



## Offshore Petroleum Factsheet Series:

### Your right to comment on Offshore Project Proposals

*Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).*

*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.*

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#### What is this factsheet about?

This factsheet is useful to anyone who is considering commenting on an offshore project proposal. It explains how to stay updated on opportunities to comment and briefly explains your right to challenge a decision to approve an offshore project proposal. It also includes an Annexe setting out the information required in an offshore project proposal.

#### Outline

(Click on the subheadings to skip to that section)

1. Overview of the process for offshore project proposals
2. Your right to comment on an offshore project proposal
3. What happens next?
4. Your right to challenge an accepted offshore proposal plan
5. Evaluate this resource
6. Annexe 1

#### Overview of the process for offshore project proposals

During exploration, the company will try to understand the quantity and quality of petroleum in the area. If the petroleum is considered commercially viable,<sup>1</sup> the company

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<sup>1</sup> OPGGS Act s 162 (5)(b).

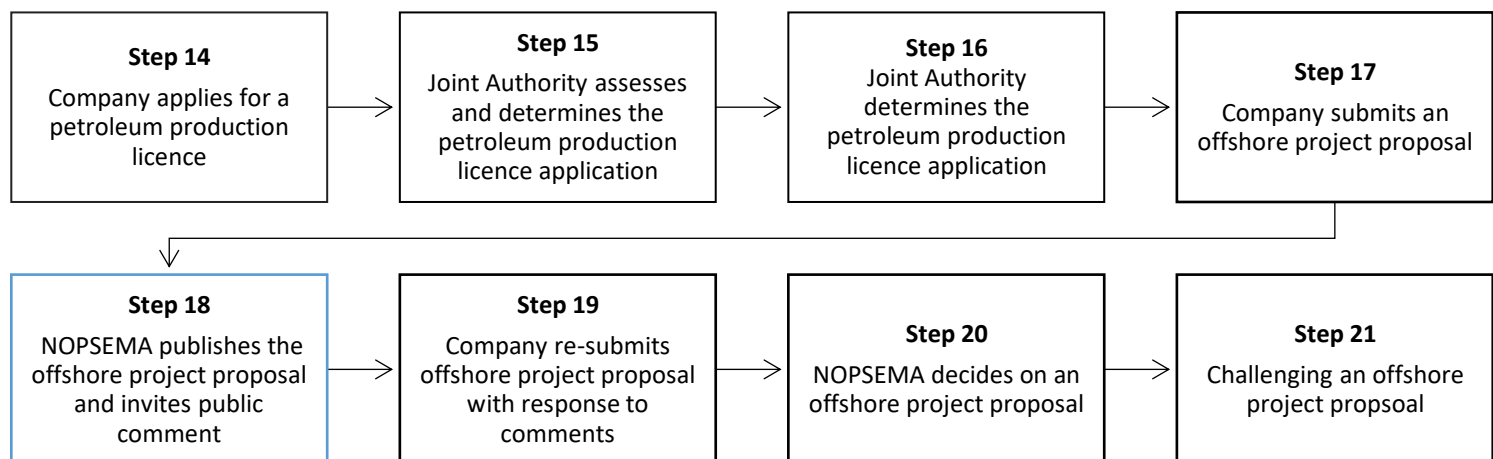
can apply for a petroleum production licence,<sup>2</sup> which grants exclusive right to recover the petroleum deposit.<sup>3</sup>

Otherwise, the holder of an exploration permit can apply for a retention licence which reserves the right over a deposit that is not commercially viable but likely to become so within 15 years.<sup>4</sup>

The Joint Authority will assess petroleum production licence applications based on certain criteria, including whether the area contains petroleum, and whether the company has the financial resources to carry out production.<sup>5</sup>

However, if the offshore project is likely to impact ‘matters of national environment significance’, an offshore project proposal must also be approved.

The Figure below sets out the steps involved in the assessment of offshore project proposals. This factsheet focusses on Step 18, where NOPSEMA is required to publish an offshore project proposal and invite public comment.



### What is an offshore project proposal?

An offshore project proposal (**OPP**) is an environmental approval required for any recovery of petroleum. The OPP instrument was created, and currently functions in practice, as a substitute for an approval under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (**EPBC Act**).

Most offshore projects are likely to have a significant impact on a matter of national significance such as listed threatened species and world heritage sites.

<sup>2</sup> OPGGS Act s 168.

<sup>3</sup> OPGGS Act s 161.

<sup>4</sup> OPGGS Act s 148.

<sup>5</sup> OPGGS Act s 171.

## Your right to comment on an offshore project proposal

Anyone can comment on an offshore project proposal.

### Where can I find offshore project proposals open for comment?

Once NOPSEMA has decided that the offshore project proposal is complete,<sup>6</sup> it is uploaded to the NOPSEMA website.

Visit: The NOPSEMA [website](#) to view offshore project proposals.

Once it is uploaded, NOPSEMA will invite public comment, by way of written submission, for a period of four weeks.

N.B. To be notified of public comment opportunities for offshore project proposals, subscribe to NOPSEMA's [mailing list](#).

