

**Submission  
No 36**

**MINERALS LEGISLATION AMENDMENT (OFFSHORE DRILLING AND  
ASSOCIATED INFRASTRUCTURE PROHIBITION) BILL 2023**

**Organisation:** National Offshore Petroleum Safety and Environmental Management  
Authority (NOPSEMA)

**Date Received:** 31 August 2023

# Submission to the NSW Legislative Assembly Committee on Environment and Planning

INQUIRY INTO MINERALS LEGISLATION AMENDMENT  
(OFFSHORE DRILLING AND ASSOCIATED INFRASTRUCTURE  
PROHIBITION) BILL 2023

**NOPSEMA**

# **NOPSEMA's Submission to the NSW Legislative Assembly Committee on Environment and Planning on the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023**

Date: 30 August 2023

---

## **Table of Contents**

1. Introduction.....	2
2. Scope of the submission.....	2
3. Our role.....	2
4. NOPSEMA's Legislative Framework.....	2
5. General comments .....	3
6. Environmental management.....	3
7. Environment Plans for seismic surveys in Commonwealth waters.....	4
8. Examples of potential mitigation measures.....	4
9. Conclusion .....	5

## 1. Introduction

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) provides this Submission to the Legislative Assembly Committee on Environment and Planning (the Committee) in consideration of NOPSEMA's functions and regulatory roles as Australia's offshore energy regulator.

## 2. Scope of the submission

NOPSEMA notes the Terms of Reference of the Committee's inquiry into the Minerals Legislation (Offshore Drilling and Associated Infrastructure) Bill 2023, the first print of the Bill with the Explanatory note, the First and Second Reading by Mr Rory Amon and the media release from the Committee dated 31 July 2023.

The following comments address how NOPSEMA undertakes its regulatory functions with a focus on environmental management functions, including seismic surveys, to provide context to inform the Committee's inquiry into the Bill. This submission does not canvass any constitutional, legal or policy issues, noting that policy responsibility for the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) rests with the Commonwealth Department of Industry, Science and Resources (DISR). This submission does not offer any opinion on the Bill or the Committee's inquiry into the Bill. It informs the Committee of our role within our legislative remit and jurisdiction.

## 3. Our role

NOPSEMA is Australia's independent, expert regulator for the offshore energy industry.

NOPSEMA's regulated community is broad and includes all parties involved in the exploration and recovery of petroleum and greenhouse gas activities. We are also the regulator for offshore renewables, as the Offshore Infrastructure Regulator (OIR).

Our regulatory role includes oversight of workforce health and safety, structural and well integrity, and environmental management for all offshore energy operations and greenhouse gas storage activities in Commonwealth waters (and in coastal waters where regulatory powers and functions have been conferred). To date, only Victoria has conferred the regulation of health and safety and structural integrity of petroleum and greenhouse gas storage activities to NOPSEMA in their coastal waters.

## 4. NOPSEMA's Legislative Framework

NOPSEMA is an independent statutory authority established under the OPGGS Act. NOPSEMA's principal functions are as follows:

- to promote the occupational health and safety (OHS) of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations
- to develop and implement effective monitoring and enforcement strategies to ensure compliance under the OPGGS Act and regulations
- to investigate accidents, occurrences and circumstances relating to OHS, well integrity and environmental management
- to advise on matters relating to OHS, well integrity and environmental management
- to make reports, including recommendations, to the responsible Commonwealth minister and each responsible state and Northern Territory minister

- to cooperate with other Commonwealth and state or Northern Territory agencies or authorities having functions relating to regulated operations

NOPSEMA is also the regulator for offshore renewables, as the Offshore Infrastructure Regulator (OIR) established under the *Offshore Electricity Infrastructure Act 2021* (OEI Act). The CEO of NOPSEMA is also the CEO of the OIR. The CEO has responsibility for exercising the powers and functions of the OIR under the OEI Act and for the day-to-day management of the OIR.

Further details on the legislative regimes are available at [www.nopsema.gov.au](http://www.nopsema.gov.au) and [www.oir.gov.au](http://www.oir.gov.au).

## 5. General comments

NOPSEMA understands that the Bill aims to stop exploration and mining of petroleum and minerals in coastal waters off NSW by prohibiting approval of offshore mineral and petroleum exploration and mining.

We note that the Second Reading speech provided commentary on seismic surveys and the PEP-11 offshore title area. The following observations and comments may provide additional context to the Committee's inquiry.

NOPSEMA encourages the Committee to consider our detailed December 2019 submission to the *Senate Inquiry into the impact of seismic testing on fisheries and the marine environment*.<sup>1</sup>

This submission provides a comprehensive overview of how NOPSEMA regulates seismic activity, the various legislative and regulatory regimes that apply and a thorough overview of offshore seismic surveys including sensitivities of the Australian environment and examples of mitigation measures.

## 6. Environmental management

NOPSEMA is responsible for ensuring all offshore petroleum and greenhouse gas activities in Commonwealth waters are undertaken in accordance with the Offshore Petroleum Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations).

