THE SENATE

Economics Legislation Committee

Inquiry into the 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]

Answer to Question on Notice

Question:

CHAIR: I haven't had the chance to go through your submission in detail yet, but does the industry have any examples—ideally Australian based, or even international examples—of decommissioning best practice, where the field has gone through a decommissioning process effectively, so we can see what, from the industry's point of view, best practice is?

Mr McConville: The submission as made focuses deliberately and directly on the levy and its operation, so it doesn't go into a broader discussion of decommissioning policy. That work was done in our submissions to the government in the development of its decommissioning policy framework, the legislation for which was passed by the parliament earlier this year. That sets out a number of examples and recommendations around policy refinement. If I may, I think the best point of referral is our industry submission to that process of review. We are happy to take that on notice and provide that submission and, indeed, related documents to the committee if it would help.

CHAIR: Excellent. Thank you very much. Senator Patrick, you have some questions?

Senator PATRICK: Mr McConville, you originally were very critical of the scheme when it was first announced. I presume you had the opportunity to make a submission during the consultation period between December and January.

Mr McConville: Yes, we did.

Senator PATRICK: Is it your feeling that your points were largely taken into consideration?

Mr McConville: I think some lines of what we put forward were taken into consideration. Our preferred position would be that a levy not be imposed at all, and of course that was not taken into consideration. But we are where we are now and we do believe that there are further changes that could be made to the legislation to improve its operation and the application of the levy.

Answer:

Also attached are submissions made by APPEA to the broader decommissioning framework consultation process with the Department of Industry (February 2021) and the Exposure Draft Materials (April 2021) we committed to providing to the Committee at Senator Patrick's request. Whilst we view these as being out of scope for this current inquiry, we do hope they provide some benefit to the committee.

Mr Simon Staples
Director—Commercial
Australia Petroleum Production and Exploration Association (APPEA)
12 November 2021

23 April 2021

The Manager
Strategic Policy Section, Resources Division
Department of Industry, Science Energy and Resources
Submitted via email: [redacted]

Submission from the Australian Petroleum Production and Exploration Association on the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021

APPEA welcomes the opportunity to provide detailed feedback to the Department of Industry, Science, Energy and Resources (DISER) on the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021 (the Bill).

APPEA and its members recognise the importance of decommissioning for the community, the government, the environment and the Australian oil and gas industry. It is an issue that we simply must 'get right' to operate responsibly, sustainably, and commercially.

It is essential for APPEA and industry to engage unreservedly and fully with government and other stakeholders to develop a decommissioning framework that delivers the right outcomes and a clear, workable regulatory path forward. To this end we have engaged constructively with the government over almost two years as the policy framework has been developed. This constructive collaboration has been important, recognising the complexity of the issues, the significance of decommissioning as part of industry operations and given the long-term impact of both policy and legislation.

It is therefore not surprising that the complexity of the decommissioning task is reflected in the substantial nature of the Exposure Draft of the Bill, but we would note the timeframes for the review of have been extremely tight given its complexity and significance.

We would request the government not rush to finalise the Bill and instead continue consultation with industry and other stakeholders to ensure all views and feedback are fully considered. The objective must be a policy and legislative framework that is world-class, and which will best serve Australia over the coming decades.

The attached submission has been developed by APPEA in consultation with members and is presented as a basis for further consultation prior to the Bill being finalised.

Yours sincerely

[redacted]

Andrew McConville
Chief Executive

Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021

Consultation
April 2021

Submission from the Australian Petroleum Production and Exploration Association

Key Points

- APPEA supports in principle, changes to the OPGGS Act to deliver improved government oversight of financial/technical capability throughout the life of an asset which includes ensuring companies have the financial capacity to complete necessary decommissioning activities.

- We are concerned that proposed changes in the Bill rely heavily on "subsidiary legislation", guidelines and policy that are yet to be drafted and determined.

