

12 November 2021

Mr Mark Fitt
Committee Secretary
Senate Standing Committees on Economics
PO BOX 6100
Canberra ACT 2600

Dear Committee Members,

**RE: Responses to questions on notice from Senate Inquiry into the Laminaria-Corallina
Decommissioning Cost Recovery Levy Bills**

Further to our submission and the evidence provided at the Senate Economics Legislation Committee (the Committee) hearing on 8 November 2021 in relation to the Laminaria-Corallina Decommissioning Cost Recovery Levy Bills¹, the Australian Petroleum Production & Exploration Association (APPEA) welcomes the opportunity to provide responses to the Committee's written questions on notice received on 10 November 2021.

- 1. In your evidence you estimate that the levy will collect about \$380 million per annum and about \$3.4 billion in total – can you detail how you made this calculation? Is this calculation based only on production by registered holders of petroleum licences under the OPGGS Act, as the Bill provides?**

As a result of not being provided with the relevant modelling from the government, the Treasury, and/or the Department of Industry, APPEA developed its own simplified modelling. Our model was built on four simple inputs which are outlined below:

- Estimated production data from Energy Quest for 2019-20 adjusted to reflect the estimated production volumes of registered holders of petroleum licences under the OPGGSA Act.
- Converted that relevant production volumes using the Santos Conversion Calculator² to a million barrel of oil equivalent amount (mmBOE) for the 2019-20 year.
- Multiplied the BOE figure by the levy rate of \$0.48 to provide an annual levy figure.
- Multiplied the annual levy figure by nine to reflect the levy running for nine years.

A summary of this methodology is provided in the table below:

Base Year	mmBOE	Levy Rate	Levy per annum	Total levy to 30 June 2030
2019-20	791	\$0.48	\$379.68 million	\$3,417 million

We note that our estimate is conservative. In our view, the collections that result from the levy will increase as production increases and new offshore projects come online.

¹ Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 [Provisions] and Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 [Provisions].

² Santos Conversion Calculator can be found here: <https://www.santos.com/conversion-calculator/>

2. Are operators concerned about the cost?

Yes. This is largely driven by the lack of information and transparency associated with the government process of procurement and spending to date, and that the government forecast the levy to run for nine years. We submit that the potential to collect more than \$3.4 billion is likely to far exceed the circa. \$1.2 billion³ required by government as part of decommissioning and remediating the Laminaria-Corallina oilfields.

Whilst we acknowledge there is a tendering process underway and there are commercial sensitivities with that process, the current drafting of legislation signals to those participating in the procurement process that government is willing to spend almost three times that which is needed by the government to perform the decommissioning and remediating activities to a high standard.

3. Are you concerned about the impact of this levy on the industry?

Yes. APPEA remains concerned about the signal this levy sends to an industry seeking to further invest in new energy supply and emissions reduction technologies. The levy poses fiscal and investment challenges by setting a dangerous legislative precedent and sovereign risk concern in that financial culpability is unlikely to receive the necessary focus if it is shouldered by the broader industry despite the failures of regulation, regulators, and a few industry participants. This includes those petroleum producers that derived no commercial or financial benefit from the resource.

We also observe that the fiscal impact of the levy extends beyond the levy itself with the impact compounded by the imposition of a 'tax-on-tax' by denying legitimate deductions for the levy. We would submit this creates a dilemma for the government arising from its capacity to profit from a failure to adequately regulate the circumstances whereby those who benefit from a petroleum project, remediate the project.

If the levy remains not deductible for broad taxation purposes (economically equivalent to a 58% net 'tax-on-tax'), taxpayers subject to the levy will need to collect additional revenue of \$238 plus GST for every \$100 of levy ($\$100 / (1-58\%)$) to fund the levy (or reduce deductible expenditure by the same amount) or reduce costs and expenditure by the same amount. This additional revenue or cost cutting will shift the burden of the levy and 'tax-on-tax' to customers and communities while the government will receive nearly 2.5 times the cost of decommissioning.

Put another way, a non-deductible levy of \$1.1 billion that is not otherwise recoverable from customers and our community will reduce the capital to be invested by approximately \$2.6 billion. Reducing this burden and the likelihood of it being passed can be achieved by making the levy deductible for broad taxation purposes.

³ In our view, \$1.2 billion reflects the top of the range for expected decommissioning and remediating costs. It is possible that the related activities could be conducted at a lesser cost.

4. How would you like the impact of this levy to be reduced?

The recommendations we outline in our submission and in our response to question 5 below will reduce the broader fiscal impacts of the levy whilst ensuring that the industry will bear the full cost associated with decommissioning and remediating the Laminaria-Corallina oilfields. That is, the government, taxpayers or the Australian community will not be liable for a single dollar of the cost associated with decommissioning and remediating the Laminaria-Corallina oilfields and that every dollar required will be collected from the broader industry.

5. What measures have you sought to be included in these Bills in the previous consultations on it? Why?

Despite our initial opposition to the levy and the signal it sends, we recognise that the government is committed to introducing a levy to recover the cost of decommissioning and remediating the Laminaria-Corallina oilfields. As part of the development process, APPEA made several submissions to the Department of Industry and The Treasury after identifying several consequences contrary to the stated policy intent of the legislation.

