



Australian Government
**Department of Industry,
Science and Resources**

Submission to the Senate Economics Legislation Committee

Inquiry into the Offshore Petroleum and Greenhouse
Gas Storage Legislation Amendment (Safety and Other
Measures) Bill 2024

6 March 2024

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Background

The Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 ('the Bill') seeks to further strengthen Australia's offshore safety regime to ensure that it continues to provide an effective, leading practice framework for securing the health and safety of offshore oil and gas workers. The Bill also seeks to ensure that other aspects of the regime continue to operate effectively.

To achieve this objective, the Bill will amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) to implement the outcomes of the Offshore Oil and Gas Safety Review (Safety Review) and provide for other measures. The Safety Review involved an extensive stakeholder consultation process including through workshops, meetings and an online survey of the offshore workforce. Consultation was undertaken with the offshore petroleum and seismic industries, unions, workforce representatives, state and territory government agencies and regulators.

The other measures in the Bill:

- clarify the validity of certificates issued under the *Navigation Act 2012* (the Navigation Act) while a vessel is a facility under the *OPGGGS Act* to ensure that when it disconnects it will meet the requirements of the *Navigation Act*;
- enable amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (OPGGGS Environment Regulations) while ensuring that an approval of taking actions in accordance with a program under section 146B of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) remains effective; and
- make minor and technical amendments to improve the operation of the *OPGGGS Act*.

Key features

Improvements to the health and safety of workers to further strengthen Australia's offshore safety regime

The safety measures in the Bill will:

- strengthen the training requirements for Health and Safety Representatives (HSRs) to more closely align with the *Work Health and Safety Act 2011* (the WHS Act);
- enable HSRs to request review of safety management-related documents;
- ensure that HSRs have representation on Health and Safety Committees in relation to the members of the workforce at a facility;
- clarify the definition of "health" to align clearly with a broader understanding of health that encompasses both physical and psychological health – with the definition mirroring the definition of health in section 4 of the *WHS Act*;
- provide protection for workers against discrimination consistent with an equivalent provision in the *WHS Act*;
- modernise diving legislation to improve health and safety compliance in diving operations and dive vessels and expand reporting requirements on safety issues;

- provide for a new duty on a titleholder to ensure that where a separate operator is appointment, the titleholder must ensure that the operator can carry out its duties under the *OPGGS Act* and regulations;
- enable the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to monitor compliance with diving-related obligations on a vessel before and after it is a facility or associated offshore place;
- clarify notification and reporting requirements; and
- introduce a vessel activity notification scheme to require operators to notify NOPSEMA when commencing or concluding work as a facility.

The majority of the proposed changes from the Safety Review will be implemented through regulations under the *OPGGS Act*, including revisions to strengthen and improve current regulations. These will be implemented as part of the remake of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* ahead of the scheduled sunset date on 1 April 2026.

Improving jurisdictional interface

The Bill will support industry, NOPSEMA and the Australian Maritime Safety Authority to further demonstrate Australia's commitment to our obligations as a member of the International Maritime Organisation.

To further enhance the safety outcome in Australia's offshore petroleum industry, the Bill will introduce changes to ensure that vessel safety certification is in place, to address a risk when disconnectable facilities transition between the *OPGGS Act* and Commonwealth maritime legislation.

Vessel safety certificates demonstrate the vessel's compliance with various maritime conventions, such as the *International Convention for the Safety of Life at Sea* and the *International Convention for the Prevention of Pollution from Ships*. The proposed amendments will apply certain aspects of Commonwealth maritime legislation to disconnectable facilities that, from time to time, may need to disconnect to navigate away from cyclones or to undertake maintenance. These amendments seek to ensure that vessel safety certificates remain valid when a disconnectable facility transitions between the maritime and offshore petroleum regime.

Improving offshore environmental regulation

On 27 February 2014, the then Minister for the Environment granted approval for offshore petroleum and greenhouse gas storage activities undertaken in accordance with the Strategic Assessment Program endorsed under the *EPBC Act*. The endorsed Program reflects the offshore environmental regulations under the *OPGGS Act* that were in place at that time and aligns with the requirements of the *EPBC Act*. This removed the need for offshore activity proponents to seek duplicative environmental approvals under both the *OPGGS Act* and the *EPBC Act*.