- A whole of government approach to decommissioning policy and legislation is required to avoid unintended consequences on future investment into the offshore oil and gas industry.

- APPEA has consistently stated it does not support trailing liability as a general principle for decommissioning in Australia. A more effective approach is to have in place a robust Financial Assurance Framework which requires titleholders to establish their financial capacity to appropriately conduct decommissioning activities when required.

- In the event a trailing liability framework is put in place by the government it should only apply to transactions made from a date after the amendments under the Bill come into force.

- A titleholder should not be liable for costs associated with wells drilled or facilities installed *after* the relevant entity has ceased to be the titleholder.

- The power to apply decommissioning liability to 'any person capable of benefiting financially' from title operations or in a position 'to influence compliance' or acts 'jointly with' titleholder in relation to title operations' is too broad, vague, forward looking and speculative and limited to direct influence to conduct and compliance.

- APPEA does not support the inclusion of a trailing liability to areas that have been lawfully transferred or surrendered, or where decommissioning activities have been undertaken in an approved manner.

- We would draw the government's attention to recommendations made in previous APPEA submissions in relation to decommissioning planning, taxation treatment of decommissioning liability and possible models of financial assurance. The Bill as drafted does not adequately address these issues.

Contents

1. Introduction

Petroleum decommissioning is a technically complex and costly exercise that requires strong alignment between the objectives of government as the owner of the resource and industry as the developer of the resource. Decommissioning is an absolute priority for APPEA and its members.

This paper is the third submission APPEA has provided to government on decommissioning reform in offshore areas in Australia since 2018. While many of the issues raised in previous APPEA submissions are evident in the Bill we would note there are still gaps in relation to decommissioning planning, taxation treatment of decommissioning liability and possible models of financial assurance that do not appear to be evident in the Draft Bill. We request the further consultation with government to ensure these matters are also adequately addressed as the decommissioning policy and legislative framework is finalized.

There are several key principles on which any decommissioning policy and legislative framework should be based. A decommissioning framework should:

- Enable efficient and effective access to Australia's oil and gas resources for development that can benefit the Australian economy in terms of investment, jobs and taxation revenue;
- Support energy security for the nation through the responsible development of Australia's substantial energy resources;
- Enable the sale and purchase of oil and gas assets which provide opportunity for the optimum recovery of the oil and gas resources;
- Ensure the right behaviours and risk allocation between asset owners and former owners;
- Ensure that the impacts of resource extraction on the environment and other users of the sea are responsibly managed;
- Minimise financial exposure to the Australian government for decommissioning costs;
- Ensure, at the end of asset life, that the asset is decommissioned in a manner which:
    - is fully funded by the owner(s) of the asset;
    - has a proper regard for safety, the environment and potential socioeconomic impacts to other users of the sea or land, including host communities;
    - is flexible to allow the implementation of decommissioning solutions that are technically feasible, cost effective, suitably paced and socio-economically prudent; and
    - ensures that risks to the environment are reduced to As Low As Reasonably Practicable (ALARP) and acceptable so that the environment in which the activity is undertaken is maintained and / or enhanced for the benefit of future generations.
- Ensure the decommissioning solutions implemented provide confidence to all relevant stakeholders in relation to the safety of asset management;
- Ensure new, safe and cost-effective decommissioning technologies and strategies can be applied in the future; and

- Ensure that all decommissioning activities are undertaken in a manner consistent with Australia's international environmental obligations.

The accompanying guidance with the release of the Bill notes that details missing in the Bill and further clarity will be provided at a later date through guidance. Given the importance of the Bill and the far-reaching consequences to the Australian offshore petroleum industry, there is a substantial risk that important aspects of the legislative reform will fall to guidance, which does not have the force of law and which will result in substantial discretion being exercised by regulators. Such discretion will increase uncertainty for all parties and will result in either decreased investment or the higher pricing of risks associated with investment. The net result in either case will be less development of Australia's offshore oil and gas resources.

