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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**OFFSHORE RESOURCES LEGISLATION AMENDMENT
(PERSONAL PROPERTY SECURITIES) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM, MP)

OFFSHORE RESOURCES LEGISLATION AMENDMENT (PERSONAL PROPERTY SECURITIES) BILL 2011

GENERAL OUTLINE

The purpose of the Bill is to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and the *Offshore Minerals Act 1994* (the OMA) to exclude application of the *Personal Property Securities Act 2009* (the PPS Act).

The PPS Act establishes a single national personal property securities register (PPS Register) which, while yet to commence operation, is intended to become the primary register of personal property security interests throughout Australia. Commonwealth legislation, including the OPGGS Act and the OMA, is not automatically affected by the PPS Act, i.e. it does not override existing registration requirements enshrined in Commonwealth legislation. However, it is stated Commonwealth policy that, in order to remove duplication and increase clarity, existing approval and registration requirements for personal property securities, and dealings in these securities, are either removed from Commonwealth Acts so that PPS Act registration requirements only will apply, or that the PPS Act is expressly excluded from application to personal property under relevant Commonwealth Acts dealing with personal property and interests in personal property.

Chapters 4 and 5 of the OPGGS Act relate to registration of transfers of, and dealings in, petroleum titles and greenhouse gas titles respectively. Chapter 3 of the OMA relates to registration and dealings for offshore minerals titles.

If no amendments are made to the OPGGS Act and OMA, offshore petroleum, greenhouse gas and minerals titles will be “personal property” for the purposes of the PPS Act, and the registration and other provisions of the PPS Act will apply to these titles, in addition to the requirements of the OPGGS Act and the OMA. This Bill implements the Commonwealth’s policy decision to expressly exclude application of the PPS Act for the purposes of dealings relating to titles under the OPGGS Act and the OMA. Unlike Commonwealth legislation, State and Territory legislation will be automatically overridden by the PPS Act if it contains inconsistent personal property security registration requirements. State and Northern Territory governments have advised the Commonwealth, through consultation, that they are electing to opt out of or exclude the operation of the PPS Act for their onshore mining schemes. Therefore excluding application of the PPS Act to the OPGGS Act and the OMA will ensure consistency between the onshore and offshore mining regimes, and minimise a potential regulatory burden and costs to the mining industry and its investors in complying with different registration requirements, potentially skewing investment between onshore and offshore, and having to keep abreast of developments.

In addition to the reasoning above, under the registration requirements in the OPGGS Act, the regulator (currently the Designated Authority (DA)) has the ability to refuse to approve a dealing in relation to a petroleum title, and the responsible Commonwealth Minister has the ability to refuse to approve a dealing in relation to a greenhouse gas title. With respect to a petroleum title, the responsible Commonwealth Minister also has the power to issue a direction to the DA in relation

to the exercise of the DA's power to approve or refuse to approve a dealing in relation to the petroleum title. The DA must comply with any such direction. This ability to refuse approval and registration of an interest underpins the purpose of the registration requirement, to enable the Australian Government to ensure the suitability of the entities that potentially are able to exercise control over the exploitation of Australia's offshore petroleum resources. Given there will be no similar 'approval' or 'vetting' facility under the PPS Act for dealings to be refused, and instead upon registration of the interest on the PPS Register it will automatically come into force, it is necessary to maintain and distinguish OPGGS Act registration of interests as deferral to the PPS Act would raise serious policy questions about the management and security of national resources.

The Bill amends the OPGGS Act and the OMA to provide that all types of title and licence granted or various types of rights and interests acquired in relation to those titles and licences under either piece of legislation is not personal property for the purposes of the PPS Act. This means that any security interests acquired in these titles or licences or interests are not personal property securities for the purpose of the PPS Act.

FINANCIAL IMPACT STATEMENT

Nil financial impact on the Australian Government Budget.

REGULATORY IMPACT STATEMENT

This bill does not impose any new regulatory burden on the offshore petroleum, greenhouse gas or minerals industries. Consultation with State and Northern Territory government counterparts has confirmed their intent to exclude application of the PPS Act to onshore mining.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2 - Commencement

Sections 1 to 3 in the Bill will commence on the day the amending Act receives Royal Assent.

Schedule 1 will commence on the later date of either the day after the amending Act receives the Royal Assent or the registration commencement time within the meaning of the *Personal Property Securities Act 2009*.

Clause 3 - Schedules

This clause gives effect to the provisions in the Schedules to this Bill.

Schedule 1 - Amendments

Items 1 – after section 439

This item inserts a new section 439A into the OMA which provides that a licence or an interest or right in, or in relation to, a licence granted under the OMA are declared not to be personal property for the purposes of the PPS Act. This means that any securities acquired in these items are not personal property securities for the purpose of the PPS Act. In other words a security which is acquired, when a secured party takes an interest in these items as security for a loan or other obligation, or enters into a transaction that involves the supply of secured finance, will not be governed by the *Personal Property Securities Act 2009*.

Item 2 - after Part 9.10A

This item inserts a new Part 9.10B into the OPGGS Act which provides that the listed permits, leases, licences, and authorities granted or interest, right, determination or option referred to in sections 486 and 537 under the OPGGSA are declared not to be personal property for the purposes of the PPS Act. This means that any securities acquired in these items are not personal property securities for the purpose of the PPS Act. In other words a security which is acquired, when a secured party takes an interest in these items as security for a loan or other obligation, or enters into a transaction that involves the supply of secured finance, will not be governed by the *Personal Property Securities Act 2009*.