

Submission to the Senate Economics Legislation Committee

INQUIRY INTO THE OFFSHORE PETROLUUM AND GREENHOUSE
GAS STORAGE LEGISLATION AMENDMENT (SAFETY AND OTHER
MEASURES) BILL 2024

NOPSEMA



Table of Contents

1. Introduction	2
2. Scope of the submission	2
3. Our role	2
4. Our legislative framework.....	2
5. Environmental management	3
6. Environment Plans under the Environment Regulations.....	4
6.1. NOPSEMA EPBC Act Program.....	5
7. Conclusion.....	6



1. Introduction

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) provides this Submission to the Senate Economics Legislation Committee (the Committee) in consideration of NOPSEMA's functions and regulatory roles as Australia's offshore energy regulator.

NOPSEMA notes that on 29 February 2024, the Senate referred the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 (the Bill) to the Economics Legislation Committee for report by 22 March 2024.

NOPSEMA recently (19 February 2024) made a submission to the Senate Environment and Communications Legislation Committee inquiry into the Protecting the Spirit of Sea Country Bill 2023. In this submission we canvassed how we regulate environmental management through environmental plans and provided context to NOPSEMA's endorsed program under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). In addition, the submission included information specifically addressing consultation with relevant persons, including First Nations Australians. We encourage the Committee to engage with this submission for greater insight into the wider operation of the regulatory regime.

2. Scope of the submission

The following comments provide an overview of NOPSEMA's role to inform the Committee's inquiry into the Bill.

This submission does not canvass any constitutional, international treaty, legal or policy issues. Policy responsibility for the Bill's proposed amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) and any subsequent regulations rests with the Commonwealth Department of Industry, Science and Resources (DISR).

This submission does not offer any opinion on the Bill or the Committee's inquiry into the Bill. It informs the Committee of NOPSEMA's role within our jurisdiction and legislative framework.

Additional information specifically relating to environmental management and NOPSEMA's endorsed program under the EPBC Act is included.

3. Our role

NOPSEMA is Australia's independent regulator for the offshore energy industry.

NOPSEMA's regulated community is broad and includes all parties involved in the exploration and recovery of petroleum and greenhouse gas activities. We are also the regulator for offshore renewables, as the Offshore Infrastructure Regulator (OIR).

Our regulatory role includes oversight of occupational health and safety, structural and well integrity, and environmental management for all offshore energy operations and greenhouse gas storage activities in Commonwealth waters (and in coastal waters where regulatory powers and functions have been conferred). To date, only Victoria has conferred the regulation of health and safety, structural and well integrity of petroleum and greenhouse gas storage activities to NOPSEMA in their coastal waters.

4. Our legislative framework

NOPSEMA is an independent statutory authority established under the OPGGS Act. NOPSEMA's functions are detailed in section 646 of the OPGGS Act and are summarised as follows:



- to promote the occupational health and safety of persons engaged in offshore petroleum and greenhouse gas storage operations
- to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their obligations under the OPGGS Act and regulations, structural integrity law and environmental management law
- to investigate accidents, occurrences and circumstances that affect, or have the potential to affect, occupational health and safety and involve, or may involve, deficiencies in structural integrity or deficiencies in environmental management
- to report on investigations, as appropriate, to the responsible Commonwealth Minister, and to State and Northern Territory petroleum ministers
- to advise persons, either on its own initiative or on request, on matters relating to occupational health and safety, structural integrity, and environmental management
- to make reports, including recommendations, to the responsible Commonwealth Minister, and to State and Northern Territory petroleum ministers on issues relating to Occupational Health and Safety, structural integrity, and environmental management
- to provide information, assessments, analysis, reports, advice and recommendations when requested by the responsible Commonwealth Minister in relation to the Minister performing functions or exercising powers in relation to offshore greenhouse gas storage operations
- to cooperate with the Titles Administrator in relation to the administration and enforcement of the OPGGS Act and regulations and with other Commonwealth, State and Northern Territory agencies and authorities with functions relating to regulated operations.

On 2 June 2022, the *Offshore Electricity Infrastructure Act 2021* (OEI Act) entered into force. The OEI Act establishes the OIR to regulate the offshore renewables sector.

The functions of the OIR are set out under section 177 of the OEI Act and include regulation of work health and safety, infrastructure integrity and environmental management for offshore infrastructure activities. The functions of the OIR are administered by NOPSEMA.

Further details on the legislative regimes are available at [nopsema.gov.au](https://www.nopsema.gov.au) and [oir.gov.au](https://www.oir.gov.au).

5. Environmental management

NOPSEMA is responsible for ensuring all offshore petroleum and greenhouse gas activities in Commonwealth waters are undertaken in accordance with the Environment Regulations.

To meet these regulations, all offshore activities including exploration, development, production and decommissioning must:

- be consistent with the principles of ecologically sustainable development
- reduce risk to the environment to as low as reasonably practicable (ALARP).¹

¹ NOPSEMA Factsheet: ALARP and Acceptable: <https://www.nopsema.gov.au/sites/default/files/documents/2021-04/A739345.pdf>



- Before an activity takes place, the titleholder must demonstrate to NOPSEMA that they have:
- correctly identified the environmental risks and impacts of the activity
- developed an appropriate environment plan to ensure those risks will be acceptable and reduced to ALARP.