The Independent Review of the *EPBC Act* ('the Samuel Review') was published in October 2020. It found that "the current settings for strategic assessments have significant limitations". The strategic assessment endorsed NOPSEMA's arrangements in place at the time of the agreement. Professor Samuel noted "the regulatory settings for NOPSEMA are effectively frozen, stifling continuous improvement of environmental regulation and further streamlining". There is currently no mechanism under the *EPBC Act* to amend or modify an approved strategic assessment. This means that strategic assessments are "unable to respond to changes in information and

circumstances ... strategic assessments that operate for long periods of time are unable to be changed to achieve the environmental outcomes envisaged, including those in the National Environmental Standards”.

The Government accepted the recommendations of the Samuel Review and is making changes to improve the flexibility and assurance of strategic assessments. The Government is also implementing a new accreditation model under the proposed Nature Positive Plan that would overcome these limitations where a Commonwealth agency can demonstrate consistency with the National Environmental Standards. However, these changes are expected to take several years to implement, so the measure in the Bill will ensure the *OPGGS Environment Regulations* can be amended to achieve improved environmental outcomes.

In May 2023, the Government announced a review of the environmental management regime for offshore petroleum and greenhouse gas storage activities.

The 3-year review will recommend improvements to the environmental management regime to make sure it:

- is fit for purpose in a decarbonising economy;
- reflects best practice for offshore environmental management;
- is consistent with reforms to the national environmental legislation that the Department of Climate Change, Energy, the Environment and Water under the Government’s Nature Positive Plan is developing; and
- is consistent with Australia’s international obligations for emissions and sustainable development.

It is essential as part of this review that the Department considers options to improve the regulatory regime and ensures it continues to reflect best practice for offshore environmental management. This includes ensuring that there are strong processes in place for consultation, environmental management and oil pollution emergency response arrangements.

The Bill will enable amendments to be made to the *OPGGS Environment Regulations* under the *OPGGS Act* to clarify and strengthen the offshore framework, while maintaining streamlined arrangements for NOPSEMA approvals under the *EPBC Act*. Without this measure, proponents would need to seek separate approvals under both the *OPGGS Environment Regulations* and the *EPBC Act*. This would significantly increase regulatory burden on industry and government, and consultation burden on stakeholders, for no increase in environmental protection.

Consistent with section 17 of the *Legislation Act 2003*, the Minister for the Environment and the Department of Climate Change, Energy, the Environment and Water would need to be consulted on any proposed amendments to the prescribed regulations before they are made.

The Bill does not change the legal requirements for environmental approvals for offshore activities in any way and there will be no change to assessments. The amendments proposed in the Bill will preserve the effect of the approval under the *EPBC Act* by providing that a person who is acting in compliance with the offshore environmental regulations as in force from time to time will be taken to comply with the endorsed Program. Proponents will still have to demonstrate that they meet the requirements of the *EPBC Act*, as well as the requirements of the *OPGGS Environment Regulations*.

As part of the Offshore Environmental Management Review, the Government will ensure any reforms are consistent with the National Environmental Standards being developed as part of the

Nature Positive Plan. This includes the standard for First Nations engagement and participation in decision-making and the standard for community engagement and consultation.

Minor and technical amendments

The Bill makes minor and technical amendments to ensure the ongoing effective operation of the *OPGGS Act*. These amendments will:

- enable NOPSEMA to specify the timeframe for a person to comply with a remedial direction;
- clarify that the spatial extent of an eligible greenhouse gas storage formation is the expected migration pathway of the particular greenhouse gas (GHG) substance;
- ensure that the *OPGGS Act* specifies when the annual titles administration levy imposed on cross-boundary greenhouse gas assessment permits becomes due and payable; and
- clarify that if a remedial direction is in force in relation to a pipeline, that pipeline is a facility even if the pipeline is no longer subject to a pipeline licence, which ensures that the safety provisions of the *OPGGS Act* and regulations apply to persons undertaking activities to comply with the remedial direction.

Conclusion

The Bill makes amendments to enhance the health and safety of offshore workers and to improve the operation of the *OPGGS Act*. Other measures in the Bill will ensure that vessel safety certification is in place for disconnectable facilities, enable changes to the *OPGGS Environment Regulations* to allow for continuous improvement and better environmental outcomes while maintaining streamlining arrangements, and correct technical matters.

The Department considers that these amendments will assist it, and NOPSEMA, in administering a best practice regulatory framework.