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25 March 2021

Committee Secretary  
Senate Standing Committees on Environment and Communications  
Submitted online

Dear Sir/Madam

**RE: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021**

I am writing to provide APPEA comment on the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021 (the Bill)*.

The Australian Petroleum Production & Exploration Association (**APPEA**) is the peak national body representing upstream oil and gas explorers and producers active in Australia. Further information about APPEA can be found on our website at [www.appea.com.au](http://www.appea.com.au).

Petroleum is essential to the Australian economy and way of life. As well as generating \$50 billion in export earnings the industry supplies an important energy and commodity resource.

Almost half of Australian homes – five million households – are connected to the natural gas network. In NSW and Victoria alone, 2.3 million homes are connected. Natural gas accounts for 44 per cent of household energy use, with more than 11 million residential gas appliances in use including 86% of households in Victoria.<sup>1</sup>

Refined and derived petroleum products are used to power our cars, to provide energy, and as feedstock for manufacturing. Oil is the largest single energy source in Australia and accounts for close to 40 per cent of total energy end use<sup>2</sup>. Australia's reserves of liquid fuels are declining, with an increasing proportion of these products being imported.

Natural gas is indispensable to many manufacturing processes. APPEA estimates some 225,000 jobs in the manufacturing sector rely on natural gas. Manufacturing clusters dependent upon gas are found in all Australian states. Gas is used to produce non-ferrous metals (such as aluminium, copper and zinc), chemicals and polymers (such as fertilisers and anti-freeze), plastics and non-metallic mineral products like glass, ceramics, cement and bricks, and is also used in food preparation, processing and packaging, fermentation and brewing.

The *Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act)* is a key touchpoint Australian resources developments. Green tape is consistently raised by APPEA members as one of the top issues impacting the global competitiveness of Australia's resource sector and a key barrier to investment.

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<sup>1</sup> Deloitte Access Economics (2016) Analysis for Gas Vision 2050

<sup>2</sup> Australian Government (2016), Australian Energy Statistics [www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/aes/2016-australian-energy-statistics.pdf](http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/aes/2016-australian-energy-statistics.pdf)

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Over the past 12 months Australia and the world have faced the challenge of the COVID-19 pandemic which has had a major impact on the Australian economy and investment. It is therefore more important than ever that we work together to ensure that our regulatory frameworks protect the environment while also supporting investment and reducing unnecessary delays and costs. Complex and duplicative processes for project approval, including through the EPBC Act, should be addressed in a way that improves administration, provides certainty and encourages investment while also ensuring ecologically sustainable development.

A good regulatory environment is an essential foundation for any high performing and successful industry. Fundamentally the key objectives for the oil and gas industry can be grouped into three categories:

1. Reduce duplication between jurisdictions and processes
2. Ensure effective, efficient and predictable environmental assessment and approval processes
3. Move the basis of approvals to outcomes and standards, and away from prescription

### **Comments on the Bill**

With regard to the Bill, APPEA supports the phased introduction of National Environmental Standards (**NES**), with a focus first on the current legal settings and the staged application of NES through bilaterals.

APPEA supports the proposed interim NES as they reflect the current legal settings. Once the NES are established as the preeminent regulatory tool they should override other regulation (eg recovery plans) that are inconsistent with the NES. We note the standards proposed in the Samuel report, while a good proof of concept, are not consistent with current legislative requirements.

The EPBC is significant and complex legislation. Reviewing and updating standards will therefore take time and the proposed two-year review period is appropriate. The review should be done with the input of all stakeholders with the goal of establishing NES that achieve both industry and conservation objectives.

APPEA supports the establishment of the Environment Assurance Commissioner. The Bill's proposal that the Commissioner be focussed on the operation of bilateral agreements and other various processes, as opposed to individual approval decisions, is appropriate. Government should ensure the Commissioner function is adequately resourced.

Finally, though not directly related to the Bill, APPEA submits that it is essential that the Commonwealth ensures appropriate funding is provided for the establishment and operation of bilateral agreements. If costs are incurred by States/Territories as a result of their taking on Commonwealth functions under the EPBC Act this should be recognised and offsetting funding provided.

We would also encourage all governments to ensure that compliance and enforcement activity is effectively communicated to the public. States and Territories are already playing a major role in this regard and public confidence in environmental regulation requires that information on these activities and their outcomes is readily available and understood.



Further detailed comments on the Bill are **attached**. APPEA would welcome the opportunity to discuss this submission with the Committee.

Yours sincerely

**Matthew Paul**

Director – Environment and Queensland Policy



**ATTACHMENT**

**Detailed comments on the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021**

<b>Bilaterals</b>	
<p>Staged bilaterals should be an option</p>	<p>The Bill should be clear that a State/Territory could enter into a Bilateral for a single NES or a subset of NES, as opposed to bilaterals only being available for all NES as a package.</p> <p>If bilaterals are only available for all NES it may delay implementation of this significant reform while State/Territory regulation is updated. Further, if in future federal requirements change for a given NES the validity of the entire bilateral may be in question if staged bilaterals are not possible.</p> <p>The Bill’s drafting does not make this clear and should be clarified.</p>
<p>The treatment of NOPSEMA should be clarified</p>	<p>The Bill only talks to bilaterals with States/Territories and is silent on treatment of other management arrangements or authorisation processes. A notable example is the endorsed Program with the National Offshore Petroleum Safety and Environmental Management Authority (<b>NOPSEMA</b>) under the existing strategic assessment.</p> <p>While there does not seem to be anything introduced in the Bill that would unwind established arrangements for NOPSEMA, if there is an intent to modify the endorsed Program with NOPSEMA to align explicitly with the NES the Bill may need amendment to accommodate this. If not, when the NES change there would need to be a mechanism that captures any disparity with the endorsed Program.</p> <p>Under current arrangements there is limited/no ability to modify the endorsed Program so a new strategic assessment or “NOPSEMA bilateral” may be required.</p>
<b>Process for updating NES</b>	
<p>NES should not be able to reference administrative guidelines</p>	<p>The proposed drafting of Section 65(C)(4) provides for a NES being able to reference ‘writings’. APPEA is concerned that ‘writings’ can be interpreted to include guidelines.</p> <p>We have significant concerns with this approach as it would, in effect, allow administrative guidelines to have the same status as regulation or legislation. Administrative guidelines are not subject to parliamentary scrutiny and can be changed by departmental officers.</p>



	<p>The EPBC review’s commentary highlighted that the current administration of the EPBC has in part reached beyond the requirements of the Act. This approach has been justified by the department as being compliant with administrative guidelines.</p> <p>The NES should stand alone and not reference guidelines that may be changed without parliamentary scrutiny.</p>
<p><b>Making a decision inconsistent with a NES</b></p>	
<p>Exemption process should be further defined</p>	<p>The Bill provides that the Minister may make a decision or do a thing inconsistent with a NES if the decision or thing is in the public interest.</p> <p>While such an exemption is sensible it would be beneficial to elaborate on how such decisions would be made in practice.</p>
<p><b>NES consistency with recovery plans</b></p>	
<p>NES should override recovery plans</p>	<p>Under the current system the potential for inconsistency between approvals and recovery plans can be a major problem, with recovery plans overriding approvals and shifting interpretations of the meaning of recovery plans leading to significant instability in approvals granted.</p> <p>Stability and predictability in approvals should be a core objective of any system. Given their proposed status as the preeminent regulatory tool the NES should override other regulatory requirements such as recovery plans. In the absence of this approach the introduction of the NES would, in the short/medium term, further complicate an already complex system.</p>