



Australian Government

Australian Government response to the
Environment and Communications References Committee
report:

Oil or gas production in the Great Australian Bight

August 2017

Introduction

The Australian Government welcomes the report by the Senate Environment and Communications References Committee in relation to the inquiry into oil or gas production in the Great Australian Bight and thanks those individuals and organisations who contributed to this inquiry in preparing written submissions or appearing at the public hearings.

The Government is committed to encouraging the exploration for, and development of, Australia's offshore petroleum (oil and gas) resources. This includes the Great Australian Bight, where offshore petroleum exploration has occurred safely since the late 1960s.

Australia has a strong track record of discovering and developing its natural resource base and our regulatory framework requires stringent health, safety and environmental protection. Australia's future economic prosperity is underpinned by maintaining a steady stream of new mineral and energy projects and regulatory certainty is fundamental to Australia's appeal as an investment destination.

Oil or gas production in the Great Australian Bight Recommendations

The Government notes the report does not include any majority recommendations, with additional comments provided by the Senators. The Government's response to each recommendation made in the additional comments is provided below.

Recommendations in the additional comments from the Australian Greens

Recommendation 1: The Australian Greens recommend that no further oil or gas exploration or production be permitted in the Great Australian Bight Marine National Park. Further, the Australian Greens recommend that the Australian Government introduce legislation to prevent future oil and gas activities from occurring in the Great Australian Bight Marine National Park.

The Government does not accept this recommendation.

From the first oil and gas discoveries in Bass Strait, the North West Shelf and the Timor Sea through to more recent discoveries in the Carnarvon and Browse basins, offshore Australia has proved to contain some of the world's most highly prospective areas for oil and gas.

Oil and gas exploration has occurred in Australia over several decades and in the Great Australian Bight for over 40 years. In the Great Australian Bight, 45 oil and gas exploration permits have been granted, and 13 exploration wells were drilled between 1972 and 2003.

Throughout this time Australia's offshore oil and gas resources have been significant contributors to the Australian economy by way of export revenue, job creation, domestic supply of oil and gas, and regional development. In 2015-16 the industry contributed around \$31 billion to industry gross value added and employed around 29,000 people.

Direct benefits are returned to the Australian people during infrastructure development and production, as well as benefits during the exploration phase, such as direct and indirect

employment. Oil and gas production in Australia continues to play a part in maintaining global and domestic long term energy security.

Australia's offshore oil and gas sector is playing a significant role in the expansion of our LNG industry, supporting four of Australia's seven new LNG projects. The four new offshore-based LNG projects (Ichthys, Prelude, Gorgon and Wheatstone) represent approximately \$160 billion in investment. They will add 37 million tonnes per annum to Australia's liquefaction capacity once completed over the next few years, putting Australia on track to become the world's largest LNG exporter by the end of this decade.

A key element of the success of the offshore oil and gas sector in Australia has been our high quality resources combined with stable policy and regulatory regimes and low sovereign risk for the offshore sector. In Australia, offshore oil and gas activities beyond state and territory coastal waters are governed by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act). The legislation provides for the orderly exploration for, and recovery of, offshore oil and gas resources and sets out a basic framework of rights, entitlements and responsibilities of government and industry.

Under the OPGGS Act, the Joint Authorities (who are Ministers or their delegates) are responsible for making decisions with respect to the release of offshore oil and gas exploration areas, the granting of titles, imposition of and changes to title conditions, as well as core decisions about resource management and resource security.

The regulatory framework ensures a high level of environmental protection whilst allowing development of an internationally competitive industry. The legislation provides that all titleholders must carry out operations in accordance with good oil field practice, including in a manner which is safe and prevents the escape of oil and gas into the environment. The legal framework is objective-based and encourages continuous improvement, rather than minimum compliance.

The objective-based regime for offshore petroleum activities requires companies to demonstrate how acceptable outcomes for environmental matters will be achieved. It places a clear onus on the petroleum industry to identify and evaluate all impacts and risks that may arise from their activity.

