Secondly, continued application of the registration and approval provisions for dealings in offshore petroleum and greenhouse gas titles under the OPGGSA will ensure that DAs and the responsible Commonwealth Minister respectively can continue to ensure the suitability of the entities that potentially are able to exercise control over the exploitation of Australia's offshore petroleum resources, by having the ability to refuse to approve a dealing in a title. If the proposed amendments are not made, no similar approval or vetting facility will apply under the PPS Act, and instead upon registration of the interest on the PPS Register it will automatically come into force for the purpose of the PPS Act. Without the amendments being made to the OPGGSA, it is possible that a situation could arise whereby an interest was registered under the PPS Act but refused registration under the OPGGSA, which would lead to legal uncertainty in relation to the standing of the interest.

In effect, the amendments, once passed by the Australian Parliament, will provide that offshore petroleum, greenhouse gas and minerals titles and all interests and rights relating to those titles are not personal property for the purposes of the PPS Act. Registration and approval requirements in relation to offshore titles will therefore continue in their current form as set out in the OPGGSA and the OMA, and registration provisions in the PPS Act will not apply to offshore titles.

The Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011, associated Explanatory Memorandum and Second Reading Speech can be found at the website for the Australian Parliament:
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=priority,title;page=9;query=Dataset_Phrase%3A%22billhome%22%20ParliamentNumber%3A%2243%22;rec=13;resCount=Default

If you have any questions in relation to the Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011, please contact Jessica Brown on jessica.brown@ret.gov.au or 02 6276 1134.

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This occasional newsletter was prepared by Resources Division of the Department of Resources, Energy and Tourism.