1.1 About APPEA

The Australian Petroleum Production & Exploration Association (APPEA) is the peak body representing Australia's oil and gas explorers and producers. Our members account for nearly all of Australia's upstream oil and gas exploration and production.

APPEA is committed to the development and implementation of a world-class decommissioning framework that adequately reflects the objectives of all stakeholders including federal and state governments, oil and gas exploration and production companies, marine users and communities in which the industry operates.

APPEA and its members are committed to responsible environmental management and effective decommissioning is an integral part of this commitment. Effective environmental management is also crucial in preserving the industry's reputation and maintaining a social licence to operate.

2 Commentary and Feedback on the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021

The following section provides overarching commentary of schedules 1 to 4 of the Bill. Attachment 1 provides more detailed and specific feedback on various sections of the Bill.

2.1 Schedule 1. - Change in Control of Registered Titleholders

APPEA supports in principle, changes to the OPGGS Act that support improved government oversight of financial/technical capability throughout the life of an asset, including the financial capacity to complete necessary decommissioning activities.

In this context however, APPEA has general concerns with provisions included in this section of the Bill:

i) The threshold for a 'change of control' is set at a much lower level than what is normally considered to constitute an actual 'change of control'. As currently drafted the Bill would cover a large number of transactions that do not, in

substance change who is actually in control. For example, a person acquiring 20% would not normally be in a position to exert control and would not materially impact on a titleholder's technical or financial capacity. The provisions may also lead to unintended consequences, particularly (but not limited to) the case of listed transactions including forced public take overs. A better approach would be to use the 'change in control' tests in the *Corporations Act 2001* to determine financial and technical capacity. These tests have already been used to good effect in some resources legislation.

ii) The provisions that apply an *approval period* of six months, wherein an approval for a title transaction can be revoked by the Titles Administrator. These provisions would increase uncertainty and may result in delays on commercial transactions without any tangible benefit accruing to the Titles Administrator in terms of reduced risk. We would further note that a six month period within which to complete a change in control is too short for many transactions.

APPEA notes the absence of any time limits in the decision-making process to be undertaken by the Titles Administrator as set out in Schedule 1 of the Bill. The absence of time limits for decisions will increase uncertainty and delays for change in control and direct interest title transactions. Noting that the Joint Authority Operating Protocols (2015)[1] seek to make decisions on a consensus basis and within a reasonable timeframe, APPEA considers this protocol may constitute a sound starting point in determining appropriate time-limits to decision making.

In Annex 1 of the DISER Regulatory Impact Statement[2], costing assumptions are explained as part of the introduction of regulatory reforms to decommissioning. Item 6 provides for the average time for a single organisation to undertake requirements (based on NOPTA advice) viz-:

a. technical and financial report application – 6 hours for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application.
b. A fit and proper person declaration and appropriateness criteria application – 2 hours for 1 technical financial / administration employee to liaise and compile information, 1 hour for 1 director required to execute declaration.
c. A change of ownership and control application – 1 hour for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application.

These assumptions are at odds with the Walker Review findings[3] which note:

[1] Operating Protocols available here: Operating protocols for offshore petroleum Joint Authorities and supporting institutions (nopta.gov.au)
[2] Regulatory Impact Statement available here: https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/diser-regulatory-impact-statement---improvements-to-title-administration.pdf
[3] Walker Review available at: https://www.industry.gov.au/sites/default/files/2020-09/disclosure-log-20-036.pdf

"NOPTA explained (to me) that its financial assessment for two recent transfers of titles for mid to late life assets took in the region of 8-10 months to complete."

Based on advice from the Titles Administrator and assessment of time inputs from the Regulatory Impact Statement, there appears to be a serious and substantial discrepancy between what is proposed and the reality of what does occur. It is important that the Bill more closely reflect reality to avoid creating false expectations and increasing uncertainty around an such an important process is Additionally, The Bill should provide for a firm time limit in the decision-making process, similar to that for example set down for the Foreign Investment Review Board of 30 days for its decisions to be made.

