



Australian Network of Environmental  
Defender's Offices Inc

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**Draft Terms of Reference for a strategic assessment of the environmental management authorisation process for petroleum activities administered by NOPSEMA under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006***

ANEDO is a network of community legal centres across Australia specialising in public interest environmental law. We welcome the opportunity to provide comment on the Draft Terms of Reference for a strategic assessment of the environmental management authorisation process for petroleum activities administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

As the law currently stands, the Commonwealth cannot abdicate environmental approval responsibility to NOPSEMA due to the fact that weaker standards will not adequately protect matters of national environmental significance as required by the EPBC Act.

Our preliminary analysis is that there are significant differences between the flexible, objectives-based approach of NOPSEMA under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations*, compared with the more rigorous environmental assessment approach prescribed by the *Environment Protection & Biodiversity Conservation Act* (EPBC Act).

ANEDO is strongly opposed to the delegation of Commonwealth environmental approval powers to less rigorous legal regimes. Our concerns are based on analysis of current environmental and planning laws in each jurisdiction and our extensive experience of how current laws can fail to achieve environmental outcomes.<sup>i</sup>

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We submit that the draft report will need to provide a significant amount of detail describing the difference between the NOPSEMA and EPBC Act regimes, and a significant amount of detail on how the NOPSEMA regime would need to be strengthened to meet EPBC Act standards.

ANEDO therefore strongly supports the requirement for a comparison of the NOPSEMA authorisation process with EPBC regulatory requirements (ToR 3.2 a) and consideration of how NOPSEMA process meets the current EPBC standards as set out in the *Framework of Standards for Accreditation of Environmental Approvals* (ToR 3.2 b). The Framework identifies around 106 standards currently imposed by EPBC processes, and EDO analysis of this last year showed no state or territory laws currently meet all the standards.

The goals, objectives and standards set by the OPGGS Act (as interpreted by NOPSEMA<sup>i</sup>) do not meet current EPBC Act standards as set out in the SEWPAC Framework document. One example of a divergent 'process standard' relates to consultation requirements. NOPSEMA focusses on only consulting with 'persons whose functions, interests or activities may be affected', rather than broad public consultation (p33 Guidance note). Another example of a process concern is that NOPSEMA do not verify the accuracy or completeness of the activity description submitted by the operator until compliance phases if needed (p17 Guidance note).

ANEDO therefore strongly supports ToR 3.2 c, and as noted, we would expect the draft report to contain significant detail on the range of amendments required. In our opinion significant amendment would be needed to bring the NOPSEMA process under the OPGGS Regulations up to EPBC Act standard - for example, amendments to allow conditions to be imposed.

We reiterate that as the law currently stands, the Commonwealth cannot abdicate environmental approval responsibility to NOPSEMA due to the fact that weaker standards will not adequately protect matters of national environmental significance as required by the EPBC Act.

If you require additional information, please contact [rachel.walmsley@edonsw.org.au](mailto:rachel.walmsley@edonsw.org.au) or 02 9262 6989.

Yours sincerely,

**Australian Network of Environmental Defender's Offices**



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<sup>i</sup> ANEDO submissions on this issue include: *Submission on Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012* 18 January 2013; *Submission on Draft Framework of Standards for Accreditation of Environmental Approvals under the EPBC Act 1999* 23 November 2012; COAG *Environmental Reform Agenda: ANEDO Response - In Defence of Environmental Laws* May 2012; are available at: <http://www.edo.org.au/policy/policy.html>.

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<sup>ii</sup> See the NOPSEMA *Guidance Note* <http://www.nopsema.gov.au/assets/document/N-04700-GN1074-Environment-Plan-Content-Requirements-Guidance-Note.pdf>