### What should I include in my submission?

When drafting a submission, focus on whether the company has met its legal requirements.<sup>7</sup> These are the criteria NOPSEMA must use when deciding to accept or refuse an offshore project proposal. The key criteria include:

- Project description
  - Overview
  - Schedule and stages
  - Location
- Description of the environment
  - Environment that may be affected (**EMBA**)
  - Values and sensitivities of the environment
    - If the project or activity would occur within a World Heritage property, NOPSEMA must refuse the proposal
  - Environmental impacts and risks
  - Environmental performance standards
- Project alternatives
  - Compares and evaluates environmental impacts and risks from the project and its alternatives

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<sup>6</sup> Meets criteria under OPGGS (E) Regulations reg 9.

<sup>7</sup> OPGGS (E) Regulations reg 7; Refer to Annexe 1 for a table setting out further details for each requirement.

Read: [EDO's Factsheet on Your right to comment on and challenge an Environment Plan](#) for more tips on how to write an effective submission

If information is missing, you can recommend NOPSEMA request this information from the proponent before deciding on the offshore project proposal.

NB: NOPSEMA also published a [Guide](#) setting out offshore project proposal requirements

## What happens next?

### **Company resubmits the offshore project proposal with a response to comments**

The company must consider the submissions received during the public comment period.<sup>8</sup> Usually, a company will resubmit a revised offshore project proposal, which includes a summary of all the submissions, and the company's response. There is no requirement that NOPSEMA or the company notify you that the offshore project proposal has been resubmitted, so you must check the website regularly.

Visit: The NOPSEMA [website](#) to view offshore project proposals.

### **NOPSEMA decides on an offshore project proposal**

Once it has been resubmitted, NOPSEMA must decide within 30 days whether to accept or refuse the offshore project proposal. It is important to regularly check the NOPSEMA website for the decision and subscribe to any notifications where possible.

## Your right to challenge an accepted offshore proposal plan

### **Who can challenge?**

An aggrieved person (that is, a person whose interests are affected by the decision) can challenge NOPSEMA's decision in the Federal Court of Australia (**Federal Court**). This type of challenge is called judicial review, and it is only available if there is a [legal error](#) in the decision-making process.

For example, if NOPSEMA accepts an offshore project proposal that doesn't address all the information that is required under the law or fails to consult with relevant persons, the Court *may* consider this to be a legal error.

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<sup>8</sup> OPGGS (E) Regulations reg 11.

If you think there may be grounds to challenge a decision, you should seek legal advice as soon as you're made aware of the decision. Once NOPSEMA publishes the decision, and a statement of reasons, you have 28 days to file an application for judicial review.<sup>9</sup>

N.B. Judicial review is a complex process, involving tight timeframes and significant resources and costs. You should seek legal advice to determine whether you have grounds to challenge a decision and any risks associated with challenging a decision in Court.

### Evaluate this resource

EDO welcomes feedback on this legal resource. Your feedback will help us ensure we provide useful legal information.

If you have any concerns or suggestions regarding this legal resource, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:



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<sup>9</sup> *Administrative Decisions (Judicial Review) Act 1977* (Cth), s 11(3). In practice, NOPSEMA generally publishes a statement of reasons for the decision to accept an environment plan. If NOPSEMA does not publish the statement of reasons, you can seek these within 28 days of the decision being made.

## Annexe 1

The table below sets out the information an offshore project proposal must include.<sup>10</sup> Keep this in mind when you review an OPP. If any information is missing, you may raise this in your submission to NOPSEMA.

Section of Offshore Project Proposal		What's included
Project description	Project overview	Activities proposed as part of the offshore project proposal, including any infrastructure that's required to support production. This includes an offshore production facility (floating vessel or a fixed platform), wells and pipelines.
	Project schedule and stages	Various stages of development, starting with drilling the wells and ending with decommissioning the wells, and the proposed timing of these stages.
	Project location	The offshore location, usually shown on a map and coordinates.
Description of the environment	Environment that may be affected ( <b>EMBA</b> )	Any area that will hold a production facility, well or a pipeline is referred to as the Project Area.  The OPP will also include an EMBA. An EMBA is a map or description of an area that may be affected by the worst-case scenario, such as a petroleum spill.
	Values and sensitivities of the environment	If and how the offshore project will affect heritage values of a declared World Heritage property or National Heritage place, the ecological character of a

<sup>10</sup> OPGGS (E) Regulations reg 7

		declared Ramsar Wetland, threatened species, migratory species, and any values within Commonwealth waters.
	Environmental impacts and risk	<p>Environmental impacts may include climate change as a result of increased greenhouse gas emissions, injury or death of marine animals caused by water, noise and light pollution from production facilities and the consequences of these impacts on people’s social, economic and cultural values.</p> <p>The risk of each impact must also be assessed.</p>
	Environmental performance standards	<p>Sets out how the company plans to monitor the environmental performance of the project.</p> <p>Consider whether those methods are consistent with principles of <a href="#">ecologically sustainable development</a>. That is, whether the offshore project proposal considers environmental, social and economic aspects of the project.</p> <p>Read: The EDO factsheet on ‘<a href="#">What is ecologically sustainable development (ESD)?</a>’</p>
Project alternatives	Compares and evaluates environmental impacts and risks from the project and its alternatives	The company must assess alternative ways to conduct the offshore project, or whether to go ahead with the project in light of the environmental impacts and risks it has identified.