



Australian Government
**Department of Employment
and Workplace Relations**

Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024

Submission from the Department of
Employment and Workplace Relations to the
Senate Economics Legislation Committee

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Introduction

The Department of Employment and Workplace Relations (the department) welcomes the opportunity to make a submission to the Senate Economics Legislation Committee's inquiry into the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024*.

The department has responsibility for administering the *Work Health and Safety Act 2011* (Cth) (WHS Act), which is the principal Commonwealth Act for health and safety in the workplace. The department also has policy responsibility for work health and safety, including harmonisation of work health and safety laws, which is underpinned by the 2008 *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

The department supports the measures in the Bill that seek to align the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) work health and safety measures with the WHS Act. The department also supports the proposed amendments to the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) to clarify its application to vessels used for diving in the offshore petroleum industry.

The department makes the following observations on the relevant work health and safety frameworks to assist the committee.

Overview of the work health and safety framework

Work health and safety in Australia is legislated and regulated separately by each of Australia's state, territory and Commonwealth jurisdictions. These laws are largely harmonised across jurisdictions through a set of uniform laws (known as the model WHS laws) to provide for a balanced and nationally consistent work health and safety framework.

The department is a member of Safe Work Australia, which is the national work health and safety policy body responsible for developing, reviewing and administering the model WHS laws, as well as policies dealing with their compliance and enforcement.

The model WHS laws are given effect in the Commonwealth's jurisdiction through the WHS Act, which applies to Australian Government agencies, Commonwealth public authorities, members of the Australian Defence Force, and a small number of non-Commonwealth

licensees. State and territory work health and safety laws otherwise apply within their respective jurisdictions.

Bespoke offshore work health and safety schemes

Alongside the principal work health and safety Acts in the Commonwealth and each state and territory, there are several separate and specific health and safety Acts that have been developed to deal with particular industries or hazards. Industry-specific health and safety laws usually apply to higher-risk industries, where the hazards present may require a more prescriptive or tailored form of regulation. They may operate concurrently or to the exclusion of the relevant principal work health and safety Act.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Under the OPGGS Act, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) has responsibility for regulating health and safety of workers engaging in petroleum and greenhouse gas storage activities in Commonwealth waters. NOPSEMA also regulates the health and safety and structural integrity of petroleum and greenhouse gas storage activities in the coastal waters of the state of Victoria following conferral of jurisdictional powers and functions.

The OPGGS Act maintains separate work health and safety arrangements to the WHS Act. Therefore, any amendments made to the WHS Act do not automatically flow into the OPGGS scheme.

Offshore Electricity Infrastructure Act 2021

The *Offshore Electricity Infrastructure Act 2021* (OEI Act) commenced on 2 June 2022 for NOPSEMA to similarly regulate work health and safety for offshore electricity infrastructure activities (e.g. wind generation) in the Commonwealth's offshore area. Whereas the OPGGS Act maintains separate work health and safety arrangements, Part 1 of Chapter 6 of the OEI Act provides that the WHS Act, with some specified modifications to reflect the unique offshore work environment, applies to work carried out under the OEI Act.

By directly referencing the Commonwealth's work health and safety legislation, the OEI scheme automatically picks up any amendments or new provisions made by the Commonwealth. For example, recent amendments to psychosocial provisions in the WHS Act, developed through tripartite consultation with Safe Work Australia, flow through simultaneously to workers in the OEI scheme.

Occupational Health and Safety (Maritime Industry) Act 1993

The Australian Maritime Safety Authority has separate work health and safety inspectorate functions under the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) to protect against specialist risks to health and safety arising out of the activities on

prescribed ships that are engaged in trade or commerce on international and domestic voyages.

Like the OPGGS scheme, the OHS(MI) scheme maintains separate work health and safety arrangements to the WHS Act. In 2023, the sunseting of the Regulations under the OHS(MI) scheme were deferred to 1 April 2026 to allow for an extensive review that will consider harmonising the OHS(MI) scheme with the WHS Act. The department is leading this work.

Conclusion

The measures in the Bill are a step towards aligning work health and safety protections for workers in the OPGGS scheme with the WHS Act and the national model WHS laws. The offshore oil and gas industry presents operational risks that require sector specific laws and regulation. However, without constant maintenance, the bespoke OPGGS framework risks falling behind the more modern WHS Act and the national model WHS laws. The introduction of a Commonwealth industrial manslaughter offence is an example of a recent framework change that will require a separate amendment to the OPGGS Act to align it with the WHS Act.

The department notes the announcement made by the Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia, on a 'new offshore safety review to identify further opportunities to harmonise the offshore petroleum safety regime with our national Work Health and Safety laws.'¹ The department will work closely with the Department of Industry, Science and Resources on this review, and monitor opportunities to progress harmonisation of work health and safety regulatory frameworks to improve safety outcomes and better protect the health and safety of workers in the offshore oil and gas industry.

¹ The Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia, *Improving safety for the offshore resources sector workforce* (Media Release, 15 February 2024).