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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (REGULATORY LEVIES) AMENDMENT
(DESIGNATED COASTAL WATERS) BILL 2014**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,
the Honourable Ian Macfarlane, MP)

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (REGULATORY LEVIES) AMENDMENT (DESIGNATED COASTAL WATERS) BILL 2014

OUTLINE

The purpose of this Bill is to make amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act) as a consequence of amendments to the definition of 'designated coastal waters', in relation to a State or the Northern Territory (NT), in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act). Those amendments are contained in the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Act 2014* (Miscellaneous Measures Act).

The amendments in the Miscellaneous Measures Act expand the geographic coverage of 'designated coastal waters' under the OPGGS Act, thereby permitting conferral of particular functions upon the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) under State or NT legislation across all of the waters of the sea that are on the landward side of the Commonwealth offshore area.

NOPSEMA operates on a fully cost-recovered basis through fees and levies payable by the offshore petroleum industry. The Levies Act facilitates cost-recovery by imposing levies in respect of regulatory activities conducted by NOPSEMA in Commonwealth waters, as well as in the designated coastal waters of each State and the NT where functions and powers have been conferred by the State or Territory.

At present, the Levies Act provides that 'designated coastal waters' (for the purposes of the Levies Act) has the same meaning as it has under the OPGGS Act. Expanding the geographic area captured by the definition of designated coastal waters within the OPGGS Act would, therefore, consequentially expand the area in respect of which levies are potentially imposed. Moreover, it is anticipated that the States and the NT would be permitted to confer functions and powers over particular areas within their designated coastal waters. This means that levies are potentially imposed in relation to particular parts of the States' and the NT's jurisdictional areas.

Legal advice indicates that the extension of the Levies Act by operation of the expanded definition of designated coastal waters in the OPGGS Act would create a medium to high level of constitutional risk that the Levies Act would be held to be invalid, to the extent that it imposes taxation in respect of activities conducted by NOPSEMA across the expanded designated coastal waters. This is because the Levies Act would then arguably impose a tax that discriminates between the States or parts thereof on the basis of geographic location, contrary to section 51(ii) of the Constitution.

The purpose of the Bill is therefore to make consequential amendments to the Levies Act, to limit the operation of the levy regime to the area constituted by the previous definition of designated coastal waters in the OPGGS Act. In other words, the Levies Act will continue to apply to the same area that it currently does, and not to the expanded area of 'designated coastal waters'.

The Commonwealth will consider alternative options to ensure that NOPSEMA recovers costs associated with any regulatory functions performed in waters of the States or the NT which do not fall within the existing definition of designated coastal waters.

FINANCIAL IMPACT STATEMENT

The Bill has no financial impact.

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 (Designated Coastal Waters) Bill 2014

This Bill is 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 Bill

The purpose of this Bill is to amend the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (Levies Act) to minimise constitutional risks to that Act associated with amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act), contained in the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Bill 2014 (Miscellaneous Measures Bill).

The amendments in the Miscellaneous Measures Bill will amend the definition of ‘designated coastal waters’ in the OPGGS Act to expand the geographical scope of that term, and therefore the extent of the area in which functions can be conferred on NOPSEMA under State or Northern Territory legislation. The Levies Act imposes levies on the offshore petroleum industry to recover the costs of NOPSEMA’s regulatory activities in Commonwealth waters, and in designated coastal waters as currently defined in the OPGGS Act. The expansion of that definition in the OPGGS Act will therefore apply to expand the application of the Levies Act.

To minimise identified constitutional issues associated with the expansion of the definition for the purposes of the Levies Act, this Bill makes consequential amendments to the Levies Act to confine the definition of ‘designated coastal waters’, for the purposes of the Levies Act, to the area constituted by the present definition of that term in the OPGGS Act. The practical effect of this is that the Levies Act will continue to operate within the same geographical area as it currently does.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

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NOTES ON CLAUSES

Clause 1: Short title

This is a formal provision specifying the short title of the Act.

Clause 2: Commencement

This Act will commence on the day after this Act receives the Royal Assent.

