

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 273, 2013**

Subject     *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) Regulation 2013*

Section 11 of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (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. Sections 7 and 8 of the Regulatory Levies Act impose safety case levies in relation to facilities located, or proposed to be located, in Commonwealth and designated coastal waters, while sections 10F and 10G of this Act impose environment plan levies in relation to activities authorised by Commonwealth and State/Territory offshore petroleum titles.

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) provides the legal framework for the exploration and recovery of petroleum and for the injection and storage of greenhouse gas substances in offshore areas. The OPGGS Act is administered jointly by the Commonwealth Government and the state and Northern Territory governments and provides for a range of administrative decisions to be made in relation to petroleum and greenhouse gas titles. The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the Commonwealth Statutory Agency established by the OPGGS Act for the purpose of regulating the:

- health and safety
- structural integrity and
- environmental management

of all offshore petroleum facilities in Commonwealth waters, and in coastal waters where State powers have been conferred.

Safety case and environment plan levies are collected by the regulator for the environment and occupational health and safety for the upstream petroleum and greenhouse gas storage sectors, NOPSEMA, which collects the levies in order to fund its legislated operations on a cost-recovery basis.

Levies are calculated in accordance with the provisions of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the Principal Regulations). The safety case levy is an annual levy in the Principal Regulations. Among other things, the Principal Regulations set out a “unit value” and “SMS amount” (where “SMS amount” is “a charge for the assessment of the safety management system”), by reference to which the safety case levy is calculated.

The environment plan levy is imposed on submission of an environment plan under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* and worked out in accordance with the provisions of the Principal Regulations. The Principal Regulations set out a “unit value”, a “compliance rating” and an “activity rating” for each discrete activity, by reference to which the environment levy is calculated.

In accordance with regulations 61, 62 and 63 of the Principal Regulations, NOPSEMA must undertake regular reviews of the cost recovery arrangement including a comparison of fees and levies collected with the regulatory activities undertaken in the period and meet representatives of the offshore petroleum industry to discuss the cost effectiveness of the operations of NOPSEMA. During 2013, a review of NOPSEMA's cost recovery arrangements was undertaken, in consultation with levy payers and other stakeholders.

The review concluded that the revenue from the environment plan levy had been significantly lower than expenditure, resulting in deficits since the collection of levy commenced on 1 January 2012. The review noted that a substantial increase in levy revenue is required in order for NOPSEMA to deliver its legislated functions at an appropriate level of service. The review recommended increases of 13 per cent to safety case levies and 20 per cent to the environment plan levy, together with a realignment of various ratings applicable to petroleum facilities and petroleum activities.

With respect to the safety case and environment plan levies adjustments, NOPSEMA extensively consulted with levy payers, including the peak industry body, the Australian Petroleum Production and Exploration Association (APPEA), over a period of eight weeks and through the development of the Cost Recovery Impact Statement (CRIS). NOPSEMA also conducted a workshop with petroleum industry representatives at which the cost effectiveness of its operations was presented and the levy increases discussed.

The CRIS was prepared in conjunction with the Department of Finance to ensure compliance with the Australian Government's Cost Recovery Guidelines. The Department of Finance has finalised its costing review and have agreed the costs in the CRIS.

The Department of Industry consulted with the Office of Best Practice Regulation on the amendments to confirm that their requirements have been satisfied.

The current NOPSEMA CRIS expires on 30 June 2014, however as levies are determined for a calendar year, new costing arrangements are required from 1 January 2014 to ensure ongoing liquidity of NOPSEMA. The new CRIS will expire on 31 December 2015, setting the levies for next two years.

Safety case levies were previously amended in 2012 (taking effect on 1 January 2013). Environment plan levies were introduced on 1 January 2013, and were based on estimates of efforts required to assess and secure compliance against environment plans. The safety case environment plan levy increases for 2014 and 2015 better reflect efforts required to undertake the regulatory functions and also ensure that NOPSEMA has sufficient cash reserves to meet monthly operational expenses, asset replacements, current provisions and a reserve of approximately 10 per cent of the next year's budget. NOPSEMA will continue to monitor all of its costs during the life of the new CRIS to ensure any opportunities for levy reductions are identified and efficiencies are improved.

The Regulation amends the Principal Regulations to adjust environment plan and safety case levies, in line with the recommendations made by NOPSEMA's review of cost recovery arrangements. Details of the Regulation are in the [Attachment](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 1 January 2014.

## **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) Regulation 2013*

This Legislative Instrument 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 Legislative Instrument**

Safety case levies are annual levies which are imposed in relation to offshore petroleum and greenhouse gas facilities located or proposed to be located in the Commonwealth waters. Environment plan levies are levies which are imposed in relation to activities authorised by offshore petroleum and greenhouse gas titles which require an accepted environment plan. Levies are imposed by the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* and calculated in accordance with the provisions of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the Principal Regulations).