The lack of specific criteria for decision-making by the regulator in approving and revoking 'change in control' as well as wide discretion through non-specific criteria for decision-making in relation to direct interests in titles will result in significant uncertainty for commercial transactions. In addition there is no clarity or control around the information or documents that will be required for applications, with current drafting only referencing an application to be in an approved form and to be accompanied by information or documents "required by the form". This will create significant delays in assessment and make review by the regulator subject to wide interpretation leading to uncertainty and the adverse pricing of risk and investment.

2.2 Schedule 2. – Trailing Liability

Retrospective Application

The Bill provides for transitional provisions from 1 January 2021. APPEA does not support backdating particularly given that the measures and changes contained in the Bill are not sufficiently detailed to enable operators to have a clear understanding of requirements. Given the lack of detail contained in the Bill there is also a risk of future change which would be further complicated by seemingly arbitrary backdating.

If trailing liability is to be applied, it should ideally not apply retrospectively and should only apply to transactions made after a date after the amendments are in force.

APPEA is concerned at the lack of information on changes to the planning and reporting for decommissioning, which will arguably be central to ensuring that trailing liability should it be implemented is never exercised. This is discussed further in Section 3 below.

Trailing Liability

APPEA acknowledges that Government seeks to taxpayers and the broader community in situations where a titleholder is unable to fulfil its decommissioning obligations. However, the duty to maintain a financial assurance by a title holder (OPGGS Act s 571) without corresponding provisions to ensure the effectiveness of a titleholder's financial assurance and the effectiveness of the regulator's assessment of the same will, result in titleholders being more inclined to cease production rather than sell to lower cost operators. This is because of the enduring nature of risk in being a previous titleholder. It is entirely reasonable to expect that the existence of this risk would result in a reduction of recovered resources in an area.

APPEA has consistently maintained it does not support trailing liability as a principle of decommissioning in Australia. A far more effective approach is the implementation of a robust Financial Assurance Framework to ensure titleholders demonstrate their financial capacity to meet their decommissioning liabilities when they need to be met. There is also risk that a trailing liability regime may fail in circumstances where existing titleholder(s) progress into financial default and previous holders and persons are either in default or no longer located within Australian jurisdiction.

It is not reasonable for former titleholders to be liable for the actions of subsequent titleholders following a title transfer, as they cannot control future maintenance practices, other operational decisions. Additionally, a titleholder should not be liable for costs associated with wells drilled or facilities installed after the relevant entity has ceased to be the titleholder. Furthermore, the proposed approach may result in substantial accounting liabilities being recognized by the seller on or post divestment of an asset and as a consequence, operators may choose to cease activity rather than sell an asset to another operator and in so doing fail to ensure maximum utilization of Australia's oil and gas resources.

The power to apply decommissioning liability to 'any person capable of benefiting financially' from title operations or in a position 'to influence compliance' or acts 'jointly with' titleholder in relation to title operations' is too broad, vague, forward looking and speculative. Current provisions in the Bill may unintentionally capture employees and contractors (individuals or companies), royalty holders, financiers, property equity direct interest holders, parent companies of investment funds/trustees or even suppliers or purchasers of commodities or capacity. In the event trailing liability is preferred by government, a better definition is needed so the extent of reach of the liability is absolutely clear and includes elements limited only to direct influence of conduct and compliance.

This point is further compounded by the Bill extending trailing liability where NOPSEMA and or the responsible Commonwealth Minister can make remedial directions to any prior registered holder or persons in areas (permits, leases, licences and authorities) that have wholly or partly ceased to be in force, i.e., vacated areas. the wide nature of the provisions contained in the Bill introduce an unacceptable level of risk for investors and operators. In addition, proposed changes to sections 587 and 587A could also include areas that were lawfully transferred or surrendered, or where decommissioning activities had been undertaken in an approved manner.

