



Australian Government
**Department of Resources,
Energy and Tourism**

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10 November 2011

Mr Tony Zappia MP
Chair
House Standing Committee on Climate Change, Environment and the Arts
ccea.reps@aph.gov.au

Dear Mr Zappia,

RE: INQUIRY INTO THE OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (SIGNIFICANT INCIDENT DIRECTIONS) BILL 2011

Thank you for the letter of 3 November 2011 to the Hon Martin Ferguson AM MP, Minister for Resources and Energy, providing the Commonwealth with an opportunity to respond to the issues raised in the Western Australian (WA) Department of Mines and Petroleum's (DMP) submission to the Standing Committee on Climate Change, Environment and the Arts' inquiry into the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Bill 2011* (Significant Incident Directions Bill). Minister Ferguson has asked me to reply on his behalf.

The Significant Incident Directions Bill amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) to specifically enable the regulator for the offshore petroleum industry to issue a direction to a petroleum titleholder in the event of a significant offshore petroleum incident occurring within the title area that has caused, or might cause, an escape of petroleum. A direction may require action either within or outside the titleholder's title area. From 1 January 2012, the regulator will be the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

The WA DMP submission states that, given NOPSEMA will be a statutory body and not directly accountable to a minister, it may be more appropriate that the power to issue significant incident directions to a petroleum titleholder be given to the responsible Commonwealth Minister or the Joint Authority.

The Commonwealth considers NOPSEMA, as the regulator for the offshore petroleum industry, the most appropriate body to determine whether a significant offshore petroleum incident has occurred and whether a direction is required. As the day-to-day regulator for safety and environmental matters, and also for structural integrity of facilities and wells, NOPSEMA will have expertise in understanding potential risks to environment and human health and safety that may result from an incident, and actions that may be required to prevent, as far as possible, significant impacts from such an incident.

I would also note that there are provisions in the OPGGS Act that establish the accountability of NOPSEMA to the responsible Commonwealth Minister. This includes reporting requirements, such as the requirement to prepare an annual report of NOPSEMA's operations which must be provided to the Commonwealth and State and Northern Territory (NT) Petroleum Ministers. However, I would also particularly refer the Committee to

section 692 of the OPGGS Act, which provides the responsible Commonwealth Minister the power to give written directions to NOPSEMA regarding the performance of its functions or the exercise of its powers, and to section 647, which provides that the responsible Commonwealth Minister may give written policy principles to NOPSEMA about the performance of its functions. NOPSEMA is required to comply with any such direction or policy principles. Although these provisions may not relate to operations at particular facilities, they would enable the Minister to provide general guidance on NOPSEMA's exercise of the significant incident directions powers, if this was necessary. This could, for example, require notification of any affected stakeholders, including State and Territory governments, where a direction may impact on matters of interest to those States or Territories.

WA DMP has also proposed that the legislation should incorporate a requirement for consultation with the relevant State/NT, or at a minimum notification of a direction, in the event of NOPSEMA issuing a direction. The Commonwealth does not consider it necessary to formalise in legislation the need for notification and/or consultation processes in relation to a issuing a direction in the case of a significant offshore petroleum incident. Given that such a direction is likely to be issued in urgent situations, it would not always be practicable to notify and/or consult prior to a direction being issued. Formalising a requirement for consultation may cause unacceptable delays where a direction may need to be issued as soon as practicable to ensure prompt action by a titleholder.

Also, as noted above, if it became necessary to do so, the responsible Commonwealth Minister could require NOPSEMA to notify potentially affected State or NT governments in the event of issuing a direction in relation to a significant offshore petroleum incident.

WA DMP has referred to amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Environment Regulations) to incorporate an agreement between the Commonwealth Minister and Western Australian Minister on how the State will be kept informed on issues arising in Commonwealth areas. It is proposed that the Environment Regulations will be amended to specifically require consultation with stakeholders, including State and NT agencies, as part of the environment plan development process for offshore petroleum activities. Operators will also be required to include processes in their environment plan to notify relevant State/NT agencies of the commencement date for offshore activities where those activities may be of concern to the local community.

These specific requirements will ensure that states and the NT will be kept informed of the location and timing of activities occurring in offshore waters, and can input to the environment plan development process.

In addition, while the Commonwealth understands that consultation requirements may be appropriate in some cases, it is our firm view that NOPSEMA should not be formally required to consult with or notify parties in all cases in relation to the proper exercise of the functions and powers that have appropriately been given to NOPSEMA, as the national offshore petroleum regulator for the offshore area, under the OPGGS Act. There is nothing to prevent NOPSEMA determining, in a particular case, that it is necessary or appropriate to consult with or notify a potentially affected party, and to take action to do so.

I trust that the Committee will find this further submission useful in considering the issues raised by WA. For further information, the contact officer in the Department on these amendments is

Yours sincerely,

~~Martin Squire~~
~~General Manager~~
Offshore Resources Branch
Department of Resources, Energy and Tourism

