

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources and Northern Australia

Offshore Petroleum and Greenhouse Gas Storage Act 2006
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment
(Safety Case and Environment Plan Levies) Regulations 2017

Purpose and Operation

The *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Regulatory Levies Act) imposes levies in relation to offshore petroleum and greenhouse gas titles, including safety case levies and environment plan levies. Levy amounts collected are used to fund regulatory functions of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) on a cost-recovery basis.

Section 11 of the Regulatory Levies Act provides that the Governor-General may make regulations for the purposes of a number of sections of the Regulatory Levies Act, including sections 7 and 8 (which impose safety case levies) and sections 10F and 10G (which impose environment plan levies).

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) provides the legal framework for the exploration for, and recovery of, petroleum, and for the injection and storage of greenhouse gas substances in offshore areas. Section 781 of the OPGGS Act relevantly confers on the Governor-General the power to make regulations prescribing matters required or permitted by the OPGGS Act to be prescribed. Section 687 of the OPGGS Act provides that regulations may make provision for the remittal or refund, in certain circumstances, of part of an amount of a safety case levy imposed by the Regulatory Levies Act in respect of a facility and a year or part of a year. Section 688C of the OPGGS Act provides that regulations may make provision for the remittal or refund of part of an amount of an environment plan levy imposed by the Regulatory Levies Act.

The *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulations 2017* (the Regulations) amends the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the Levies Regulations) to:

- expressly authorise the refund of a safety case levy (as well as a remittal); and
- reflect the fact that refunds of levy amounts are to be issued by the Commonwealth (rather than by NOPSEMA).

Section 687 of the OPGGS Act previously provided that regulations may make provision for the remittal, in certain circumstances, of part of an amount of a safety case levy imposed by the Regulatory Levies Act in respect of a facility and a year or part of a year. The *Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Act 2017* amended section 687 to make it clear that regulations can provide for the remittal (in the narrow sense) *and* refund of part of an amount of a safety case levy. The Regulations therefore make consequential amendments to the Levies Regulations to eliminate any doubt about the Commonwealth's ability to refund such amounts.

The Levies Regulations currently assume that NOPSEMA can refund environment plan levy amounts. This was the case when regulations 59E and 59I (which provide for the refund or remittal of part of an amount of environment plan levy) were made. However, this has not been the case since 1 July 2014, when the *Public Governance, Performance and Accountability Act 2013* commenced, and NOPSEMA's special account was abolished. Now only the Commonwealth can refund levy amounts. The Regulations will therefore amend the Levies Regulations to provide that, while NOPSEMA may remit part of an amount of an environment plan levy, only the Commonwealth may issue a refund.

For the same reasons, the amendments made by the Regulations also ensure that it is clear that NOPSEMA can remit part of an amount of a safety case levy, and the Commonwealth can refund part of an amount of a safety case levy.

Consultation

The amendments made by the Regulations follow from amendments to the OPGGS Act made by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Act 2017*, which provide a clear regulation-making power for regulations providing for remittal and refund of environment plan levies and safety case levies.

NOPSEMA and the Department of Finance were consulted on the proposal to make necessary amendments to the OPGGS Act and the Levies Regulations that relate to the remittal and refund of levy amounts. NOPSEMA was also consulted during the drafting of the Regulations.

The amendments to the OPGGS Act and the Levies Regulations ensure the validity of the levy remittal and refund process that has been in place for a number of years, and for which there is extensive familiarity by both Government and the industry. The amendments made by the Regulations do not insert any new, or change any existing, substantive obligations for industry. As such, no further consultation was considered necessary.

Regulatory Impact

The Office of Best Practice Regulation advised that the proposal is likely to have only minor regulatory impacts on business, individuals and community organisations (OBPR ID: 21126).

Details of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulations 2017* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Regulatory Levies Act).

Section 4 – Schedules

This section is a machinery clause that enables the Schedules to amend the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the Levies Regulations) and provide for application provisions for those amendments.

Schedule 1—Amendments

Part 1—Amendments

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004

Item 1 – Paragraph 22(1)(b)

This item omits “remission” and substitutes “remittal or refund” in paragraph 22(1)(b) to reflect that safety case levies will be able to be remitted or refunded under regulation 25 of the Levies Regulations. The item also substitutes “remission” with “remittal”, for consistency with the word used in the regulation-making power in section 687 of the OPGGS Act.

Item 2 – Regulation 25

This item repeals regulation 25 and substitutes it with a revised regulation that clarifies: (a) that part of an amount of a safety case levy imposed in Commonwealth waters must be remitted or refunded in certain circumstances which are stipulated in the text of the regulation; and (b) the entities responsible to remit (the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)) and to refund (the Commonwealth) if part of an amount of a safety case levy must be remitted or refunded in accordance with this regulation. Previously, regulation 25 provided only for the remittal of

part of an amount of a safety case levy, in accordance with the scope of the previous regulation-making power in the OPGGS Act.

New paragraph (25)(4)(a) is inserted to specify when a portion of a facility amount within an amount of a safety case levy must be remitted or refunded. This also provides consistency with previous paragraph (25)(4)(a) of the Levies Regulations [now paragraph (25)(6)(a)], which relates to the remittal or refund arrangements for safety management system (SMS) amounts (as defined in regulation 3 of the Levies Regulations).