As a large component of the recommendations made were disregarded without feedback or reasoning, a summary of these recommendations have been replicated in the table below:

Recommendation	Explanation
1. Legislate that the levy applies for no more than four (4) years and end on 30 June 2025.	Currently, the levy will run until 30 June 2030, collecting approximately \$380 million per annum, potentially resulting in a minimum \$3.4 billion being collected over the life of the levy, far exceeding the cost of decommissioning. APPEA's recommendation lowers the risk of overcollection occurring and provide greater certainty to industry for both regulatory and investment purposes.
2. Automate the termination of the levy once all costs related to the decommissioning activities of the Laminaria-Corallina oilfields and associated infrastructure have been recovered by the federal government.	The levy should automatically terminate once all government costs for decommissioning and remediating the Laminaria-Corallina oilfields are recovered. This ensures that the legislation is consistent with the approved policy and design whilst ensuring that the government does not profit from the levy.
3. Legislate that the Australian Taxation Office can vary the levy rate down in circumstances where the amount collected by the levy in any year would exceed total unrecovered costs without the need for a legislative instrument.	Legislative Instruments are disallowable instruments and where disallowed, the rate cannot be varied. This increases the risk of overpayments occurring and the government profiting from the levy. APPEA's recommendation would help to limit the risk of overpayments and the 'moral hazard' risk that the levy be treated as a hollow log to pay for other programs.
4. Legislate an annual transparency review and reconciliation process that discloses the amount	There are no transparency requirements in the legislation and to date, there has been no clear and

of decommissioning expenditure incurred by government, the amount of expenditure the government expects to incur over the following 12 months, and how much has been recovered by the government through the levy to that point in time.	transparent communication from the Department of Industry or The Treasury as to the costs associated with the required decommissioning activities or general modelling. A legislated annual transparency review and reconciliation process would support the management of the levy, further limit the risk of overpayments, and provide certainty to industry and taxpayers that the levy is achieving its intended outcomes.
5. Legislate mechanisms for dealing with overpayments.	As drafted, there are no mechanisms for dealing with overpayments given that the levy in its fullness will collect a minimum of \$3.4 billion when we estimate that circa. \$1.2 will be needed. Mechanisms should be appropriately inserted to ensure that any overpayments are returned to taxpayers as soon as practical and that: <ul style="list-style-type: none"> any amounts returned are not later assessable for income tax or Petroleum Resource Rent Tax (PRRT). any interest on overpayments returned should not be assessable if the levy is not assessable. any interest on funds held (due to overpayments or timing differences) should be reported and either returned or reinvested.
6. Make all payments of the levy deductible for taxation purposes (consistent with the deductibility of the Major Bank Levy) as would be the case under ordinary decommissioning frameworks.	The levy should be deductible to align with normal taxation and accounting outcomes that would have occurred under a normal decommissioning arrangement. We note that deductibility has no bearing on the government's ability to recover the cost nor does it result in taxpayers and the Australian community footing the bill. The government will still collect every dollar required through the levy from the industry.
7. If the levy is not deductible, legislate any amounts received by a petroleum producer that are directly or indirectly attributable to the levy as being treated as non-assessable non-exempt income for broad taxation purposes.	This recommendation provides symmetry in treatment of the levy. We accept that were the levy is deductible, amounts received in relation to the levy should also be assessable.
8. Amend the Petroleum Resource Rent Tax Assessment Regulation 2015 to ensure that payments of the levy are treated as a specifically excluded cost.	This recommendation ensures that the government is not profiting from the levy by collecting an additional forty cents for every dollar of levy liability paid, therefore profiting from its own levy.

More detailed information about these recommendations can be found in our submission to the Committee dated 8 November 2021.

6. *The National Energy Resources Australia report on decommissioning released earlier this year said that the industry could save \$1.5 billion by setting up a decommissioning yard in Australia. Would APPEA support establishing such a yard? What are the options?*

Yes. The report⁴ identifies several cost reduction opportunities, based on international experience.

More broadly, the transport, storage and processing of waste all have the potential to directly impact the environment.

Where acceptable to decision makers, APPEA is supportive of recovering decommissioned infrastructure. This position would preference managing materials locally to reduce the costs and impacts of transport and provide local employment and investment opportunities.

A circular approach to waste management, across the project lifecycle, is also consistent with Commonwealth, state, and territory waste avoidance strategies; and is particularly relevant to steel and non-ferrous metals which are high value commodities with significant embodied energy.

7. *Do you believe your member companies have budgeted for full removal of their oil and gas equipment? Is this incorporated into how they have valued their assets and planned going forwards? What evidence have you used to draw this conclusion?*

Yes. APPEA is confident that our members are providing accurate breakdowns of capital expenditure in their field development plans (FDP), which are submitted to the National Offshore Petroleum Titles Administrator (NOPTA).