It is concerning that no guidance or information has been included to stipulate what would trigger a remedial action and how this is to be assessed by the regulator or responsible Minister. There is also no ability, even after a remedial action has been satisfied, to discharge all obligations. With reference to the discussion above on the timing of legislative change, given that investment decisions are made on the basis of legislation and regulatory frameworks that exist at the time investment is made and plans are approved, it would be unwelcome to have legislation effectively back date liabilities and expenses.

It is also questionable whether NOPSEMA as the operational regulator can make decisions in relation to the holder of a trailing liability. This responsibility should rest entirely with the responsible Minister due to the significance of any such decision. Furthermore, NOPSEMA

as the primary approvals body, would be in a position to direct work and actions (trailing liability), to fix issues on areas that were previously approved by NOPSEMA.

Trailing liability, if preferred as a policy approach by government should exist only as an option of "last resort" after all options available to the regulator have been exhausted. Given this, the following matters need to be addressed in greater detail to ensure there are no unintended consequences and / or differences in interpretation:

- Any liability of a former titleholder should be limited to its previous participating interest and should only apply for infrastructure that was installed before the transfer took place. There is currently no such provision in legislation.
- The Bill should clearly state that trailing liability is a "last resort" and will only to be exercised in the most extraordinary of circumstances after all avenues of redress have been pursued.
- The 'chain' of liability should start with the current titleholder and proceed sequentially backwards on a reverse chronological basis, with each titleholder only being liable for the work they completed and on an equity basis.

2.3 Schedule 3. – Applications in Decision Making

APPEA notes the Bill enables the regulator to accept or refuse a title applicant on the grounds of technical and financial capability to undertake work and other obligations in a title area. However, decision-making criteria need to be specific and not provide unlimited discretion – for example, whether technical or financial resources available to titleholder pursuant to transfer are "sufficient" and "may have regard to any other matters" the regulator "considers relevant" without additional detail may lead to uncertainty for any divestments or investments.

We also question the need to give notice for certain events, as described by 695YC – as soon as practicable after the event occurs, as well as at the time of a grant, renewal, or approval of a transfer of a title. A better outcome would be that written notice is provided to the Titles Administrator and NOPSEMA following an event that affects those certain events as described in 695YC (2) and that a declaration is provided by an applicant at the time of renewal.

It is also necessary to clearly establish what specific information that will be collected and addressed.

2.4 Schedule 4. – Information Gathering Powers

The application of greater information gathering powers by the Titles Administrator and NOPSEMA should provide for more timely titles administration and approvals processes. These expanded powers should facilitate a more streamlined and informed administrative process and a more robust demonstration of a titleholders duty to maintain financial assurance (OPGGS Act s 571).

It is also noted that the avoidance of "ad hoc" information requests by the regulator should be a priority.

3 Other Related Items

There are a number of matters that have been raised by APPEA in previous submissions, specifically APPEA's submission on the government's paper, "Enhancing Australia's decommissioning framework for offshore oil and gas activities", that have not been addressed in the Bill.

Addressing these issues remains important to ensuring Australia has a world class decommissioning regime in place. We would request further consultation with government in relation to the following:

- **Financial Assurance** - The form of financial assurance utilised should be at the discretion of the titleholder and managed within a JVOA and agreed with the regulator based on Government's financial assurance standards and expectations and could include a combination of:
  - An acceptable credit rating from an acceptable financial rating provider (i.e. Standard & Poors) to demonstrate financial capacity;
  - Provision of financial statements demonstrating net worth or some other specified financial measure relative to the decommissioning obligation;
    - i.e. Net assets (excluding goodwill, intangibles and deferred taxation assets), of a suitable multiple of the decommissioning cost estimate, to ensure sufficient funds would be available under potential future price or cost scenarios.
  - Related party corporate guarantee from an entity with an acceptable credit rating and or provision of group financial statements demonstrating net worth or some other specified financial measure relative to the decommissioning obligation;
  - Bank guarantee from an acceptably rated bank or financial institution;
  - Cash Deposit; and
  - Insurance Surety Bond from an acceptably rated provider.

