

Western Australia

**Petroleum and Geothermal Energy Safety
Levies Act 2011**

As at 11 Nov 2011

No. 50 of 2011

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Petroleum and Geothermal Energy Safety Levies Act 2011

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Defined Terms

Western Australia

Petroleum and Geothermal Energy Safety Levies Act 2011

No. 50 of 2011

**An Act to provide for levies in relation to petroleum operations,
geothermal energy operations and pipeline operations, and for
related purposes.**

[Assented to 11 November 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Petroleum and Geothermal Energy Safety Levies Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

assessment means an assessment of an amount of safety levy under section 10;

assessment notice means —

- (a) a notice given under section 10(1)(b); or
- (b) a notice of reassessment given in accordance with the regulations;

CEO means the chief executive officer of the department;

department means the department of the Public Service principally assisting in the administration of this Act;

geothermal energy operation has the meaning given in the *Petroleum and Geothermal Energy Resources Act 1967* section 5(1);

levy period means a period prescribed as the period in respect of which a safety levy is payable;

licensee, in relation to a pipeline operation, has the meaning given in the *Petroleum Pipelines Act 1969* Schedule 1 clause 3;

objection means an objection under section 14(1);

operator, in relation to a petroleum operation or geothermal energy operation, has the same meaning as it has in the *Petroleum and Geothermal Energy Resources Act 1967*;

penalty amount means an amount payable under section 12(1);

petroleum operation has the meaning given in the *Petroleum and Geothermal Energy Resources Act 1967* section 5(1);

PGERA regulations means regulations made for the purposes of the *Petroleum and Geothermal Energy Resources Act 1967* section 149B;

pipeline operation has the meaning given in the *Petroleum Pipelines Act 1969* section 4(1) as affected by the *Barrow Island Act 2003* section 11;

PPA regulations means regulations made for the purposes of the *Petroleum Pipelines Act 1969* section 56B;

prescribed means prescribed by the regulations;

reassessment means a reassessment of an amount of safety levy in accordance with the regulations;

record means any document or record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

- (a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
- (b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

revised safety case has the same meaning as it has in the PPA regulations;

revised safety management system has the same meaning as it has in the PGERA regulations;

safety case has the same meaning as it has in the PPA regulations;

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safety case in force, for a pipeline operation, means a safety case or revised safety case —

(a) that has been accepted in relation to the operation by the Minister responsible for the administration of the *Petroleum Pipelines Act 1969*; and

(b) the acceptance of which has not been withdrawn, and includes any condition imposed under the PPA regulations in respect of the operation;

safety case levy means the levy referred to in section 7;

safety levy means —

(a) the safety management system levy; or

(b) the safety case levy;

safety management system has the same meaning as it has in the PGERA regulations;

safety management system in force, for a petroleum operation or geothermal operation, means a safety management system or revised safety management system —

(a) that has been accepted in relation to the operation by the Minister responsible for the administration of the *Petroleum and Geothermal Energy Resources Act 1967*; and

(b) the acceptance of which has not been withdrawn, and includes any condition imposed under the PGERA regulations in respect of the operation;

safety management system levy means the levy referred to in section 4.

Part 2 — Safety levies

Division 1 — Safety management system levy

4. Safety management system levy

- (1) If, for the whole or a part of a levy period, there is a safety management system in force for a petroleum operation or geothermal energy operation, a levy is payable in respect of the safety management system.
- (2) The levy is payable in accordance with the regulations.

5. Liability for payment of safety management system levy

- (1) The person liable to pay the safety management system levy in respect of a safety management system in force for a petroleum operation is the operator of the petroleum operation.
- (2) The person liable to pay the safety management system levy in respect of a safety management system in force for a geothermal energy operation is the operator of the geothermal energy operation.

6. Amount of safety management system levy

- (1) The amount of safety management system levy payable is the amount that is specified in, or worked out in accordance with, the regulations.
- (2) The regulations may specify different amounts of safety management system levy, or different means of working out amounts of safety management system levy, for different classes of safety management system.

Division 2 — Safety case levy

7. Safety case levy

- (1) If, for the whole or a part of a levy period, there is a safety case in force for a pipeline operation, a levy is payable in respect of the safety case.
- (2) The levy is payable in accordance with the regulations.

8. Liability for payment of safety case levy

The person liable to pay the safety case levy in respect of a safety case in force for a pipeline operation is the licensee of the pipeline operation.