Such matters are a relevant consideration for the grant / administration of a retention lease. See NOPTA [Grant and Administration of a Retention Lease and Related Matters \(nopta.gov.au\)](https://www.nopta.gov.au/Grant-and-Administration-of-a-Retention-Lease-and-Related-Matters)

It is also important to note that Section 571 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) provides that a petroleum titleholder has a duty to maintain financial assurance, at all times, while the title is in force to meet costs, expenses and liabilities.

The demonstration of financial assurance is also a prior condition for acceptance of an environment plan (e.g. Failure by a [petroleum titleholder](#) to maintain compliance with [subsection 571\(2\)](#) of the OPGGS Act, in a form acceptable to the National Offshore Petroleum Safety and Environment Management Authority (NOPSEMA), is a ground for withdrawal of acceptance of an [environment plan](#)).

To complement the existing provisions and processes described above, the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Act 2021*, introduces explicit provisions around financial viability and financial capacity.⁵

⁴ See pages 8 and 9 of - A baseline assessment of Australia's offshore oil and gas liability – Centre of Decommissioning Australia – Executive summary available at [Offshore Oil and Gas Decommissioning Liability \(Australia\) : NERA National Energy Resources Australia](#)

⁵ [Consultation hub | Updated offshore oil and gas guidance - Department of Industry, Science, Energy and Resources \(converlens.com\)](#)

As part of field development plans submitted with various government departments, petroleum producers need to be clear and transparent about their development and end of field life obligations over the entire project life. With project horizons being upwards of 40 years, field development plans are reviewed and updated regularly as time passes. This includes any financial obligations that may arise because of decommissioning as they become more certain and known.

We also understand that the Committee has concerns about the reporting and transparency of decommissioning provisions in the financial statements not reflecting the total obligation that may result decades into the future. We observe that this has nothing to do with a lack of transparency. Rather, this is a function of financial reports prepared in accordance with Australian Accounting Standards (or international equivalents) set by the Australian Accounting Standards Board and audited in accordance with the Australian Auditing Standards that set by the Auditing and Assurance Standards Board. That is, the financial statements reflect the best estimated present value (time value of money) of a future obligation.⁶

8. *The government's 2020 'enhanced decommissioning framework' included a measure to require financial security for decommissioning offshore oil and gas facilities. At present financial security is only required to cover oil spills and other catastrophic events. Does APPEA support this measure? Why/why not?*

The APPEA secretariat read section 571 of the OPGGS Act, as a standing obligation / duty across the petroleum lifecycle. This view is consistent with NOPSEMA's view.

The Committee may wish to consider assurance through the lens of planned versus unplanned events. From an estimated maximum loss point of view, an oil spill would be the largest insurable / assurable event.

The Department noted re implementation⁷ (on page 9):

"The department considers the existing financial assurance provisions in section 571 of the Act are sufficient to enable adjustments to how NOPSEMA undertakes its compliance and monitoring enforcement of a titleholder's duty under section 571.

This will be achieved through changes to the policy and guidance material issued by government— with NOPSEMA to reflect this in its material—and a review of the methodology used for financial assurance."

The Explanatory Statement⁸ describes that financial assurance is required to deal with extraordinary costs, expenses, and liabilities that a titleholder might not have the capacity to meet. It is not expected to cover expenses of a titleholder in meeting ordinary operating costs, such as the costs of compliance with title conditions. Further to this, the Explanatory Statement for the amended

⁶ Paragraph 45 of AASB 137 Provisions, Contingent Liabilities and Contingent Assets

⁷ [Consultation hub | Offshore oil and gas decommissioning: enhanced framework - Department of Industry, Science, Energy and Resources](#)

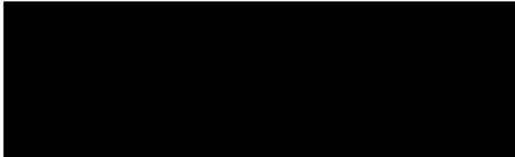
⁸ Explanatory Statement, Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Bill 2013, at 42. - [Offshore Petroleum and Greenhouse Gas Storage Amendment \(Compliance Measures No. 2\) Act 2013 \(legislation.gov.au\)](#)

Environment Regulations⁹ states that ordinary commercial commitments that fall to the titleholder to manage do not require financial assurance.

Moreover, on page 3, NOPSEMA acknowledge that, in most cases, the greatest reasonably credible costs, expenses and liabilities that may arise from a petroleum activity, are associated with the unlikely event of an escape of petroleum. This does not limit the titleholder duty to maintain sufficient financial assurance for all costs, expenses or liabilities that may arise over the life of a petroleum title, whether relating to an escape of petroleum or otherwise.

Should you require further information or would like to discuss our responses to the questions on notice, please do not hesitate to contact me on 0457 363 936.

Yours sincerely,



Andrew McConville
Chief Executive

⁹ Explanatory Statement, Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Financial Assurance) Regulations 2014 - [Offshore Petroleum and Greenhouse Gas Storage \(Environment\) Amendment \(Financial Assurance\) Regulation 2014 \(legislation.gov.au\)](https://www.legislation.gov.au/Details/F2014L00001)