The Government's regulatory framework only allows petroleum activities to proceed if the potential impact on the environment has been reduced to as low as reasonably practicable, and to an acceptable level. Petroleum activities, including exploration and extraction, can only go ahead when an environment plan has been accepted by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

The OPGGS Act regulatory framework requires a titleholder to prepare an environment plan for every petroleum activity, not just those that may have an impact on matters of national environmental significance. The environment plan must consider all the impacts and risks arising from the activity. NOPSEMA will only accept an environment plan once it has determined the plan meets the stringent requirements set out in law.

Recommendation 2: The Australian Greens recommend that the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 be amended to include a requirement for approval by the Minister for the Environment of all Environment Plans prior to the commencement of any exploratory activity and that, ultimately, the environmental assessment role of National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) be handed back to the Department of the Environment and Energy or to a National Environmental Protection Agency, established as an independent statutory authority to assess and make recommendations to the Environment Minister in relation to any environmental applications, including those for offshore oil and gas exploration, before final Ministerial approval or rejection.

The Government does not accept this recommendation.

Australia's objective-based regulatory regime is regarded as leading practice for high hazard, technically complex industries, including the offshore oil and gas sector. The evolution from prescriptive-based regulation to objective-based regulation stemmed in large part from the 1988 disaster in the North Sea where the Piper Alpha offshore oil and gas platform suffered an explosion, resulting in 167 fatalities. The incident led to a fundamental worldwide reassessment of how to best regulate the offshore oil and gas sector.

Objective-based regulatory regimes are based on the principle that the legislation sets the broad safety and environmental goals to be attained. Those undertaking operations or activities must develop the most appropriate methods of achieving those goals. It places the onus and duty of care for the safety of people and environmental protection on those seeking to undertake offshore oil and gas operations and activities. In Australia, it also requires those with that duty (titleholders or operators) to demonstrate to the offshore petroleum regulator, NOPSEMA, that the impacts, hazards, and risks of an operation will be reduced to a level that is as low as reasonably practicable. Environmental impacts and risks must also be of an acceptable level.

Following the recommendations of the Montara Commission of Inquiry, NOPSEMA was established as the single national offshore oil and gas regulator in 2012. This reform expanded the responsibilities of the former National Offshore Petroleum Safety Authority, creating one independent authority responsible for regulating the safety of Australia's offshore oil and gas workers, the structural integrity of oil and gas facilities and wells, and environmental management of petroleum activities, from exploration through to decommissioning. Centralisation of these functions under a single expertise-based statutory authority provides an integrated, holistic and focussed approach to the regulation of this high risk, technically complex industry, where the consequences of incidents may be significant.

NOPSEMA is an independent statutory authority and it has responsibility for the regulation of environmental management under the OPGGS Act for oil and gas activities.

Environmental approvals for offshore oil and gas activities in Commonwealth waters are governed by the provisions of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations).

This framework ensures optimal environmental protection whilst allowing development of an internationally competitive and sustainable industry.

The Government maintains its confidence in the stringent regulations to which all oil and gas activities are subject, and in the assessment processes of NOPSEMA as the independent, expert regulator. Prior to undertaking any oil or gas activity in offshore waters, a titleholder must submit an environment plan (EP) to NOPSEMA. NOPSEMA must not accept an EP unless satisfied that environmental impacts and risks will be reduced to as low as reasonably practicable and to acceptable levels.

In February 2014, the Minister for the Environment granted a class of action approval for petroleum and greenhouse gas activities assessed by NOPSEMA under the OPGGS Act (the Program). Prior to this, offshore petroleum and greenhouse gas activities in Commonwealth waters that were likely to impact matters of national environment significance were subject to regulation under both the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the OPGGS Act.