9. Amount of safety case levy

- (1) The amount of safety case levy payable is the amount that is specified in, or worked out in accordance with, the regulations.
- (2) The regulations may specify different amounts of safety case levy, or different means of working out amounts of safety case levy, for different classes of safety case.

Part 3 — Assessment and recovery of safety levies

10. Assessment of safety levy

- (1) The CEO must —
 - (a) assess the amount of safety levy that is payable; and
 - (b) give a notice to each of the persons liable to pay a safety levy specifying —
 - (i) the amount of safety levy payable; and
 - (ii) the day on which the safety levy is payable; and
 - (iii) any other matter required by the regulations.
- (2) The CEO may make an assessment on the basis of information obtained or provided under this Act, the *Petroleum and Geothermal Energy Resources Act 1967* or the *Petroleum Pipelines Act 1969*.
- (3) Subsection (2) does not limit the material to which the CEO can have regard when making an assessment.

11. Payment of safety levy

- (1) An amount of safety levy becomes due and payable on the day specified in, or worked out in accordance with, the regulations.
- (2) A safety levy is payable to the CEO.

12. Penalty for non-payment of safety levy

- (1) If an amount of safety levy remains unpaid after the day on which it becomes due and payable, the person liable to pay the safety levy is liable to pay to the CEO, in addition to the amount of safety levy, an amount calculated at the prescribed rate on the amount of safety levy from time to time remaining unpaid.
- (2) The CEO may waive, in whole or in part, a penalty amount if the CEO considers that there are good reasons for doing so.

13. Recovery of safety levy and penalty amount

The following amounts may be recovered by the CEO in a court of competent jurisdiction as debts due to the State —

- (a) an amount of safety levy that remains unpaid after the day on which it becomes due and payable;
- (b) a penalty amount that remains unpaid.

Part 4 — Objections and review

14. Objection

- (1) A person may object to an assessment notice given to the person —
 - (a) on the ground that the person is not liable to pay the safety levy to which the notice relates; or
 - (b) on the ground that there is an error in the assessment or reassessment of the amount of safety levy payable; or
 - (c) on a prescribed ground (if any).
- (2) An objection must be made to the CEO in writing within the prescribed period or any longer period that the CEO may allow.
- (3) An objection must —
 - (a) identify the person making the objection; and
 - (b) give details of the grounds of the objection; and
 - (c) comply with any other prescribed requirements.

15. Determination of objection

The CEO must consider and make a decision on an objection in accordance with the regulations.

16. Review of decision on objection

A person who is dissatisfied with a decision of the CEO on an objection may apply to the State Administrative Tribunal for a review of the decision.

17. Liability to pay not affected by objection

A person's liability to pay an amount of safety levy, or a penalty amount, is not affected by the making of an objection.

Part 5 — Information and records

18. CEO may require information and records

- (1) The CEO, for the purposes of the administration and enforcement of this Act, may do any of the following —
 - (a) direct a person —
 - (i) to give such information as the CEO requires; or
 - (ii) to answer a question put to the person;
 - (b) direct a person to produce a record in the person's custody or under the person's control;
 - (c) examine and make a copy of a record produced in response to a direction under paragraph (b).
- (2) A direction under subsection (1)(a) —
 - (a) may be given orally or in writing to the person required to give the information or answer; and
 - (b) must specify the time at or within which the information or answer is to be given; and
 - (c) may require that the information or answer —
 - (i) be given orally or in writing; or
 - (ii) be given at or delivered to a place specified in the direction; or
 - (iii) in the case of written information or a written answer, be delivered by means specified in the direction; or
 - (iv) be verified by statutory declaration.
- (3) A direction under subsection (1)(b) —
 - (a) must be given in writing to the person required to produce the record; and
 - (b) must specify the time at or within which the record is to be produced; and

- (c) may require that the record be produced —
 - (i) at a place specified in the direction; and
 - (ii) by means specified in the direction.
- (4) A person to whom a direction is given under subsection (1) must not, without reasonable excuse, fail to comply with the direction.

Penalty: a fine of \$20 000.

19. Incriminating information

- (1) An individual is not excused from giving information, answering a question or producing a record when directed to do so under section 18 on the ground that the information, answer to the question, or production of the record, might tend to incriminate the individual or make the individual liable to a penalty.
- (2) However —
 - (a) the information or answer given or record produced; or
 - (b) giving the information, answering the question or producing the record; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, answering the question or producing the record,is not admissible in evidence against the individual —
 - (d) in any civil proceedings; or
 - (e) in any criminal proceedings other than proceedings for perjury or an offence against section 20.

