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Parliament of Australia

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EDO submission on the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission on the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 (**the Bill**). This submission is concerned primarily with the proposed addition of section 790E to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**OPGGS Act**), and does not address the other measures in the Bill.

EDO has addressed two key issues for the Committee's attention: the timing and context of this inquiry; and the impact of proposed section 790E.

Timing of this inquiry

The Bill was introduced to the House of Representatives on 15 February 2024, and referred to the Senate Standing Committees on Economics on 29 February. Community members and stakeholders have had seven days to make a submission on the Bill, a timeframe which is plainly inadequate for proper analysis and engagement.

Moreover, this inquiry is taking place at the same time as the Department of Industry, Science and Resources' (**DISR**) is seeking feedback on the consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals (**Consultation Requirements Review**). This review is taking place as part of a broader, three-year, process for improving the offshore environmental management regime, including the OPGGS Act and subordinate regulations.¹ A paper was released by DISR for public comment in January 2024 and submissions also close this week (8 March).

In addition, at the same time the Federal Government is consulting on replacing the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) with new nature positive laws, including a new suite of National Environmental Standards which will apply to all accredited bodies under the EPBC Act, including the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**). As described below, this is directly relevant to the operation of the Bill.

The fact these reform processes are still ongoing compounds the need for more time to assess the implications and impact of the Bill. The seven day inquiry is far too short, and does not give

¹ [DISR, Offshore petroleum and greenhouse gas storage environmental management review, 2024](#)

stakeholders enough time to provide feedback – especially those stakeholders deeply engaged in both the EPBC Act reform process, and the Consultation Requirements Review. At a minimum, EDO **recommends** the inquiry be extended to allow for proper public scrutiny and stakeholder feedback on the Bill.

Proposed section 790E

Under section 146B of the EPBC Act, the Minister for the Environment has granted approval for actions which are offshore petroleum and greenhouse gas activities (with some exclusions) undertaken in Commonwealth waters in accordance with an endorsed Program.² The endorsed Program sets out relevant requirements under the OPGGS regulatory scheme, and the accreditation removes the need for EPBC Act approval for those actions. However, under the EPBC Act this accreditation doesn't automatically cover variations or updates to the endorsed Program. This means that if OPGGS laws, regulations, or policies change (so they no longer match what has been endorsed), the Environment Minister would need to endorse those changes.

While this does create some inflexibility, it also means that endorsed programs cannot be changed or varied in a manner which undermines the standards of protection originally endorsed by the Environment Minister. It requires the Minister to scrutinise the new laws, regulations or policies and consider whether they meet the requirements of the EPBC Act.

Proposed section 790E of the Bill appears to allow for changed operation of this accreditation, such that an action taken in accordance with amended OPGGS legislation or regulations, could still be accredited under the EPBC Act – even where the changed OPGGS regime differs from, or is a regression on, the endorsed Program. As such, it appears the Bill seeks to maintain the validity of the existing accreditation of NOPSEMA approvals to cover future changes to the OPGGS Act or regulations. The proposed amendment would allow rules or processes under the OPGGS regime to be substantially changed and there would be no need to reconsider or reissue accreditation under the EPBC Act.

This would include, for example, changes to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 – which are currently being scrutinised through the Consultation Requirements Review. It is not clear why the Bill is being progressed ahead of the outcome and findings from the Consultation Requirements Review, or indeed the broader review process, and the Bill seems to pre-empt the finding that changes to the OPGGS regulatory regime will be required.

The interaction of this Bill and the proposed new nature positive laws is also unclear. As noted above, the proposed new Environment Protection Agency (**EPA**) will have a key role in accreditation. Under the proposed new nature positive laws, any variations or updates to accreditation would require the EPA to be satisfied the changes are not inconsistent with National Environmental Standards – a critical protection against regressive changes *after* a program is endorsed. Relevantly, these Standards will include a Community Engagement and Consultation Standard, and a First Nations Engagement and Participation in Decision-Making Standard. These

² Program Report – Strategic Assessment of the environmental management authorisation process for petroleum and greenhouse gas storage activities administered by the National Offshore Petroleum Safety and Environmental Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 February 2014 (**endorsed Program**).

Standards will apply to NOPSEMA, insofar as NOPSEMA's functions under a strategic assessment will need to be accredited against these Standards by the new EPA.

This Bill, again, pre-empts this proposed safeguard, by allowing an action to be taken in accordance with the OPGGS Act or subordinate regulations, even where that action would otherwise not be in accordance with the endorsed Program. Neither current laws, nor proposed nature positive reforms, allow changes to an approved policy, plan, or program without oversight. In contrast, this Bill does not include an equivalent safeguard, or any measures to ensure only changes to 'clarify, strengthen or improve' would be acceptable. It appears the Bill could potentially allow regressive changes to legislation or regulations to automatically come under the existing accredited program.

As such, EDO **recommends** section 790E is removed from the Bill.

Conclusion

It is clear the timeframe for this inquiry is far too short to enable adequate engagement, and that the law reform context for this Bill is rapidly evolving. In the absence of clarity arising from either the ongoing Consultation Requirements Review, or the EPBC Act reform process, EDO strongly recommends the amendment relating to EPBC Act accreditation be removed.

For further information, please contact [REDACTED]

Yours sincerely,

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