



GENERAL POLICY REVIEW

Issue 18 - December 2011

RECENT AMENDMENTS TO THE *OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE ACT 2006 (OPGSA)* AND ASSOCIATED REGULATIONS

The purpose of this series 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 Review covers:

- the National Regulator legislative and regulatory amendment processes currently being undertaken by the Commonwealth;
- Commencement of NOPTA and NOPSEMA – Changes to the Submission of Documents Under the Regulations from 1 January 2012;
- exclusion of the application of the *Personal Property Securities Act 2009* from offshore titles and interests in titles;
- the introduction into Parliament of the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Bill 2011*;
- the new consultation provisions in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*; and
- Correction to transitional provisions in the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*.



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National Regulator legislative and regulatory amendments

As many of you would be aware, the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011* (the National Regulator Amendment Act) and associated Acts were passed by the Parliament on 15 September 2011, and received Royal Assent on 14 October 2011. Below is a brief summary of some of the key features of the new legislation.

The National Regulator Amendment Act amends the OPGGSA to establish the National Offshore Petroleum Titles Administrator (NOPTA) for the offshore petroleum and greenhouse gas storage industries, and expands the functions of the National Offshore Petroleum Safety Authority (NOPSA) to become the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), with regulatory responsibility for occupational health and safety, structural integrity, environmental management, and day-to-day operations. The parts of the National Regulator Amendment Act that provide for the establishment of NOPSA and NOPSEMA are on track to commence by Proclamation on 1 January 2012.

At that time, NOPTA and NOPSEMA will commence to exercise regulatory functions and powers under the OPGGSA, and the Designated Authorities will be abolished. In addition, the *Offshore Petroleum and Greenhouse Gas Storage (Annual Fees) Act 2006* will be repealed once NOPTA and NOPSEMA commence operations on 1 January 2012. Titleholders will no longer be required to pay annual fees from this date. However, as discussed below, new cost-recovery levies, including a new annual titles administration levy, will commence to apply from 1 January 2012.

The *Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Act 2011* amends the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Regulatory Levies Act) to impose new cost-recovery levies on holders of offshore petroleum and greenhouse gas storage titles. The levies will recover the costs of NOPTA in undertaking its regulatory functions in relation to titles administration (through the annual titles administration levy) and NOPSEMA in undertaking its regulatory functions in relation to environmental management (through the environment plan levy).



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Annual titles administration levy is imposed for each year of the term of an eligible title. An “eligible title” is:

- A work-bid petroleum exploration permit;
- A special petroleum exploration permit;
- A petroleum retention lease;
- A petroleum production licence;
- An infrastructure licence;
- A pipeline licence;
- A work-bid greenhouse gas assessment permit;
- A greenhouse gas holding lease;
- A greenhouse gas injection licence.

The levy for the first year of the term of a permit, lease or licence is due and payable at the end of 30 days after the day on which the term begins. The levy for a later year of the term is due and payable at the end of 30 days after the anniversary of the day on which the first year of the term begins.

An environment plan levy is imposed on the submission to NOPSEMA of an environment plan or proposed revision to an environment plan, where the activities to which the plan or proposed revision relates are authorised by one or more Commonwealth titles. Where a State or Territory has conferred environmental regulatory functions on NOPSEMA in their designated coastal waters, environment plan levy will also be imposed on submission to NOPSEMA of an environment plan or proposed revision to an environment plan, where the activities to which the plan or proposed revision relates are authorised by one or more State/Territory titles.

Titleholders should be aware that, where an environment plan has been submitted to the Designated Authority for acceptance prior to 1 January 2012, but a decision to accept or finally reject the plan has not been made before that date, the plan or proposed revision will be deemed to have been submitted to NOPSEMA on 1 January 2012 and levy will be payable on this submission.

Provisions relating to the calculation and composition of the annual titles administration levy and environment plan levy will be included in the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*. Further information about the amendments being progressed to regulations under the OPGGSA and Regulatory Levies Act is provided below.



