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

Submission to the Senate Economics Legislation Committee

About ACF

ACF is Australia's national environmental organisation. We represent a community of more than half a million people who are committed to achieving a healthy environment for all Australians. For more than 50 years, ACF has been a strong advocate for Australia's forests, rivers, people and wildlife. ACF is proudly independent, non-partisan and funded by donations from our community.

Recommendations

Recommendation 1: The Bill should be amended to delete Part 2 of Schedule 2.

Recommendation 2: The Albanese government should urgently prioritise the development of the nature positive legislative reforms, and commit to a timeframe for their introduction into Parliament.

Introduction

ACF welcomes the opportunity to make a submission to the Committee in relation to this Bill. We are concerned that the very short timeframe for the Committee's review of the legislation indicates that the government is intent on pushing the Bill through without careful consideration, and we urge the Committee to give it careful scrutiny in the short time that is available.

This submission solely relates to Part 2 of Schedule 2 to the Bill. This seemingly innocuous reform included in the package as an "other measure" subverts the intended operation of important environmental safeguards in the the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). It should be removed from the Bill.

We do not express any view with respect to the other reforms proposed by the Bill.



Part 2 of Schedule 2 of the Bill should be withdrawn

The offshore oil and gas regulator, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), operates under an environmental authorisation process documented in the *Program Report - Streamlining Offshore Petroleum Environmental Approvals, Program Report February 2014*. Then Environment Minister Greg Hunt endorsed the program report as meeting the standards of protection and environmental management required under Australia's national environmental law, the EPBC Act. This endorsement in turn provides the basis for approval for a class of actions (offshore oil and gas approvals) by NOPSEMA. This means offshore oil and gas project proponents have the significant benefit of only having to seek an approval from NOPSEMA without the need for a separate approval under the EPBC Act, subject to certain exceptions. For example, an action that is likely to have a significant impact on the Great Barrier Reef Marine Park or the World or National Heritage values of the Reef cannot be approved by NOPSEMA. The arrangement is in effect a delegation of the Environment Minister's EPBC Act responsibilities to NOPSEMA.

At the heart of this regime was the endorsement of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*, as they stood in **2014**. Part 2 of Schedule 2 of the Bill seeks to allow for the regulations to be changed (without guard rails of any kind) and yet for the benefit of that endorsement to remain.

The clear legislative intent of the EPBC Act is that this form of alternate approval regime will only be permitted after consideration of a proposed "plan, policy or program" (NOPSEMA's Environmental Management Framework in this case). This consideration comprises a "strategic assessment" under Part 10 of the EPBC Act, which involves public consultation on the proposed program, and very specific requirements for the Environment Minister to be satisfied that the proposal meets the standard of environmental protection intended by the EPBC Act. This includes ensuring that the proposal is consistent with Australia's international environmental commitments, as well as other instruments developed under the EPBC Act such as threatened species recovery plans.

Under the current provisions of the EPBC Act, strategic assessments are effectively a once in time process. The EPBC Act does not provide for variations to strategic assessments. This Bill seeks to create a backdoor for these variations and hence avoid the scrutiny Parliament has deemed necessary for changes to strategic assessments.

The proposed reforms subvert the legislative policy of the EPBC Act by allowing the Resources Minister, or her delegates, to implement changes to the regulations which form part of NOPSEMA's environmental management framework while maintaining the exemption from the need for proponents to obtain a separate approval under the EPBC Act. Under the amendments as proposed, the Resources Minister could make these changes at any time and without any limitation as to what the regulations provide for, other than the constraints in the proposed s790E(4), which simply reproduce constraints already contained in the EPBC Act and the approval decision that followed the strategic assessment of NOPSEMA's environmental management framework.



There are several issues with what is proposed:

- Part 2 of Schedule 2 of the Bill subverts the policy intent of the EPBC Act in relation to the consideration and endorsement of a plan policy or program following a strategic assessment, allowing the Resources Minister to introduce lower standards. The clear intent of the EPBC Act is that, firstly exemptions will only be available where the alternative approval regimes meets the standards of the EPBC Act, and secondly it is the Environment Minister who is responsible for ensuring that regime is acceptable.
- In so far as NOPSEMA envisages that the current review of their Environmental Management Framework will necessitate an updating of that framework, then the appropriate course under the EPBC Act is for the updates considered necessary to be assessed through the processes provided for under the EPBC Act. There is no reason why the offshore oil and gas industry should have a special carve out from these processes.
- The 2020 Independent Review of the EPBC Act has recommended reforms to improve the current provisions for strategic assessments and other forms of accreditation under new national nature laws, and the government has committed to progressing these changes under its Nature Positive Plan. Improvements to the framework for strategic assessments and accreditations should occur through these reforms, rather than being pre-empted by the reforms in Part 2 of Schedule 2 of this Bill.
- If these reforms are intended to facilitate rapid implementation of changes following the review of consultation processes for offshore oil and gas proposals, then they are premature. The consultation on these proposed changes has not concluded and no changes to the regulations (in relation to consultation in relation to offshore oil and gas proposals) have yet been proposed.

The circumstances suggest the only reason for including Part 2 of Schedule 2 in this Bill is to facilitate weakening of current obligations for offshore oil and gas proponents to consult with interested community and First Nations representatives. The Albanese government should provide the details of these changes to consultation requirements and allow them to be scrutinised before considering whether any legislative amendments to the OPGGS Act and EPBC Act are required and their form.

The Hon Zali Steggall MP has tabled amendments to the Bill in the House of Representatives which delete Part 2 of Schedule 2 from the Bill. This Committee should endorse those amendments.

Recommendation 1: The Bill should be amended to delete Part 2 of Schedule 2.



The government should urgently progress their nature positive legislative reforms

The Independent Review of the EPBC Act recommended a fundamental overhaul of the EPBC Act including provisions related to strategic assessments and accreditation.

The government in its Nature Positive Plan has responded to those recommendations and committed to new national nature positive laws. New legislation currently under development includes an updated and improved framework for strategic assessments and accreditation of approval regimes. Key elements of the package include a new requirement for strategic assessments and regulatory systems proposed for accreditation to be assessed against proposed new National Environmental Standards, and a new national regulator, Environment Protection Australia (EPA). The new framework will provide greater scope for varying and updating accreditations,

Strategic assessments and accreditation of approval regimes effectively amount to a delegation of regulatory responsibilities, and under the updated legislative framework the Environment Minister together with the EPA will have responsibility for the administration and oversight of these arrangements. This builds upon and extends the legislative policy of the EPBC Act in relation to these arrangements outlined above.

The government should be prioritising the development of the nature positive reform package rather than attempting pre-emptory carve outs to the EPBC Act as proposed here. The nature positive legislative reforms are behind schedule. The December 2022 Nature Positive Plan committed to Bills being introduced into Parliament by the end of 2023, but development of the drafts is well behind this schedule. The only commitment the government has been prepared to make is that the Bills will be introduced “as soon as possible in 2024”. This is unsatisfactory – the government should ensure that the necessary resources and priority is allocated to the development of the new laws and commit to a timeframe for introduction of the Bills.

Recommendation 2: The Albanese government should urgently prioritise the development of the nature positive legislative reforms, and commit to a timeframe for their introduction into Parliament.

