
OFFSHORE PETROLEUM (LAMINARIA AND CORALLINA
DECOMMISSIONING COST RECOVERY LEVY) BILL 2021

TREASURY LAWS AMENDMENT (LAMINARIA AND CORALLINA
DECOMMISSIONING COST RECOVERY LEVY) BILL 2021

EXPOSURE DRAFT EXPLANATORY MATERIALS

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Commissioner	Commissioner of Taxation
Resources Minister	Minister for Resources and Water

Chapter 1

Laminaria-Corallina cost recovery levy

Outline of chapter

1.1 The Offshore Petroleum (Laminaria And Corallina Decommissioning Cost Recovery Levy) Bill 2021 introduces a temporary levy on offshore petroleum production to recover the Commonwealth's costs of decommissioning the Laminaria and Corallina oil fields and associated infrastructure.

1.2 Schedule 1 to the Treasury Laws Amendment (Laminaria And Corallina Decommissioning Cost Recovery Levy) Bill 2021 amends the *Income Tax Assessment Act 1997*, the *Petroleum Resource Rent Tax Assessment Act 1987* and the *Tax Administration Act 1953* to specify certain administrative features relating to the Laminaria-Corallina cost recovery levy, including the requirement that the levy is payable to the Commissioner annually.

Context of amendments

1.3 The Bill provides for a temporary levy on offshore petroleum production which will recover the costs of the Australian Government decommissioning and remediating the Laminaria and Corallina oilfields and associated infrastructure.

1.4 The levy ensures that taxpayers are not left to pay for the decommissioning and remediation of production facilities and associated infrastructure in the Laminaria and Corallina oilfields.

1.5 The measure was announced as part of the 2021-22 Budget.

Summary of new law

1.6 The Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 creates a new, temporary levy on offshore petroleum production to recover the Commonwealth's costs of decommissioning the Laminaria-Corallina oil fields and associated infrastructure.

1.7 The levy will apply to registered holders of petroleum production licences under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

1.8 The levy will be at a standard rate of 48 cents per barrel of oil equivalent produced in each levy year.

1.9 To prevent over collection, the rate of levy for a year may be reduced by the Commissioner where imposition of the levy at the standard rate would result in the collection of more levy than the Commonwealth's unrecovered costs.

1.10 The Bill provides that the levy is imposed for financial years commencing 1 July 2021 and ending 30 June 2030. This period has been chosen to ensure that the levy can be imposed for the duration of the decommissioning of the Laminaria and Corallina oil fields and associated infrastructure.

1.11 The Bill includes the power for the Resources Minister to terminate the levy once the Minister is satisfied the Commonwealth's costs have been recovered.

1.12 The Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 amends various taxation Acts to specify certain administrative features relating to the Laminaria and Corallina cost recovery levy. In particular, the amendments:

- Modify the *Income Tax Assessment Act 1997* to specify that the levy is non-deductable; and
- Modify the *Petroleum Resource Rent Tax Assessment Act 1987* to add payments of levy to the list of excluded expenditure; and
- Modify the *Tax Administration Act 1953* to:
 - Limit the objection period and the period of review for the levy;
 - Specify that the levy is payable to the Commissioner;
 - Ensure that ordinary taxation collection and recovery provisions apply in relation to the levy.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A new, temporary levy is imposed on the production of offshore petroleum to allow the Commonwealth to recover the costs of the Australian Government decommissioning and remediating the Laminaria and Corallina oilfields and associated infrastructure.	No equivalent.

Detailed explanation of new law

1.13 The Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 will introduce the *Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Act 2021*. [section 1 of the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021*]

Who is liable to pay the levy

1.14 The levy will apply to all registered holders of a petroleum production licence during the levy year. [section 10 of the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021*]

1.15 The levy will be payable on all petroleum recovered at the wellhead in a levy year. Petroleum for the purposes of the levy has the same meaning as defined in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* [definition of 'petroleum' in section 6 of the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021*]

1.16 A levy year is each of the financial year beginning between 1 July 2021 and 1 July 2029. [subsection 7(1) of the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021*]

The rate of the levy

1.17 The amount of levy payable is calculated by applying the levy rate to the amount of petroleum recovered by the holder of petroleum production licences in relation to all licences held during a levy year.

1.18 The petroleum amount for the levy year is the total quantity of all petroleum measured at the wellhead, in barrels of oil equivalent. [definition of 'petroleum amount' in section 6 of the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021*]

1.19 The rate of the levy for a levy year is the lesser of:

- 48 cents per barrel of oil recovered in offshore licence areas in the licence period
- The Commonwealth's unrecovered costs at the end of the levy year divided by the total barrels of oil equivalent produced under all licences in the levy period (the distributed levy rate). [section 11(1) and (2) of the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021*]

1.20 Barrel of oil equivalent is not defined in legislation but is a well understood term in the gas and petroleum industries. It is a unit of energy approximately equal to the energy of one barrel (158.9873 litres) of crude oil. The barrel of oil equivalent is a way of combining oil and natural gas reserves and productions into a single measurement.