20. False or misleading information

- (1) A person must not, in compliance or purported compliance with a direction under section 18 or any other requirement under this Act, do any of the things set out in subsection (2).

Penalty: a fine of \$20 000.

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- (2) The things to which subsection (1) applies are —
- (a) making a statement that the person knows is false or misleading in a material particular; or
 - (b) making a statement that is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
 - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
 - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether or not the information is false or misleading in a material particular.

Part 6 — Other matters

21. Petroleum and Geothermal Energy Safety Levies Account

- (1) An agency special purpose account called the Petroleum and Geothermal Energy Safety Levies Account (the *Account*) is to be established for the department under the *Financial Management Act 2006* section 16.
- (2) The Account must be credited with the following —
 - (a) any safety levy paid or recovered;
 - (b) any penalty amount paid or recovered.
- (3) Moneys held in the Account must be applied in payment of the costs and expenses incurred in the administration and enforcement of these enactments —
 - (a) this Act;
 - (b) each listed OSH law as defined in the *Petroleum and Geothermal Energy Resources Act 1967* section 5(1);
 - (c) each listed OSH law as defined in the *Petroleum Pipelines Act 1969* section 4(1).

22. Delegation

- (1) The CEO may delegate to a public service officer in the department any power or duty of the CEO under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

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- (5) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.

23. Confidentiality

A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the performance of those functions except —

- (a) for the purpose of, or in connection with, performing functions under this Act or another written law; or
- (b) as required or allowed by this Act or another written law; or
- (c) with the written consent of the Minister or the person to whom the information relates; or
- (d) for the purpose of any proceedings before a court or the State Administrative Tribunal arising out of the operation of this Act; or
- (e) in prescribed circumstances.

Penalty: a fine of \$20 000.

24. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

25. Evidentiary value of assessment notice

An assessment notice (or a copy of an assessment notice) is admissible as evidence in proceedings under this Act and, in the absence of proof to the contrary, is proof of the following —

- (a) the making of the assessment;
- (b) the amount of safety levy assessed;
- (c) the identity of the person liable to pay the safety levy;
- (d) when payment of the safety levy is due;
- (e) any other fact stated in the notice.

26. Regulations

(1) The Governor may make regulations prescribing all matters that are —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), the regulations may —

- (a) provide for the amount of safety levy payable to be worked out on such basis, and in accordance with such factors, as are prescribed; and
- (b) provide for the classification of safety management systems and safety cases; and
- (c) without limiting paragraph (b), authorise or require the CEO to determine the classification of a safety management system or safety case for the purposes of assessing the amount of safety levy payable in respect of the safety management system or safety case; and
- (d) deal with the assessment of the amount of safety levy payable and the procedure for assessment; and
- (e) deal with the reassessment of the amount of safety levy payable and the procedure for reassessment; and

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- (f) provide for the payment and recovery of amounts, or the refund of amounts, after reassessment; and
- (g) provide for matters relating to the determination of objections, and the review of decisions on objections, under Part 4; and
- (h) provide for the keeping of records by persons who are or may be liable to pay a safety levy; and
- (i) provide for review by the State Administrative Tribunal of decisions made under the regulations; and
- (j) provide that contravention of a regulation is an offence and, for an offence against the regulations, provide for a penalty not exceeding a fine of \$10 000.

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Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

| Defined Term | Provision(s) |
|---|---------------------|
| Account | 21(1) |
| assessment..... | 3 |
| assessment notice | 3 |
| CEO | 3 |
| department | 3 |
| geothermal energy operation..... | 3 |
| levy period | 3 |
| licensee | 3 |
| objection | 3 |
| operator | 3 |
| penalty amount..... | 3 |
| petroleum operation | 3 |
| PGERA regulations..... | 3 |
| pipeline operation | 3 |
| PPA regulations | 3 |
| prescribed..... | 3 |
| reassessment..... | 3 |
| record | 3 |
| revised safety case | 3 |
| revised safety management system..... | 3 |
| safety case | 3 |
| safety case in force..... | 3 |
| safety case levy | 3 |
| safety levy | 3 |
| safety management system | 3 |
| safety management system in force | 3 |
| safety management system levy..... | 3 |