



## Memo: Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 - Provisions relating to EPBC Act accreditation

### Proposal

In addition to a range of amendments relating to safety, the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024 (**the Bill**) proposes a new: *790E - Approval under Environment Protection and Biodiversity Conservation Act 1999—interaction with this Act and Environment Regulations*.

The Explanatory Memo states that “the other measures in the Bill: provide certainty to stakeholders by ensuring that an approval of taking actions in accordance with a policy, plan, or program under section 146B of the Environment Protection and Biodiversity Conservation Act 1999 remains effective following any amendments to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023.”

The Bill therefore seeks to maintain the validity of the existing accreditation of NOPSEMA approvals to cover future changes to the Act or regulations. That is, it appears that rules or processes could be substantially changed and there would be no need to reconsider or reissue accreditation.

### Background and key issues

Under the EPBC Act, the Minister can ‘endorse’ a policy, plan or program, and provide upfront approval for actions or classes of actions undertaken in accordance with that policy, plan or program (also known as **accreditation**). In the case of offshore petroleum and greenhouse gas activities, the Minister has accredited 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.<sup>i</sup>

Under the EPBC Act currently, if laws, regulations, or policies change (so they no longer match what has been endorsed) the Minister would need to endorse those changes (i.e. the EPBC Act doesn’t automatically cover variations or updates to the endorsed program). While this does create some inflexibility, it also means that endorsed plans cannot be changed or varied in a manner which undermines the standards of protection originally endorsed by the Environment Minister. It requires the Minister to scrutinise the new laws, regulations or policies and consider whether they meet the requirements of the EPBC Act.

The proposed Nature Positive reforms led by Environment Minister Tanya Plibersek will set out new provisions relating to how accreditation of a policy, plan or program will work under the new laws. A key element of the Nature Positive reform proposal is that there will be a clear role for the new independent EPA. The proposed process to allow variations or updates to accreditation in new national nature laws includes a requirement that the new EPA is satisfied that the changes are not inconsistent with the new national environmental standards – a key protection against regressive changes after a program is endorsed. This Bill pre-empts the Nature Positive reform legislation that will establish the EPA and the national environmental standards.

Neither current laws and nor proposed Nature Positive reforms allow changes to an approved policy, plan, or program without oversight. In contrast, this Bill does not include an equivalent safeguard. In fact, it appears to directly override oversight and scrutiny. The critical question is whether the Bill could potentially allow regressive changes to legislation or regulations to automatically come under the existing accredited program.

For example, there is a real and imminent risk that standards for community consultation may be reduced as a result of the current consultation process.<sup>ii</sup> Establishing a weaker community consultation standard for offshore projects now, ahead of finalising a national standard for community consultation and a standard for First Nations consultation and engagement as part of the broader reforms, is problematic. This would be the tail wagging the dog, and undermine the critical Nature Positive reform process.

If the effect of the Bill is to allow changes to be made without requiring a reconsideration or update of NOPSEMA accreditation, key questions include:

- how does broad ongoing accreditation ensure amendments to legislation or regulations meet new national environmental standards if consideration by EPA is not required?
- How does the proposed process ensure there is no lessening of legislative or regulatory standards in relation to environmental protection or community consultation? (ie, non-regression)?

There is a risk that if the Minister has a broad power to amend legislation or regulations without reference to national environmental standards/accreditation requirements, we could have different standards applied for different industries. Some existing limits on what can and cannot be accredited are reproduced in s790E(4), but these do not prevent dilution of standards under the ongoing accreditation.

EDO is looking into scrutiny and accountability issues where the Bill allows legislative or regulatory changes to be made without triggering requirements for re-accreditation, or invalidating the current accreditation.

Our **preliminary view** is that any amendments that allow substantive changes to be made to a regulatory aspects of an accredited program must trigger an appropriate review and scrutiny. Under the proposed Nature Positive reforms this process would require explicit consideration of whether proposed changes are consistent with national environmental standards as a minimum – for both protection of matters of national environmental significance, and for First Nations and community consultation. This should be done by an independent EPA as proposed in the new nature positive laws. The non-regression principle should be explicitly applied.

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<sup>i</sup> See: *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 (ie. **the endorsed Program**).

<sup>ii</sup> See: [Consultation hub | Clarifying consultation requirements for offshore oil and gas storage regulatory approvals: consultation paper - Consult hub \(industry.gov.au\)](#)