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The *Offshore Petroleum (Royalty) Amendment Act 2011* confers the functions currently exercisable by the Designated Authority under the *Offshore Petroleum (Royalty) Act 2006* on the responsible State Minister of Western Australia (WA). These amendments enable the continued use of specialist royalty expertise in the Western Australian Department of Mines and Petroleum following the abolition of the Designated Authority.

To fully reflect and implement the transfer of regulatory responsibilities from the Designated Authorities to NOPTA and NOPSEMA, the Commonwealth is progressing amendments to regulations under the OPGGSA and the Regulatory Levies Act. The regulations to be amended are:

- *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* – machinery amendments.
- *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* – machinery and transitional amendments, as well as new consultation provisions to address concerns raised by the Western Australian Government. Further information about the consultation provisions is provided below.
- *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* – machinery amendments.
- *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* – amendments to detail the calculation and composition of the new annual titles administration levy and environment plan levy, and to provide for when environment plan levy is due and payable, in addition to machinery amendments.

The amendments to these regulations are proposed to come into effect on 1 January 2012 when NOPTA and NOPSEMA commence operations. The amending regulations and associated explanatory material will be available on www.comlaw.gov.au after consideration of the regulations by the Federal Executive Council.

Please note that amendments to the *Offshore Minerals Act 1994* (OMA) to add minerals titles administration and regulation to the functions of NOPTA and NOPSEMA are proposed to be introduced into Parliament in the 2012 sittings. These amendments will not commence by 1 January 2012. In the interim, the Designated Authorities will continue to exercise regulatory functions in relation to offshore minerals under the OMA.

Further information on the establishment of NOPTA and NOPSEMA is also available in the Information Session Presentations given by NOPTA and NOPSAs at: <http://ret.gov.au/resources/nopta/Pages/nopta.aspx> (NOPTA) and <http://www.nopsa.gov.au/presentation/index.asp> (NOPSAs).



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Exclusion of the application of the *Personal Property Securities Act 2009* from offshore titles and interests in titles

The *Offshore Resources Legislation Amendment (Personal Property Securities) Act 2011* (PPS Amendment Act) was introduced into Parliament on 25 May 2011 with the National Regulator package of legislation. The PPS Amendment Act was subsequently passed by Parliament on 15 September 2011, and received Royal Assent on 14 October 2011.

The *Personal Property Securities Act 2009* (PPS Act) establishes a national personal property securities register which is intended to become the primary register of personal property security interests throughout Australia. Prior to the passage of the PPS Amendment Act, offshore petroleum, greenhouse gas and minerals titles would have been captured by the definition of “personal property” for the purposes of the PPS Act, and therefore would have been subject to the registration regime established under the PPS Act. Amendments to the OPGGSA and OMA contained in the PPS Amendment Act expressly exclude the operation of the PPS Act in relation to offshore petroleum, greenhouse gas and minerals titles.

As the Personal Property Securities Register under the PPS Act will commence in early 2012, this effectively means that offshore petroleum, greenhouse gas and minerals titles, and interests in those titles, will not at any time become subject to the PPS Act regime, and the registration and approval provisions in the OPGGSA and OMA will continue to apply.

If you have any questions in relation to the PPS Amendment Act, please contact Jacqui Princi on (02) 6213 6435 or at jacqui.princi@ret.gov.au.



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Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Bill 2011

On 21 September 2011, the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Bill 2011* (Significant Incident Directions Bill) was introduced into the House of Representatives. The Bill was subsequently passed by the House of Representatives on 23 November 2011; however, as Parliament has finished sitting for the year, the Bill will not be introduced into the Senate for consideration and final passage until next year.

Following the uncontrolled release of hydrocarbons from the Montara Wellhead Platform in August 2009, it became evident that a clear and specific power is required in the event of a significant offshore petroleum incident to enable the regulator to give directions to a petroleum titleholder in relation to the clean-up or other remediation of the effects of an escape of petroleum, both within *and* outside the title area.

The Significant Incident Directions Bill will therefore amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) to insert new provisions to specifically enable the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), as the regulator for the offshore petroleum industry, to issue a direction to a petroleum titleholder in the event of a significant offshore petroleum incident occurring within the title area that has caused, or might cause, an escape of petroleum.