The Minister for the Environment's endorsement of the Program and class of action approval means titleholders seeking to undertake offshore petroleum or greenhouse gas activities in Commonwealth waters in accordance with the Program no longer need to refer those actions for separate assessment under the EPBC Act. The endorsement of NOPSEMA by the Minister for the Environment demonstrates the Government's confidence in NOPSEMA's assessment process to deliver high levels of environmental protection. An independent review of NOPSEMA's performance under the Program found in 2015 that NOPSEMA is delivering the levels of environmental protection required under the EPBC Act, and processes and procedures are in place to continue to do so in the future.

It is good regulatory practice that an independent, expert regulator is responsible for ensuring a safe and environmentally responsible offshore oil and gas sector once a title has been issued. NOPSEMA's regulation of Australia's oil and gas sector has been subject to numerous independent statutory reviews and in each review NOPSEMA has been found to be a robust and competent regulator.

NOPSEMA is staffed by highly trained, qualified technical risk management experts with extensive experience in offshore oil and gas operations and environmental management. NOPSEMA's functions extend beyond approvals and involve extensive compliance monitoring and enforcement programs to ensure the necessary safety and environmental safeguards are maintained.

Recommendation 5: The Australian Greens recommend that NOPSEMA takes responsibility for, and develops new consultation guidelines and methodologies rather than devolving responsibility to an industry representative body.

The Government does not accept this recommendation.

In August 2015 NOPSEMA initiated a stakeholder engagement and transparency work program with the objective of improving community confidence in offshore petroleum environmental management and improving the consultation practices of oil and gas titleholders. Since then, NOPSEMA has implemented a number of initiatives including publication of additional guidance and reference material specifically focussed on stakeholder consultation requirements and expectations. The most recent of these guidelines was

published in May 2017 following extensive stakeholder engagement. NOPSEMA has also developed and launched a community information portal on its website to assist stakeholders to understand the regulatory process and how they are able to effectively engage in consultation under the regulatory framework.

Early in the development of the NOPSEMA work program the Australian Petroleum Production and Exploration Association (APPEA), as a representative body of the oil and gas industry, requested an opportunity to contribute to improved consultation outcomes on behalf of its members. APPEA's proposed contribution was to take the form of a standardised method for undertaking consultation which could be provided to titleholders for their potential use in engaging with stakeholders. NOPSEMA agreed to APPEA making this contribution on condition that any industry-led method was prepared collaboratively with relevant stakeholders to ensure that it met their needs, that it sought to improve consistency and predictability in titleholder consultation practices and that it met the requirements of the relevant regulations and NOPSEMA's guidelines on stakeholder consultation.

APPEA recently provided NOPSEMA with a draft of the proposed method. Following review of the method NOPSEMA has decided to progress this initiative through the newly established NOPSEMA environment plan transparency taskforce. The taskforce was established in July 2017 to align and coordinate the range of activities underway to improve community confidence in the offshore petroleum regime. The taskforce comprises representatives from NOPSEMA, Commonwealth, State and Northern Territory governments and relevant industry and stakeholder groups. It will ensure that the final consultation method(s) appropriately addresses the needs of all relevant stakeholders.

Recommendation 6: The Australian Greens recommend that the Australian Government amend the *Petroleum Resource Rent Tax Assessment Act 1987* to prevent companies from claiming environmental remediation expenses as carry-forward expenditure for the purposes of assessing their tax liabilities.

The Government does not accept this recommendation.

The Petroleum Resource Rent Tax (PRRT) is a secondary tax designed to capture a return for the Australian community in relation to the value of the finite petroleum resources which they own.

The PRRT taxes the economic rent (profit) generated from a petroleum project. Taxable profit is calculated by removing deductible expenditure from assessable receipts. Excess deductible expenditure is able to be carried forward and uplifted to be deducted against future assessable receipts. The PRRT is levied at a rate of 40 per cent of taxable profit.

Where a business incurs costs in relation to environmental remediation, those costs will reduce the profit ultimately made by the business. Such costs should continue to remain deductible expenditure, as it represents expenditure that has a direct connection with the business of exploring and recovering a petroleum resource.

