



## Consideration

### **Conduct of the inquiry**

2.1 Given the close relationship between the OPGGS Amendment (Significant Incident Directions) Bill 2011 and the bills introduced on 25 May 2011, the Committee invited submissions from organisations that had contributed to the inquiries into those bills. The following two submissions were received:

- Submission 1 – The Western Australian Department of Mines and Petroleum (DMP)
- Submission 2 – The Department of Resources, Energy and Tourism (RET)

2.2 As the submission from DMP raised some potential issues for consideration by the Committee, discussed below, the Committee invited RET to provide an additional submission in response.

### **Issues raised during the inquiry**

2.3 Western Australia's DMP expressed agreement with the need for a 'clear and specific power' to issue significant incident directions, as provided for by the bill.<sup>1</sup> However, its submission also noted two issues of concern for consideration by the Committee.

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1 DMP, *Submission 1*, p. 1.

- 2.4 Firstly, DMP raised concerns about the significant incident direction-giving power being given to NOPSEMA, 'given that it is a statutory body and not directly accountable to a minister'. It suggested that it would be more appropriate for the power, which is expected to be used infrequently, to lie with the Commonwealth Minister or the Joint Authorities, who DMP suggested would be able to react to an incident in sufficient time.<sup>2</sup>
- 2.5 In response to this suggestion, RET noted that as the 'day-to-day regulator for safety and environmental matters, and also for structural integrity of facilities and wells', NOPSEMA would have the expertise required to understand the potential environmental, health and safety risks involved in a significant incident and the actions required to mitigate those risks. RET contended that this expertise makes NOPSEMA the 'most appropriate body to determine when a significant incident has occurred and whether a direction is required'.<sup>3</sup>
- 2.6 RET further noted that there are already provisions in the OPGGS Act that make NOPSEMA accountable to the responsible Commonwealth Minister. In particular, RET noted that section 692 of the OPGGS Act enables the Minister to give written directions to NOPSEMA regarding 'the performance of its functions or the exercise of its powers' (although not in relation to operations at particular facilities), and that section 647 enables the Minister to 'give written policy principles to NOPSEMA about the performance of its functions'. In these ways, the responsible Commonwealth Minister would be able to provide 'general guidance on NOPSEMA's exercise of the significant incident directions powers', if necessary.<sup>4</sup>
- 2.7 The second issue raised by DMP concerned the required level of consultation between the direction-giving authority and State Governments. The submission noted that significant offshore petroleum incidents could have a large impact on Western Australia's offshore waters and islands, its coastline, and its natural gas supply. It also noted that as Western Australia receives 95 per cent of its natural gas supply from Commonwealth Offshore areas, and a number of new projects are expected to increase this amount, gas produced in offshore areas under Commonwealth jurisdiction is largely piped into areas under Western Australia's jurisdiction. This means that significant incidents, and

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2 DMP, *Submission 1*, p. 1.

3 RET, *Supplementary Submission 2.1*, p. [1].

4 RET, *Supplementary Submission 2.1*, pp. [1-2].

resultant directions, may have ‘direct or consequential impacts on the State’.<sup>5</sup>

2.8 DMP therefore proposed that the bill be amended to incorporate ‘a requirement for consultation with Western Australia or at the minimum, notification in the event that a direction is issued’. It argues that this should be required for directions of a non-permanent nature, not only those of a permanent nature as is currently required (via the Joint Authorities).<sup>6</sup>

2.9 In response to this proposal, RET argued that it is not necessary to ‘formalise in legislation’ any notification or consultation processes for when a significant incident direction is issued, particularly due to the need for such directions to be issued within tight time constraints:

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.<sup>7</sup>

2.10 RET noted that, given the ability of the Commonwealth Minister to issue directions and policy principles to NOPSEMA, discussed above, the Minister could, if necessary, ‘require NOPSEMA to notify potentially affected State or Northern Territory governments’ when a significant incident direction is issued.<sup>8</sup> However, RET also expressed its ‘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’ under the OPGGS Act.<sup>9</sup>

## Committee conclusions

2.11 The Committee supports the intent of the bill and recognises the need for a clear and specific power for the national regulator to issue directions for remedial actions in the event of a significant incident involving offshore

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5 DMP, *Submission 1*, pp. 1-2.

6 DMP, *Submission 1*, p. 2.

7 RET, *Supplementary Submission 2.1*, p. [2].

8 RET, *Supplementary Submission 2.1*, p. [2].

9 RET, *Supplementary Submission 2.1*, p. [2].

petroleum operations. The Montara incident of 2009 demonstrated the capacity of incidents involving the escape of petroleum to affect very large areas of offshore waters and coastlines, and it is therefore important that the regulator is able to issue directions for actions that extend beyond the boundaries of a title area.

- 2.12 The Committee accepts RET's view that the power to issue significant incident directions should sit with NOPSEMA, rather than a Commonwealth Minister, noting that the Minister already has a legislated ability to provide guidance to NOPSEMA on how it should perform its functions.
- 2.13 The Committee agrees with DMP that the relevant State and/or the Northern Territory should, at a minimum, be notified when a significant incident direction is issued. However, the Committee also accepts RET's view that enshrining such notifications in the OPGGS Act could have unintended consequences, particularly given the importance of a timely response to significant incidents.
- 2.14 The Committee's preferred approach would be for NOPSEMA to incorporate into its standard practices the notification of relevant State or Territory authorities as soon as practicable after a direction is issued. The Committee notes that, should this provision not prove adequate, the Minister, without amending the OPGGS Act, will have the power to require NOPSEMA to adopt specific notification procedures in the future.
- 2.15 Beyond the issues addressed above, the Committee has been unable to ascertain that there are any aspects of the bill that are cause for concern. It therefore recommends passage of the bill.

### **Recommendation 1**

**That the House of Representatives pass the Offshore Petroleum and Greenhouse Gas Storage Amendment (Significant Incident Directions) Bill 2011**

Tony Zappia MP  
Chair