  Financial assurance should be applied in a flexible manner to limit the administrative burden and complexity of a title by title approach.
- **Availability of PRRT credits or other instruments** - In the event a prior titleholder is "called back" to fulfil decommissioning obligations of the existing titleholder, they should have full access to any financial security that has been provided, as well as Petroleum Resource Rent Tax benefits accrued during ownership. The regulator should also provide documentation to the prior titleholder of the relevant financial and technical assessments conducted prior to the trailing liability determination being made.
- **Public comment and transparent reporting** - Clarification is needed on the public reporting and public comment periods contemplated, with a need to define what decommissioning activities it will be applied to. APPEA supports the existing requirements (Environment Regulation 25A and 26C) for titleholders to provide notice to the regulator of completion of an activity and environmental reporting, to give clarity and assurance that decommissioning has been fully completed in accordance

with the terms of the title and Environmental Plan and should link to the satisfaction of decommissioning obligations.

- It is not clear what objectives are being met to issue close-out reports to the public if the regulator (NOPSEMA) has already determined that the activity has been acceptably closed-out. These reports are currently very detailed and technical in nature and may contain confidential information. Redacted or modified versions are likely to cause public concern.
- **Decommissioning planning and management** - the most recent DISER Consultation Paper presented changes, at a very high level to the inclusion of Field Development Plans (FDP's) as an instrument of planning and reporting for decommissioning. The ongoing lack of detail available for a titleholder to fully understand how these changes will be applied in practice is concerning.
- **Taxation** – Although amendments to tax law would not be implemented via the OPGGS act, taxation implications need to be further considered and require greater consultation with industry:
    - **Financial Assurances** - Taxpayers should be allowed an income tax and PRRT deduction for the cost of providing financial assurance.
    - **Remedial Directions** - Remedial directions that force operating projects into PRRT losses may incentivise project participants to shut-in early. This is because the ATO has ruled that decommissioning losses incurred prior to a project closing do not give rise to a refundable PRRT credit – an approach that is inconsistent with the overall intent of the PRRT regime.
    - **Trailing Liability** - Trailing liabilities paid by a "related person" may not be deductible for either corporate income tax or PRRT purposes and are therefore unlikely to give rise to a refundable PRRT credit. The non-refundability of PRRT credits and the denial of a deduction for corporate income tax will impact the overall viability of a project and impact significantly on project economics.
    - **Commencement of Proposals** - Where mechanisms are introduced that impact taxation policies, these recommendations should only apply to transactions made after an agreed date established by government.

Attachment 1

APPEA response matrix - Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 20211[4]