The purpose of the Regulation is to amend the Principal Regulations such that safety case levies are increased for of 13 per cent, the environment plan levies for 20 per cent, and various ratings applicable to petroleum facilities and petroleum activities are realigned.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

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

**Details of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulation 2013**

**Regulation 1 – Name of Regulation** provides for the full title of the Amendment Regulation to be the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulation 2013*.

**Regulation 2 – Commencement** provides for the Regulation to commence on 1 January 2014.

**Regulation 3 – Authority** provides that this Regulation is made under section 11 of the *Offshore Petroleum and Greenhouse Gas (Regulatory Levies) Act 2003*.

**Regulation 4 – Schedules** provides that existing named instruments are amended or repealed as per the terms in the Schedules contained in this Regulation.

**Schedule 1 – Amendments**

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

**Item 1, paragraph 21(3)(a)** substitutes numbers of regulations referenced in the paragraph such that “regulation 48” is replaced with “regulation 60”, no further amendments were made to this paragraph.

**Item 2, paragraph 29(3)(a)** substitutes numbers of regulations referenced in the paragraph such that “regulation 49” is replaced with “regulation 60”, no further amendments were made to this paragraph.

**Item 3, paragraph 59C(3)(b)** increases the value of the multiplier used to calculate the activity amount from \$3 000 to \$3 600.

**Item 4, paragraph 59C(4)(b)** increases the value of the multiplier used to calculate the compliance amount from \$3 000 to \$3 600.

**Item 5, subregulation 59C(7)** repeals the table and substitutes it with a table that sets out new activity and compliance ratings used for calculation of environment plan levies for offshore petroleum activities in Commonwealth waters. All activity categories remain the same with only the activity and compliance ratings adjusted in line with the approved revised CRIS.

**Item 6, paragraph 59G(3)(b)** increases the amount used to multiply the compliance rating from \$3 000 to \$3 600.

**Item 7, paragraph 59G(4)(b)** increases the value of the amount used to multiply the compliance rating from \$3 000 to \$3 600.

**Item 8, subregulation 59G(7)** repeals the table and substitutes it with a table that sets out new activity and compliance ratings used to calculate environment plan levies for offshore

petroleum activities in the designated coastal waters. All activity categories remain the same with only the activity and compliance ratings adjusted in line with the approved revised CRIS.

**Item 9, clause 2.3 of Schedule 1 (table)** repeals the table and substitutes it with a new table. The new table inserts two new items with applicable facility ratings: table item 1: a floating liquefied natural gas facility with a rating of 25; and table item 11: vessel or structure that is not otherwise listed above (in the table) with a facility rating of 3. These new items and ratings are contained in the approved revised CRIS. Other facility categories remain the same with only the facility ratings adjusted in line with the revised CRIS.

The new table, while containing mostly the same categories, has been renumbered as well as existing table item 2 being separated, for clarity, into items 3 and 4, for clarity. All existing table items are renumbered such that:

- table item 1 (large platform with drilling or workover capacity) becomes new table item 2;
- table item 3 (floating production storage and offloading facility) becomes new table item 5;
- table item 4 (offshore drilling unit of drill-ship) becomes new table item 6;
- table item 5 (vessel for laying pipes for a petroleum or a greenhouse gas substance) becomes new table item 7;
- table item 5A (vessel used for doing work on an existing pipe) becoming new table item 8;
- table item 6 (floating storage unit linked to a production platform) becomes new table item 9; and
- table item 7 (monopod, well head platform or other small production of injection facility with no accommodation) becomes new table item 10.

**Item 10, clause 2.6 of Schedule 1** increases the unit value, by reference to which the facility amount of the safety case levy is calculated, from \$31 000 to \$35 000.

**Item 11, clause 3.3 of Schedule 1, table item 1**, increases the SMS amount for a facility other than a mobile facility from \$150 000 to \$170 000.

**Item 12, clause 3.3 of Schedule 1, table item 2**, increases the SMS amount for a mobile facility from \$100 000 to \$113 000.

**Item 13, clause 3.3 of Schedule 1, table item 3**, increases the SMS amount for a facility other than a mobile facility from \$150 000 to \$170 000.

**Item 14, clause 3.3 of Schedule 1, table item 4**, increases the SMS amount for a mobile facility from \$100 000 to \$113 000.

**Item 15, clause 2 of Schedule 2** repeals clause 2 and substitutes it with:  
Vessel use for:

- (a) Doing work on an existing pipe; or
- (b) Laying pipes for petroleum, or a greenhouse gas substance.

Item 15 also inserts a new clause 3: Vessel or structure used for the erection, dismantling or decommissioning of a facility and renumbers clause 3 to clause 4.

**Item 16 clause 1.3 of Schedule 3** increases the unit value, used to calculate the pipeline amount, from \$10 000 to \$14 000.

**Item 17 clause 2.2 of Schedule 3** increases the SMS amount, used to calculate the pipeline amount, from \$40 000 to \$56 000.