To meet these regulations, all offshore petroleum activities including seismic activities, exploration, development or production activities must:

- be consistent with the principles of ecologically sustainable development
- reduce risk to the environment to as low as reasonably practicable (ALARP).<sup>2</sup>

Before an activity takes place, the titleholder must demonstrate to NOPSEMA that they have:

- correctly identified the environmental risks and impacts of the activity
- developed an appropriate environment plan to ensure those risks will be acceptable and reduced to ALARP.

---

<sup>1</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/SeismicTesting/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/SeismicTesting/Submissions) see Submission 66.

<sup>2</sup> NOPSEMA Factsheet: ALARP and Acceptable: <https://www.nopsema.gov.au/sites/default/files/documents/2021-04/A739345.pdf>

## 7. Environment Plans for seismic surveys in Commonwealth waters

For all petroleum activities in Commonwealth waters, including seismic surveys, titleholders are required to submit an environment plan (EP) to NOPSEMA, under the Environment Regulations. It is an offence to undertake an offshore petroleum activity without an accepted EP for that activity.

The EP must demonstrate that the environmental impacts and risks of the activity will be reduced to an acceptable level (amongst other criteria) before the EP can be accepted.

An EP that included an activity that has potential to cause long-term impacts to the environment (including socio-economic aspects of the environment) without appropriate mechanisms to manage or mitigate those impacts would not be acceptable nor would it be consistent with the principles of Ecologically Sustainable Development.

If the environment plan still doesn't meet the requirements of the Regulations or the OPGGS Act and it cannot be demonstrated that the survey cannot be conducted without unacceptable environmental impacts, it will be refused by NOPSEMA. In rare circumstances, NOPSEMA will accept an EP in part or apply conditions to an EP allowing it to proceed under specific circumstances, such as not allowing the part of the survey plan that carries unacceptable levels of environmental risk.

If NOPSEMA is reasonably satisfied that the environment plan meets the acceptance criteria set out in the regulations and the survey can be managed with good environmental outcomes, the EP must be accepted. NOPSEMA will also publish the accepted EP on the NOPSEMA website.

An accepted EP establishes the legally binding environmental management conditions that must be met by the titleholder and against which NOPSEMA can secure compliance. Failure to comply with an accepted EP is an offence, and grounds for NOPSEMA to withdraw its acceptance of an EP.

## 8. Examples of potential mitigation measures

As noted above, NOPSEMA's core focus is the risk to the environment, ensuring an activity does not proceed with unacceptable risk and that any acceptable risk is reduced to ALARP. All these approaches are undertaken on a case-by-case basis with consideration to the potential environment impacted.

NOPSEMA undertakes a comprehensive assessment of each proposal to ensure the facts, reasons, and evidence supporting the case that environmental impacts will be managed to ALARP and acceptable levels are robust. This includes ensuring that:

- the description of the sound-sensitive marine fauna and socio-economic values (e.g. commercial fisheries) is comprehensive and identifies particularly sensitive areas and times where potential for impact is greater
- the assessment of impacts to these environmental features is informed by reliable predictions of the sound levels that will be received
- the scientific basis for conclusions is well founded, there is no cherry picking of papers to support particular arguments, and scientific results are interpreted and applied to the specific activity circumstances appropriately
- the proposed environmental management measures are tailored to the activity circumstances and will be effective in ensuring impacts are managed to acceptable levels

- appropriate measures are applied to address areas of uncertainty (e.g. adaptive management, scientific studies, or more protective control measures)
- information provided by stakeholders has been incorporated into the EIA and, where necessary, control measures have been applied to address concerns.

Additional management or mitigation actions may include implementing internationally recognised controls, such as:

- designing the survey to limit impacts in environmentally sensitive areas
- avoiding particularly important periods (e.g. migration, fishing season, breeding) for sound-sensitive marine species
- deploying marine fauna observers to ensure sound emissions are stopped if marine mammals are detected within a certain range
- implementing exclusion zones to protect environmental features (e.g. offshore reefs)
- reducing the duration of the survey or changing the way it's conducted to limit the acoustic energy that's emitted into the marine environment
- using the latest technology to monitor and detect whales, including acoustic detection arrays
- effectively communicating with other marine users prior to, during, and after the survey.

## 9. Conclusion

Noting the comments in the Second Reading speech to the Bill before the Committee, NOPSEMA takes this opportunity to note it has no activities under assessment for the PEP-11 title area at the time this submission was made. No petroleum activity in a work program can proceed until NOPSEMA has accepted an environment plan and provided the necessary safety approvals for it.

Should a new environment plan for PEP-11 be submitted to NOPSEMA in the future it will be put out for public consultation and assessed in accordance with the legislation. NOPSEMA had previously accepted an environment plan for PEP-11 for a seismic survey in 2018. The activity was assessed as completed in 2018.

In conclusion, this submission provides an overview of our role and jurisdiction, information on how NOPSEMA regulates seismic activities in offshore Commonwealth waters and highlights additional areas and a related seismic submission to a Senate inquiry, for the Committee's consideration.