Clause 3: Schedules

This clause gives effect to the provisions in the Schedule to this Act.

Schedule 1 – Amendments

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

Item 1: Section 3 (definition of *coastal waters*)

This item removes the definition of ‘coastal waters’ from section 3 of the Levies Act.

In order to correct a drafting error, all references to ‘coastal waters’ within the Levies Act are to be replaced with references to ‘designated coastal waters.’ The expression ‘coastal waters’ has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act); that is, the waters that lie between the territorial sea baseline and a line 3 nautical miles seaward of that baseline, plus any waters that are on the landward side of the territorial sea baseline that are not within the limits of the State or Territory. This is broader than the scope of ‘designated coastal waters’, as defined for the purposes of the Levies Act.

The Levies Act should always have (and in practical effect always has) imposed levies in respect of designated coastal waters, not coastal waters as presently drafted in some provisions, because under the OPGGS Act the States and the Northern Territory (NT) are permitted to confer particular functions and powers upon NOPSEMA only in respect of their designated coastal waters. It follows that levies should only be imposed with respect to activities conducted by NOPSEMA in relation to any areas in which function and powers can be conferred.

See also items 5, 6, 7 and 8.

Item 2: Section 3 (definition of *designated coastal waters*)

This item removes the reference to Part 6.9 of the OPGGS Act from the definition of ‘designated coastal waters’ in section 3 of the Levies Act, and instead provides for that term to be defined by reference to section 3A of the Levies Act. A new section 3A is inserted by item 4 for this purpose.

This item and item 4 gives effect to the key purpose of this Bill, which is to minimise constitutional risk that would have been associated with the expansion of the definition of ‘designated coastal waters’ for the purposes of the Levies Act, as a result of the expansion of that term in the OPGGS Act by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Act 2014* (Miscellaneous Measures Act).

Item 3: Section 3

This item inserts the following definition of ***scheduled area*** into section 3 of the Levies Act:

“scheduled area has the same meaning as in the Offshore Petroleum and Greenhouse Gas Storage Act 2006.”

The definition of ‘designated coastal waters’ in section 3A replicates the definition of that term under section 644 of the OPGGS Act, prior to the amendments made to that definition in the OPGGS Act by the Miscellaneous Measures Act (see discussion in item 4 below).

The definition in section 3A makes reference to the scheduled area for a relevant State or the NT. At present, the Levies Act does not define ‘scheduled area.’ An appropriate definition of ‘scheduled

area' is therefore inserted to ensure that the proposed definition of 'designated coastal waters' (see item 4 below) functions as intended.

Item 4: After section 3

This item inserts a new section 3A after section 3 of the Levies Act. Section 3A defines 'designated coastal waters' for the purposes of the Levies Act. It replicates the definition of designated coastal waters in section 644 of the OPGGS Act, prior to the amendments made to that definition by the Miscellaneous Measures Act to expand the scope of the definition. In effect, the new definition in section 3A of the Levies Act continues the current operation of the Levies Act, by ensuring that the expanded definition of designated coastal waters in the OPGGS Act does not apply for the purpose of the Levies Act.

Item 5: Subsection 10(5) (definition of *State/Territory petroleum title*)

This item replaces the reference to 'coastal waters' in the definition of *State/Territory petroleum title* with a reference to 'designated coastal waters'. See discussion under item 1.

Item 6: Subsection 10B(8) (definition of *State/Territory petroleum title*)

This item replaces the reference to 'coastal waters' in the definition of *State/Territory petroleum title* with a reference to 'designated coastal waters'. See discussion under item 1.

Item 7: Subsection 10D(6) (definition of *State/Territory petroleum title*)

This item replaces the reference to 'coastal waters' in the definition of *State/Territory petroleum title* with a reference to 'designated coastal waters'. See discussion under item 1.

Item 8: Subsection 10G(7) (definition of *State/Territory title*)

This item replaces the reference to 'coastal waters' in the definition of *State/Territory title* with a reference to 'designated coastal waters'. See discussion under item 1.