The Government notes that after receiving the Review of the Petroleum Resource Rent Tax (the Review) it has requested Treasury to undertake further consultation and provide advice on options to address the PRRT design issues identified in the Review. Treasury has been asked to report back by the end of September 2017. The Government will then consider its final response to the Review. The design issues identified by the Review include the rate at which deductible expenditures are carried forward.

Recommendations in the additional comments from the Australian Greens and Senators Chisholm and Urquhart

Australian Greens

Recommendation 3: The Australian Greens recommend that the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 be amended to include a requirement for oil proponents to release oil spill modelling and emergency response plans prior to conducting public consultation during the course of preparing or revising an Environment Plan.

Recommendation 4: The Australian Greens recommend that the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 be amended to include a mandatory period of public comment during the assessment process for Environment Plans.

Senators Chisholm and Urquhart

Recommendation 1: To address the issue of consultation, Labor recommends that the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 be amended to include a mandatory period of public comment during the final assessment process for Environment Plans.

Recommendation 2: To improve community confidence in NOPSEMA processes, Labor recommends that the Offshore Petroleum and Greenhouse Gas (Environment) Regulation 2009 be amended to include a requirement for oil proponents to publically release oil spill modelling and emergency response plans when final assessments are being made and before public consultation is finalised.

The Government notes these recommendation.

In 2016, the Australian Government undertook a review of the consultation and transparency requirements currently in place under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations).

The purpose of the review was to identify and examine issues that could impact the effectiveness of the consultation and transparency requirements under the Environment Regulations, and invite comment on draft options to address these issues, including on their potential impact to stakeholders. The review aimed to increase community confidence in the offshore petroleum regime and NOPSEMA's decision making processes, in support of NOPSEMA's work program on stakeholder engagement and transparency.

An issues paper was available for public consultation from 22 March 2016 to 30 April 2016. Public consultation sessions were held in Darwin, Melbourne, Adelaide and Perth that were attended by industry, environmental groups, members of the fishing industry and State and Territory government officials.

Twenty six submissions were received from a range of government, industry and community stakeholders. The Australian Government has considered the submissions and issues raised during the consultation period and is currently considering the outcomes of the review.

It is expected that the outcomes will be finalised in 2017.

Recommendations contained in the additional comments from the Nick Xenophon Team

Recommendation: Nick Xenophon Team recommend drilling in the Great Australian Bight should not proceed as it fails to meet the burden of proof required by the precautionary principle.

The Government does not support this recommendation. Refer to the response provided to additional comments from the Australian Greens, Recommendation 1, above.

The objectives of the Environment Regulations are to ensure all offshore petroleum and greenhouse gas storage activities are carried out in a manner consistent with the principles of ecologically sustainable development. The objective-based regulatory framework ensures activities are carried out in accordance with an Environment Plan that has appropriate environmental performance outcomes and environmental performance standards. These performance outcomes and performance standards must take into account all relevant information.

Under the Environment Regulations, a titleholder must prepare an Environment Plan for assessment and acceptance by NOPSEMA for all petroleum activities. As part of the Environment Plan, the titleholder must describe and evaluate all environmental impacts and risks that could occur as result (in whole or in part) of the activity, and demonstrate that those impacts and risks are of an acceptable level and reduced to as low as reasonably practicable (ALARP).

An ALARP objective allows titleholders to adopt environmental practices and technologies that are suited to individual circumstances, activities and locations, while taking into account costs and other factors to ensure a reasonable approach to environmental impact and risk improvements. The titleholder must show how impacts and risks will continue to be reduced to ALARP for the life of the activity. Demonstration of ALARP requires assessment of impacts and risks in the particular environmental context of the activity.

NOPSEMA must not accept an Environment Plan if it is not reasonably satisfied with this demonstration. Therefore, in the event that there is not sufficient scientific certainty in relation to an environmental impact or risk – or the impacts and risks of any mitigation measures, the Environment Plan will not be accepted and the activity cannot proceed.