Item 3 – Paragraph 30(1)(b)

This item omits “remission” and substitutes “remittal or refund” in paragraph 30(1)(b) to reflect that safety case levies will be able to be remitted or refunded under regulation 33 of the Levies Regulations. The item also substitutes “remission” with “remittal”, for consistency with the word used in the regulation-making power in section 687 of the OPGGS Act.

Item 4 – Regulation 33

This item repeals regulation 33 and substitutes it with a revised regulation that clarifies: (a) that part of an amount of a safety case levy imposed in designated coastal waters must be remitted or refunded in certain circumstances which are stipulated in the text of the regulation; and (b) the entities responsible to remit (NOPSEMA) and to refund (the Commonwealth) if part of an amount of a safety case levy must be remitted or refunded in accordance with this regulation.

The revised regulation is consistent with regulation 25 (as amended by item 2 of the Schedule to the Regulations), which details arrangements for remittal or refund of part of an amount of a safety case levy for mobile facilities in Commonwealth waters.

Item 5 – Regulation 59E (heading)

This item repeals the heading to regulation 59E and substitutes “Remittal or refund of compliance amount” to reflect the wording of the relevant regulation-making power in subsection 688C(1A) of the OPGGS Act.

Items 6 and 7 – Subregulation 59E(1); Paragraphs 59E(1)(a) and (b)

These items clarify the entity responsible for the remittal (NOPSEMA) or refund (the Commonwealth) of an instalment of the compliance amount of an environment plan (EP) levy, if NOPSEMA refuses to accept an EP, or a revision of an EP, under regulation 10 of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations).

Items 8 and 9 – Subregulation 59E(3); Paragraphs 59E(3)(a) and (b)

These items clarify the entity responsible for the remittal (NOPSEMA) or refund (the Commonwealth) of an instalment of the compliance amount of an EP levy, if an EP is withdrawn under subregulation 9(9) of the Environment Regulations before NOPSEMA has made a decision to accept or refuse to accept the EP.

Item 10 – Regulation 59I (heading)

This item repeals the heading of regulation 59I and substitutes “Remittal or refund of compliance amount” to reflect the wording of the relevant regulation-making power in subsection 688C(1A) of the OPGGS Act.

Items 11 and 12 – Subregulation 59I(1); Paragraphs 59I(1)(a) and (b)

These items clarify the entity responsible for the remittal (NOPSEMA) and refund (the Commonwealth) of an instalment of the compliance amount of an EP levy, if NOPSEMA refuses to accept an EP, or a revision of an EP, under the provision in a law of a State or Territory that substantially corresponds to regulation 10 of the Environment Regulations.

Items 13 and 14 – Subregulation 59I(3); Paragraphs 59I(3)(a) and (b)

These items clarify the entity responsible for the remittal (NOPSEMA) and refund (the Commonwealth) of an instalment of the compliance amount of an EP levy, if an EP is withdrawn, under the provision in a law of a State or Territory that substantially corresponds to subregulation 9(9) of the Environment Regulations, before NOPSEMA has made a decision to accept or refuse to accept the EP.

Item 15 – Clause 4 of Schedule 2 (note)

This item repeals the note to clause 4 of schedule 2 and substitutes it with a new note as a consequence of the amendments made by the Regulation. The new note clarifies that regulations 25 and 33 provide for part of an amount of a safety case levy to be remitted or refunded, and that refund or remittal in accordance with those regulations is mandatory.

Part 2—Application provisions

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004

Item 16 – New regulation 66 inserted in Part 13

This item inserts a provision to clarify that the amendments made by the Regulations apply in relation to safety case levies and EP levies imposed before the commencement of the amendments, as well as to levies imposed prospectively.

Retrospective application of the amendments ensures that amounts or parts of amounts of levies imposed prior to the commencement of the amendments can be either refunded or remitted, as required. This will ensure that offshore petroleum industry levy payers are entitled to refunds and remittals in relation to levies already imposed, and will not be disadvantaged because a levy happened to be imposed in advance of commencement of the amendments. This effectively puts the levy payers in the position they already believed they were in, and that they would have been in had there been a clear regulation-making power to provide for refunds and remittals when the relevant provisions of the Levies Regulations were made.

There are no legal consequences for any other persons as a result of retrospective commencement of the amendments made by the Regulations. Therefore no persons will be disadvantaged as a result of the retrospective commencement.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment
(Safety Case and Environment Plan Levies) Regulations 2017*

These Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

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The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) provides the legal framework for the exploration for, and recovery of, petroleum, and for the injection and storage of greenhouse gas substances, in offshore areas. Section 687 of the OPGGS Act provides that regulations may make provision for the remittal or refund, in certain circumstances, of part of an amount of a safety case levy imposed by the Regulatory Levies Act in respect of a facility and a year or part of a year. Section 688C of the OPGGS Act provides that regulations may make provision for the remittal or refund of part of an amount of an environment plan levy imposed by the Regulatory Levies Act.

The Regulations amend the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the Levies Regulations) to:

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Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

Senator the Hon Matt Canavan, Minister for Resources and Northern Australia