

**7 March 2024**

Secretary  
Senate Economics Legislation Committee  
Sent via Committee website

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

Australian Energy Producers welcomes the opportunity comment to the Senate Economics Legislation Committee (the Committee) on the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 (the Bill).

This submission will focus on amendments in Schedule 2, Part 2, of the Bill that would facilitate anticipated reforms to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (the Environment Regulations) to clarify consultation requirements under the Environment Regulations.

The Department of Industry, Science and Resources (DISR) is currently consulting on potential amendments to the Environment Regulations to clarify consultation requirements for offshore oil and gas projects. DISR's [consultation paper](#)<sup>1</sup> acknowledges that recent court decisions have introduced uncertainty on how titleholders should consult with relevant persons. It says: "The government believes there may be benefit in further clarifying the consultation requirements outlined in Australia's current Offshore Environment Regulations."

Australian Energy Producers welcomes the Government's recognition that the regulations need to be clarified to provide certainty for titleholders.

The Australian oil and gas industry is committed to genuine consultation with Traditional Owners, communities and businesses in which we operate. To this end, industry has and will continue to work closely with communities and Traditional Owners to understand their issues, accommodate them where we can and seek to share potential social and economic benefits in these communities.

However, as DISR's discussion paper notes, recent court decisions – in particular the Federal Court ruling in *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] almost 15 months ago – have highlighted some ambiguities in the regulations which has led to a significant increase in the consultation required by NOPSEMA for Environmental Plans (EPs).

In addition to creating "consultation fatigue" for titleholders and Traditional Owners, the uncertainty has also significantly increased the workload of National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), resulting in a significant backlog of EPs with NOPSEMA awaiting acceptance and unprecedented delays in project approvals. This has delayed potential gas supply to

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<sup>1</sup> <https://consult.industry.gov.au/offshore-petroleum-consultation-requirements>

contracted customers in Australia and Asia, and impacted decommissioning and carbon capture and storage projects.<sup>2</sup>

### **Schedule 2, Part 2: Approvals under the *Environment Protection and Biodiversity Conservation Act 1999***

Australian Energy Producers supports the intent of amendments in Schedule 2, Part 2, of the Bill that seek to maintain and strengthen measures to simplify offshore oil and gas approvals processes and avoid duplicate and parallel approvals across government agencies.

As the [Explanatory Memorandum](#) outlines, the new clause 790E is necessary to maintain the processes for environmental management approvals under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* where activities in Commonwealth waters do not require separate referral, assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This amendment makes it clear that the delegation to the NOPSEMA under the EPBC Act is retained if the Environment Regulations are amended.

The EM says: "New section 790E ensures that relevant actions taken in accordance with a new or modified process implemented through the OPGGSA or prescribed regulations, as amended from time to time, would be regarded as being undertaken in accordance with the endorsed Program."

Furthermore, the EM says: "To ensure that the effect of section 790E is constrained to the actions covered by the Offshore Petroleum and Greenhouse Gas Storage approval, an activity to which this section applies is defined as a **relevant action**."

Australian Energy Producers urges the Committee to support the Bill and recommend the Senate pass the Bill as soon as possible to facilitate the regulatory changes needed to restore certainty and clarity in NOPSEMA's decision-making.

### **Safety Measures in the Bill**

Australian Energy Producers support the general intent of the amendments to the OPGGSA to improve safety outcomes for Australia's offshore workforce. However, further detail is needed to understand the precise wording that will apply in the final regulations. It is this detail that will provide the greatest indication of how the regulatory changes will operate and the impacts on business and resources. Generally, our concerns include:

- Introduction of fair work concepts, such as discrimination (Clause 88), into offshore safety legislation. Australian Energy Producers considers that government should not seek to duplicate anti-discrimination laws; the *Fair Work Act 2009* and some jurisdictional industrial laws.
- Reporting obligations around psychosocial matters, including sexual harassment, in the absence of a robust privacy and confidentiality regime. Key details around reporting obligations for psychosocial matters are not included in the Bill. Further detail is needed on what reporting is being referred to, who it goes to, how is it shared and how much detail is expected. Further,

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<sup>2</sup> [Economics Legislation Committee, NOPSEMA, Senate Estimates 26 October 2023](#)

consideration is needed on how to de-identify and de-aggregate information so as to protect the privacy of individuals. How this information is captured and worded is relevant, as is anonymity.

- Introduction of civil penalties. Given the importance of health and safety, current criminal penalties and other levers are adequate for enforcement. Additional civil penalties would be excessive and likely ineffective.

Australian Energy Producers consider that regulatory compliance efforts should continue to foster a transparent culture of reporting incidents and dangerous occurrences, where compliance strategies underpinned by preventative measures, advice and promotion activities to reflect leading regulatory practice by NOPSEMA.

#### *Design Notification Scheme (DNS)*

Australian Energy Producers is generally supportive of regulatory powers for a scheme for notifying NOPSEMA and seeking comments on the design of proposed facilities, but further clarity is needed. Consultation with NOPSEMA on the DNS should be clear, time bound and only apply to new project builds (excluding facility modifications and decommissioning). This is of particular importance to new offshore developments to ensure that DNS consultation does not unnecessarily delay project development.

#### *Strengthening the role of Health and Safety Representatives*

Australian Energy Producers recognise the critical role that Health and Safety Representatives (HSR) provide towards a safe working environment in our industry. We have identified the following issues with the Bill:

- **HSR Training.** We support HSR training but query the need for annual refresher training which seems somewhat onerous. Further, the ability of HSR's to nominate their own training provider as long as the provider is accredited by NOPSEMA could conflict with an organisations ability to nominate their preferred training providers with potential impacts to existing contractual arrangements, increased administrative burden and loss of training consistency.
- **HSR access to documents.** We support HSR access to safety documentation, however we are concerned that HSR's through NOPSEMA forcing Safety Case revisions could create more work than is necessary. Australian Energy Producers' member companies advise that most safety concerns that arise are raised and addressed internally, without the need for escalation. The proposed change seems to push towards escalation when it would unlikely be unnecessary.
- **NOPSEMA HSR register.** We are concerned that the establishment and maintenance of a NOPSEMA HSR register has questionable value and create a new administrative burden will be borne by industry and NOPSEMA.

Australian Energy Producers thank the Committee for considering the points raised in this submission.

Yours Sincerely

A handwritten signature in black ink that reads "S McCulloch".

Samantha McCulloch

**Chief Executive**