Schedule	Exposure draft amendments	APPEA response to amendments
1 – Change in control of registered titleholders	566A – Definitions ***Approval period***, for a change in control of a registered holder of a title, means the period: (a) starting on the day the notice of approval for the change in control is given; and (b) ending at the earliest of the following: (i) immediately after the change in control takes effect; (ii) if the approval of a change in control is revoked—when the notice of revocation is given; (iii) 6 months after the day the notice of approval is given.	▪ An application of an approval period, where the Titles Administrator is able to revoke the approval of an applicant and that too, with very wide discretion to do so, and without specific criteria under s.566J, would likely significantly enhance risk and uncertainty for change in control transactions. ▪ Additionally, larger change in control transactions may take longer and the six months' period limit may lead to requiring an approval again.
	566A – Definitions Meaning of ***control*** and ***change in control*** of registered holder (1) A person controls the registered holder of a title if the person (whether alone or together with one or more other persons the person acts jointly with): (a) holds the power to exercise, or control the exercise of, 20% or more of the voting rights in the registered holder; or (b) holds, or holds an interest in, 20% or more of the issued securities in the registered holder. (3) The regulations may prescribe a different percentage, or different 12 percentages, to the percentage specified in paragraph (1)(a) or (b). (4) There is a ***change in control*** of a registered holder of a title if: (a) one or more persons (an ***original controller***) control the registered holder of a title at a particular time; and (b) either: (i) one or more other persons begin to control the registered holder (whether alone or together with one or more other persons the person acts jointly with) after that time; or (ii) an original controller (whether alone or together with one or more other persons the person acts jointly with) ceases to control the registered holder after that time.	▪ The 'change in control' threshold level of 20% is too low and would likely unnecessarily cover a large number of transactions that do not, in substance, have any material impact on titleholder's technical or financial capacity. ▪ That Bill also introduced provisions to allow gradual acquisitions / transfer of control (no more than 3 per cent in each six-month period). ▪ The provisions also capture listed transactions and public take overs which will lead to unintended consequences particularly if the timelines taken by the regulators are long. ▪ Ability to change the percentage of the threshold via regulations being the subordinate instrument is inappropriate and leads to uncertainty.
	566C Application for approval 28 (1) A person who: (a) proposes to begin to control a registered holder of a title; or (b) proposes to cease to control a registered holder of a title;	▪ The rationale of separate applications from the person who will be controlling and person who is ceasing control is not clear. A simpler deal would require two applications one from the seller and other from the buyer. ▪ If there is change in control that impacts multiple titles that should be subject of a single application ▪ 'begin to' control or 'cease to' control not defined expressions and no definition, considering the serious prescribed consequences concerning breach of these provisions, will lead to a lot of uncertainty.
	566D - Titles Administrator must decide whether to approve change in control 566D(3) Before deciding whether to approve or refuse to approve a change in control, the Titles Administrator may consult with one or more of the following: (a) the Cross-boundary Authority; (b) the Joint Authority; (c) NOPSEMA; (d) the responsible Commonwealth Minister.	▪ What is the timeframe for consultation / concurrence? (Noting that the JA Operating Protocols (2015) seek to make decisions on a consensus basis and within a reasonable timeframe (page 4) - https://www.nopta.gov.au/_documents/JA-operating-protocols-july2015.pdf)
	566D(4) and (5) (4) In deciding whether to approve or refuse to approve a change in control, the Titles Administrator: (a) must have regard to the matters specified in subsection (5); and (b) may have regard to the following matters: (i) matters raised in consultations (if any) under subsection (3); (ii) any other matters the Titles Administrator considers relevant.	▪ NOPTA decision-making for approval to "change of control" should be subject to specific criteria, e.g., whether technical or financial resources available to titleholder pursuant to change in control are "sufficient" and "may have regard to any other matters" "NOPTA considers relevant" without detail may lead to uncertainty for any "change of control" forms of divestments including as the applicant is to monitor and notify to NOPTA for any change in circumstances as also NOPTA has ability to revoke approval within the approval period having regard to the very same matters relevant for such decision-making.

[4] https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/
https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/overview---opggs-amendment-titles-administration-and-other-measures-bill-2021-pdf.pdf
https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/offshore-petroleum-and-greenhouse-gas-storage-amendment-titles-administration-and-other-measures-bill-2021.pdf

