



HUMANE SOCIETY INTERNATIONAL

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Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 [Provisions] 7 March 2024

About HSI

Humane Society International (HSI) is the world's largest animal protection organisation and HSI Australia established our office in 1994. We work to create a humane and sustainable world for animals advocating across wildlife conservation and animal welfare policy areas.

Our vision is for a world where people treat animals and nature with respect and compassion.

Submitted to:

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
By email: economics.sen@aph.gov.au

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Summary

Humane Society International (HSI) Australia welcomes the opportunity to provide this submission to the Senate Standing Committees on Economics inquiry into the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 [Provisions]* (Bill).

We limit our comments on the Bill to proposed new 790E - *Approval under Environment Protection and Biodiversity Conservation Act 1999—interaction with this Act and Environment Regulations* (s. 790E) and associated provisions. We strongly encourage the Committee to recommend removing these provisions from the Bill.

Context

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) currently allows for assessment and decision-making processes to be accredited - meaning that instead of the Minister for the Environment being responsible for assessment or decision-making under the law, the accredited person or body is responsible. HSI Australia has long opposed, and continues to oppose, the accreditation of decision-making under the EPBC Act. Retaining Commonwealth Government level responsibility for approval decisions by the Environment Minister as is currently the case, and by an independent Environment Protection Australia (EPA) under proposed new Nature Positive legislation, is the best way to ensure an effective nationally coordinated system that delivers good outcomes for our wildlife and their habitats. The Bill is a regression on the Parliament's decision in introducing the EPBC Act to consolidate decision making and accredited decision making for nationally significant environment matters under the auspices of the federal Environment Minister.

As the Committee is aware, the Australian Government is currently in the process of reforming the EPBC Act. Implementation of the reforms should provide a basis for an effective and integrated system of consultation and environmental impact assessment, removing the need for the accreditation of approvals systems. An important new feature of the Nature Positive legislation is proposed to be the development of National Environmental Standards. New Standards will set the benchmark for consultation, assessment and decision-making and have the ability to be strengthened as environmental protection requires and community expectations demand. The Standards will play a key role in ensuring the ongoing modernisation of consultation, environmental assessment and decision making without locking in processes at a single point in time, which currently allows processes to fall behind best practice and community expectation.

Nonetheless, we recognise that in February 2014 the federal Minister for the Environment accredited the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) in relation to decision making on the taking of all actions which are offshore petroleum and greenhouse gas activities (with some exclusions) undertaken in Commonwealth waters in accordance with the endorsed

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 (the Accredited Program). It is in that context that the current Bill has been introduced.

Proposed Amendment

Proposed amendment s. 790E would allow changes to be made to the Accredited Program without requiring a reconsideration or update of that accreditation under the EPBC Act.

The Explanatory Memorandum for the Bill notes:

"Until amendments are made to the prescribed regulations or the OPGGS Act, the current requirements of the endorsed Program apply to environmental assessments and relevant actions to be undertaken under the offshore regime in accordance with the OPGGS Act and the prescribed regulations. Following any amendment to the prescribed regulations or the OPGGS Act, to the extent of any inconsistency between those regulations or the Act and the endorsed Program, the requirements set out in the prescribed regulations, or the Act will apply. Section 790E will preserve the approval under section 146B, and the effect of the approval under section 146D, of the EPBC Act."

The Bill would therefore undermine a deliberate safeguard in the EPBC Act designed to ensure that decision making under accredited processes can not be weakened without reassessment against their consistency with the requirements of the EPBC Act.

The Explanatory Memorandum for the Bill further notes:

"Under the EPBC Act, there is no provision that enables the endorsed Program to be amended. However, it may be necessary to revise the environmental assessment and approval processes under the OPGGS Act or prescribed regulations from time to time to clarify, strengthen, or improve those processes".

However, there is no such constraint in the Bill. The provisions do not limit changes to those that would "strengthen" or "improve" and, if enacted, future changes could just as easily be made to weaken components of the accredited program.

Any changes currently being contemplated to the Accredited Program could use the existing provisions of the EPBC Act that allow the Minister to endorse those changes. In short, s. 790E is overreach.

Worse, this Bill pre-empts the Nature Positive reform legislation that will establish the EPA and the National Environmental Standards. Passage of the Bill now would allow the Accredited Program to avoid proposals under the proposed Nature Positive reforms

that would require the new independent EPA to be satisfied that any proposed variations or updates to accredited processes are not inconsistent with the new National Environmental Standards – a key protection against regressive changes after a program is endorsed.

More broadly, the introduction of this Bill does not provide confidence that any accredited arrangements under the EPBC Act could be relied on to provide the same standard of decision-making as the EPBC Act itself. This draft legislation could set a dangerous precedent and should not be approved.

We note that subsequent to the introduction of the Bill, Ms Steggall MP has introduced to the House of Representatives an amendment that would result in proposed s.790E being removed in from the Bill (Amendment Bill). HSI Australia strongly supports that amendment and asks that the Committee recommend that the Amendment Bill be adopted, or that s. 790E be otherwise removed from the Bill.