The direction may, among other things, require the titleholder to take action to prevent or eliminate the escape of petroleum or potential escape of petroleum, and/or to mitigate, manage or remediate the effects of an escape of petroleum.

Where necessary, the direction may require the titleholder to take action either within or outside the title area in which the incident occurred. This would include, for example, clean up of petroleum that has escaped as a result of the incident and has extended beyond the boundaries of the title area. Failure by a person to comply with a direction will be an offence of strict liability.

These amendments to the OPGGS Act will help ensure that the Commonwealth has the full ability to provide for remediation of the effects of an escape of petroleum in the event of an oil spill incident, and is one of a number of legislative amendments being introduced to improve the regulation of the offshore petroleum industry following the Montara incident.



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The Significant Incident Directions Bill was referred to the House of Representatives Standing Committee on Climate Change, Environment and the Arts for review prior to debate in the House of Representatives. The Committee tabled its report on 21 November 2011, and recommended that the House of Representatives pass the Significant Incident Directions Bill. A copy of the report is available at:
<http://www.aph.gov.au/house/committee/ceea/opggsa/report.htm>.



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Commencement of NOPTA and NOPSEMA – Changes to the Submission of Documents Under the Regulations from 1 January 2012

From 1 January 2012, upon the commencement of NOPTA and NOPSEMA, there will be changes to the submission of documents under the offshore petroleum regulations:

Document	Pre 1 January 2012	Post 1 January 2012	Comments
Safety Cases	Submitted to NOPSA	Submitted to NOPSEMA	As NOPSA is continued in existence as NOPSEMA, there will be no effect on previously accepted safety cases or applications for acceptance of a safety case submitted to NOPSA prior to 1 January 2012.
Field Development Plans	Submitted to Relevant Designated Authority for acceptance by the Joint Authority	Submitted to NOPTA for acceptance by the Joint Authority	As the Joint Authorities are continued in existence, there will be no effect on previously accepted FDPs, or FDPs previously submitted for acceptance by the Joint Authority prior to 1 January 2012.
Well Operations Management Plans (WOMPs) – for a	Submitted to NOPSA	Submitted to NOPSEMA.	As NOPSA is continued in existence as NOPSEMA, there will be no effect on previously accepted WOMPs or applications for acceptance of a WOMP that was submitted to NOPSA prior to



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petroleum title			<p>1 January 2012.</p> <p>Please also note that from 1 January 2012, if a petroleum titleholder provides a written application, plan, notice, report or any other document to NOPSEMA in compliance with the Regulations or an accepted WOMP, the titleholder must also give a copy to NOPTA.</p> <p>Consideration of WOMPs in relation to well operations under a greenhouse gas title will continue to be the regulatory responsibility of the responsible Commonwealth Minister (i.e. the Commonwealth Minister for Resources and Energy).</p>
Well activity approvals	Submitted to NOPSA	Submitted to NOPSEMA	As NOPSA is continued in existence as NOPSEMA, there will be no effect on previous approvals or applications for approvals submitted to NOPSA prior to 1 January 2012.
Environment plans	Submitted to Relevant Designated Authority	Submitted to NOPSEMA	<p>Environment Plans accepted by the Designated Authority prior to 1 January 2012 will remain in force with the acceptance date remaining the date on which the Designated Authority accepted it (for the purpose of 5 yearly revisions).</p> <p>Environment Plans, or proposed revisions to Environment Plans, that were submitted to the Designated Authority for</p>



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			<p>acceptance prior to 1 January 2012 but for which a decision to accept or finally reject the Plan or proposed revision has not been made, will be taken to have been submitted to NOPSEMA on 1 January 2012.</p> <p>Please also note that from 1 January 2012, the submission of environment plans and proposed revisions to environment plans will be subject to an environment plan levy payable by the titleholder.</p>
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Further to the information provided above, titleholders should also be aware of changes to the provisions relating to directions given under the Act that are inconsistent with an accepted WOMP or well activity approval.