1.21 Calculating barrel of oil equivalent is a common industry practice. The Society of Petroleum Engineers is an authoritative source

referred to by industry. Their calculation formula is included in their Guidelines for Application of the Petroleum Resources Management System (November 2011) and is an example of a way that entities may choose to calculate barrel of oil equivalent.

1.22 Their commonly used calculation method for gas conversation for intercompany comparison purposes is: 1 bbl of oil equivalent = 5.8 thousand standard cubic feet (Mscf) or 164.24 cubic metres (cu.m) of gas at STP (15°C and 1 atm).

1.23 The Commonwealth's unrecovered costs is the amount by which the total amount of levy assessed for previous levy years falls short of the total decommissioning cost. This amount is calculated at the end of the levy year for which the determination is made. *[section (8) of the Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021]*

1.24 Total decommissioning costs means the total amount in dollars of net costs reasonably incurred by the Commonwealth in relation to the decommissioning-related activities. *[definition of 'total decommissioning cost' in section (6) of the Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021]*

1.25 This provides a mechanism to lower the levy rate for a levy year to avoid the Commonwealth collecting more levy than it costs to undertake decommissioning activities.

1.26 It is not anticipated that the Resources Minister will issue a determination in relation to the Commonwealth's unrecovered costs in respect of the first few levy years.

1.27 Instead, it is expected that such a determination would only be made during the tail end of the levy to provide that the amount of levy assessed over the life of the levy approximately equates to the decommissioning costs incurred by the Commonwealth.

1.28 The volume of petroleum recovered is measured at the wellhead. Wellhead is not defined in the legislation but is a well understood term in the gas and petroleum industries. It is the point at which the petroleum product reaches the surface and enters storage facilities or pipes for transfer elsewhere. The wellhead typically incorporates equipment for controlling pressure in, and regulating the flow from, the well.

Termination of the levy

1.29 Once the Commonwealth's costs are recovered, the levy may be terminated early to ensure the levy is temporary and only in place as long as necessary.

1.30 The levy will terminate on the 30 June following the Resources Minister making a determination, by legislative instrument, that the Commonwealth's unrecovered costs related to all activities associated with or connected to the decommissioning and remediation of the

Laminaria and Corallina oil fields and associated infrastructure are nil and the Minister is satisfied no further recoverable costs are likely to be incurred by the Commonwealth. [subsections 7(2)-(4) of the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021*]

Returns, assessment and payment

1.31 A liable registered holder of a petroleum production licence must give annual returns within 6 months of the end of the levy year (31 December), in the approved form, to the Commissioner. [item 11, subsection 125-5 of the *Taxation Administration Act 1953*]

1.32 This delay between the end of the levy year and when annual returns are provided to the Commissioner will ensure that entities have sufficient time to accurately report their production for the levy year, including relying on the ‘true up’ that is customarily undertaken by licence holders at the end of the financial year.

1.33 In practice, the assessment will work as follows:

- Entities will report in the approved form their total barrel of oil equivalent recovered during the levy year to the Commissioner by December 31 each year; and
- If no determination has been made by the Resources Minister in relation to the Commonwealth’s unrecovered costs, the standard rate of \$0.48 per barrel of oil equivalent will apply by default; or
- If the Resources Minister has made a determination in the levy year in relation to the Commonwealth’s unrecovered costs as at the end of that levy year, the Commissioner will use that information to determine whether a lower reduction rate applies for the levy year based on the total amount of petroleum that has been reported by all entities; and
- The Commissioner will issue notices of assessment to the entities.

1.34 The amount payable under the levy is due and payable 21 days after the time the Commissioner provides an entity with a notice of assessment for the levy year.

1.35 The Commissioner has general administration of these provisions. The effect of this is:

- That people who acquire information under these provisions are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 of the *Taxation Administration Act 1953*; and

- Part IVC of the *Taxation Administration Act 1953* applies to decisions made by the Commissioner under these provisions; and
- Provides for the use of the Commissioner’s enforcement and penalty powers for misleading or false information and fraudulent applications.

1.36 The period of review and the time limit for which a taxpayer must lodge an objection to an assessment of levy is limited to 60 days after the levy assessment is given to the entity. This will provide certainty to both Government and industry about the amount of levy required to be paid and minimise will the risk of over or under collection.

Consequential amendments

- 1.37 Consequential amendments ensure that:
- a liability to pay this levy will be a *tax-related liability*; and
 - general interest charge applies to outstanding payments of this levy;
 - the approved form is used, allowing the Commissioner to properly administer the levy; and
 - Define the term ‘Laminaria and Corallina Decommissioning Levy’

[Item 8, subsection 8AAB(4), table item 45B, of the Taxation Administration Act 1953 and Subsection 995-1(1) of the Income Tax Assessment Act 1997]

Application and transitional provisions

1.38 The *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021* commences on the day after Royal Assent. *[section 2 of the Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021]*

1.39 The amendments to the *Income Tax Assessment Act 1997*, the *Petroleum Resources Rent Tax Assessment Act 1987* and *Taxation Administration Act 1953* commence at the same time as the *Offshore Petroleum (Laminaria and Corallina Cost Recovery Levy) Act 2021* and apply in relation to financial years starting on or after 1 July 2021. *[item 2(1) and 21 of the Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Act 2021]*