6. Environment Plans under the Environment Regulations

For all petroleum activities in Commonwealth waters, titleholders are required to submit an environment plan (EP) to NOPSEMA, under the Environment Regulations. It is an offence to undertake an offshore petroleum activity without an accepted EP for that activity.

The EP must demonstrate that the environmental impacts and risks of the activity will be reduced to an acceptable level (amongst other criteria) before the EP can be accepted.

An EP that includes an activity that has potential to cause long-term impacts to the environment (including social, economic and cultural features of the environment) without appropriate mechanisms to manage or mitigate those impacts would not be acceptable nor would it be consistent with the principles of Ecologically Sustainable Development.

'Environment' is defined in the Environment Regulations and means (a) ecosystems and their constituent parts, including people and communities; and (b) natural and physical resources; and (c) the qualities and characteristics of locations, places and areas; and (d) heritage values of places; and includes the social, economic and cultural features of these matters (a to d).

For the EP to be accepted it must meet the requirements of the Environment Regulations and the OPGGS Act – including whether cultural features of the environment are managed to ALARP and acceptable levels, among other considerations. NOPSEMA also assesses whether the EP has appropriate environmental performance outcomes, standards and control measures to reduce the impacts and risks to an acceptable level.

The EP acceptance process is often iterative, with NOPSEMA requesting additional information or clarifications on a case-by-case basis. In rare circumstances, NOPSEMA will accept an EP in part or apply conditions to an EP allowing it to proceed under specific circumstances, such as not allowing a part of a proposed survey plan that carries unacceptable levels of environmental risk. Following the Federal Court decision in *Cooper v NOPSEMA (No 2)* [2023] FCA 1158, NOPSEMA no longer accept EPs with conditions relating to relevant persons consultation requirements.

If NOPSEMA is reasonably satisfied that the environment plan meets the acceptance criteria set out in the regulations, the EP must be accepted. NOPSEMA will also publish the accepted EP on the NOPSEMA website.

An accepted EP provides the environmental management requirements that must be met by the titleholder against which NOPSEMA can secure compliance. Failure to comply with an accepted EP is an offence, as well as grounds for NOPSEMA to withdraw its acceptance of the EP.

6.1. NOPSEMA EPBC Act Program

On 28 February 2014, the process for streamlined environmental approvals for offshore petroleum and greenhouse gas storage activities in Commonwealth waters came into effect under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).



The Federal Minister for the Environment endorsed NOPSEMA's assessment process as a Program (the Program) that meets the requirements of Part 10 of the EPBC Act and approved a class of actions which, if undertaken in accordance with the endorsed Program, do not require separate referral, assessment and approval under the EPBC Act.

The key regulatory elements of the endorsed Program consist of the assessment process under the Environment Regulations together with NOPSEMA's Program commitments in the *Program Report - Streamlining Offshore Petroleum Environmental Approvals, Program Report February 2014*.

All petroleum and greenhouse gas storage activities undertaken in Commonwealth waters in accordance with the endorsed Program are considered "approved classes of action", with the exception of those that:

- have, will have or are likely to have a significant impact on the environment on Commonwealth land.
- are taken in any area of the sea or seabed that is declared to be part of the Great Barrier Reef Marine Park under the Great Barrier Reef Marine Park Act 1975 (Cth).
- have, will have or are likely to have a significant impact on the world heritage values of the Great Barrier Reef World Heritage property or on the national heritage values of the Great Barrier Reef National Heritage place.
- are taken in the Antarctic.
- are injection and / or storage of greenhouse gas.

The Program provides for NOPSEMA to assess and make approval decisions for new offshore petroleum development projects and shorter-term activities.

New projects are assessed under the Offshore Project Proposal (OPP) process in the Environment Regulations which delivers outcomes similar to the environmental impact statement assessment process under the EPBC Act.

An activity covered by the Program is not allowed to commence unless an EP for the activity has been accepted by NOPSEMA.

NOPSEMA's environmental assessment processes consider all project- and activity-specific environmental impacts and risks, including but not limited to those relevant to matters protected under Part 3 of the EPBC Act. Decision-making under the Program ensures that environmental impacts and risks, including to matters protected under Part 3 of the EPBC Act, will be of an acceptable level and reduced to ALARP. The object of the Environment Regulations includes to ensure that any petroleum activity or greenhouse gas storage activity is carried out in a manner consistent with the principles of ecologically sustainable development as set out in section 3A of the EPBC Act.

Key steps taken by NOPSEMA to deliver the strong environmental safeguards expected include applying and complying with NOPSEMA's Program commitments through assessments and decision-making. Many of these commitments closely mirror legislative requirements for decision-making under the EPBC Act.

The broader nature of criteria for acceptance of EPs under the Environment Regulations means that the 'cultural features' of the environment are in scope for every EP assessment and must be considered in decision-making by NOPSEMA. In contrast, EPBC Act approval mechanisms are limited to matters of National Environmental Significance.



7. Conclusion

In conclusion, this submission provides an overview of our role and jurisdiction, information on how NOPSEMA regulates under the Environment Regulations and an overview of NOPSEMA's EPBC Act Program.

NOPSEMA works within the legislative and regulatory framework provided by Parliament while supporting policy agencies to identify opportunities for improvement.

We trust that this submission provides useful and practical context to inform the Committee's inquiry into the Bill.