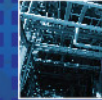
From 1 January 2012, if the responsible Commonwealth Minister gives a direction to a petroleum titleholder under section 574A (the general directions power) or 586A (the remedial directions power) of the OPGGSA, the titleholder must give a copy of the direction to NOPSEMA as soon as practicable.

If the direction given by the responsible Commonwealth Minister is inconsistent with an accepted WOMP, the titleholder must vary the WOMP to be consistent with the direction and apply to NOPSEMA for acceptance of the variation. If the direction is inconsistent with an approval of a well activity previously given by NOPSEMA, the approval will cease to be in force.

From 1 January 2012, NOPSEMA will also have the ability to give general directions and remedial directions to petroleum titleholders under section 574 and 586 of the OPGGSA respectively. If a direction given by NOPSEMA is inconsistent with an accepted WOMP, the titleholder



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must vary the WOMP to be consistent with the direction and apply to NOPSEMA for acceptance of the variation. If the direction is inconsistent with an approval of a well activity previously given by NOPSEMA, the approval will cease to be in force.



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New consultation provisions in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*

The amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations) to provide for the transition to NOPSEMA also include amendments to the consultation provisions to reflect an agreement between the Commonwealth Minister for Resources and Energy and the Western Australian Minister for Mines and Petroleum.

From 1 January 2012, environment plans prepared by operators must include arrangements for the operator to notify the Department of the responsible State or Northern Territory (NT) Minister before the proposed date of commencement of drilling operations or seismic survey operations where those operations may have an effect on the local community in that State or the NT.

These additional amendments to the Environment Regulations will not apply until 3 months after the commencement of the amendments (i.e. on 1 April 2012). These amendments will clarify the requirements for consultation with potentially affected parties during development of an environment plan or proposed revision to a plan.

During development of a plan or proposed revision, the operator of an activity must consult each of the following:

- Each Commonwealth Department or agency to which the activities to be carried out under the plan may be relevant;
- Each State or NT Department or agency to which the activities to be carried out under the plan may be relevant;
- The Department of the responsible State or NT Minister;
- A person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the plan; and
- Any other person or organisation that the operator considers relevant.

The operator will then be required to provide a report on all consultations between the operator and relevant persons in the environment plan that is submitted to NOPSEMA. The report will be required to contain a summary and the full text of any response made by a relevant person during the consultation, an assessment by the operator of the merits of any objection or claim about the adverse impact of each activity to which the plan relates, and a statement of the operator's response or proposed response to the objection or claim, if any.



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NOPSEMA will be required to consider whether the environment plan demonstrates that the operator has carried out the required consultation, and that any measures the operator has adopted or proposes to adopt because of the consultations are appropriate, when deciding whether to accept the environment plan.



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Transitional Provisions - Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

It has come to the attention of the Department of Resources, Energy and Tourism (the Department) that a technical drafting error exists in the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (RMA Regulations) which came into force on 29 April 2011.

As part of the consolidation exercise which resulted in the RMA Regulations, procedural and content requirements in relation to a field development plan (FDP) for a petroleum production licence, contained previously in guidelines only, were lifted into the regulations. To ensure recognition of previously accepted FDPs, a transitional provision was drafted in regulation 4.16 of the RMA Regulations.

The policy intent of this provision was to recognise all previously accepted FDPs as being in force under the new RMA Regulations. However this provision was drafted to only capture previously accepted FDPs where “petroleum *was being recovered* under the petroleum production licence on or before the commencement day” of the RMA Regulations. This narrow drafting technically excludes circumstances where an FDP was accepted but recovery had not yet commenced when the RMA Regulations came into force.

The Department is progressing amendments to the RMA Regulations to correct this technical error. The amendments will be included with the machinery amendments to the RMA Regulations to provide for the transition to NOPTA and NOPSEMA, which will be considered by Federal Executive Council on 7 December 2011. Once approved, the amendment will be backdated to commence from 29 April 2011, when the RMA Regulations originally commenced.



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