	(5) The matters are as follows: (a) whether the technical advice and financial resources available to the registered holder after the change in control takes effect are sufficient to: (i) carry out the operations and works that are authorised by the titles held by the registered holder; and (ii) discharge the obligations that are imposed under this Act, or a legislative instrument under this Act, in relation to those titles; (b) the matters specified in section 695YB as they apply to a person who will begin to control the registered holder; (c) if a person who will begin to control the registered holder is a body corporate—the matters specified in section 695YB as they apply to an officer of the body corporate; (d) any other matters prescribed by the regulations.	▪ The criteria for assessment of suitability is too vague and broad. It not only includes technical and financial ability, but other matters such as governance of companies, history of compliance is not captured. ▪ The assessment of the suitability seems to be open for the regulator to make this periodically and from time to time, not only on a party entering a permit. For example, the suitability may be re-assessed at FDP/PL grant/development stage. This cuts across the fundamental principle of the act that if a titleholder acquires a permit and explores, invests, then there is a right to apply to exploit through obtaining a production licence and develop. It seems tantamount to an expropriation type of provision that then allows the regulator to take away a permit for suitability reasons later after investment is made.
	566J - (1) The Titles Administrator may revoke an approval of a change in control of a registered holder of a title in the approval period for the change in control if: (a) there is a change in the circumstances of a person who is approved to: (i) begin to control the registered holder; or (ii) cease to control the registered holder; and (b) the Titles Administrator considers it appropriate to revoke the approval.	See above references to ***approval period***.
	566Z - Tracing	▪ It is not clear whether parent company or company in which the control changes, files for approval. ▪ These provisions may be seen negatively by and reduce investments by infrastructure funds or private equity funds
	Part 2 – Consequential amendments The consequential amendments link the new Chapter 5A to titles applications: Section 125 – Renewal of petroleum exploration permit Section 154 – Renewal of petroleum retention lease Section 185 – Renewal of fixed term petroleum production licence Section 221 – Grant of petroleum pipeline Section 270 – Consent to surrender Section 274 – Grounds for cancellation Section 275 – Cancellation of title Section 277 – Cancellation of title not affected by other provisions 32 – After subsection 478(2) – insert: (3) Before deciding whether to approve or refuse to approve a transfer, the Titles Administrator may consult with one or more of the following: (a) the Joint Authority; (b) NOPSEMA; (c) the responsible Commonwealth Minister. (3A) In deciding whether to approve or refuse to approve a transfer, the Titles Administrator may have regard to the following matters: (a) matters raised in consultations (if any) under subsection (3); (b) any other matters the Titles Administrator considers relevant.	▪ How will titles applications listed here be streamlined – if the matters prescribed under 695YB have not occurred? E.g., there is no notification of events under 695YC and the applicant is a current compliant title holder. ▪ What is the timeframe for consultation / concurrence? Annex 1 of the RIS[5] sets out the costing assumptions – (from NOTPA) , under paragraph / clause 6: 6. Average time for a single organisation to undertake requirements (based on NOPTA advice): a. A technical and financial report application – 6 hours for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application. b. A fit and proper person declaration and appropriateness criteria application – 2 hours for 1 technical financial / administration employee to liaise and compile information, 1 hour for 1 director required to execute declaration. c. A change of ownership and control application – 1 hour for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application ▪ These assumptions seem inconsistent with the Walker Review findings (see page 35/56)[6]: At footnote 46 - NOPTA explained to me that its financial assessment for two recent transfers of titles for mid to late life assets took in the region of 8-10 months to complete.
2 – Trailing liability	14 Vacated area for a permit, lease, licence or authority 14(1) - ... ***vacated area*** for a permit, lease, licence, or authority that has ceased to be in force, either in whole or in part.	▪ The Bill doesn't reflect that the government is a party to the consent to surrender process – in part and in full. ▪ Release from liability should occur in respect of titles, for which the decommissioning arrangements have gone through regulated surrender/expiry of title process but with flexibility especially in relation to derogations during such processes where the regulator and the titleholder may agree at the time as to who bears the residual risk. If this is not removed from the trailing liability, then the surrender process is worthless and the Government will have imposed a perpetual liability exposure on every titleholder.
	Concept of related persons 13 – new subsection before 586(3) (2A) The persons are:	▪ Trailing liability should not apply to transactions with retrospective effect, to be exercised only as an option of "last resort" and with an order of priority for determining trailing liability to be clearly set out in the Act itself, ie. , first

[5] https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/diser-regulatory-impact-statement---improvements-to-title-administration.pdf
[6] https://www.industry.gov.au/sites/default/files/2020-09/disclosure-log-20-036.pdf

	(a) the registered holder of the permit, lease or licence; or (b) a related body corporate of the registered holder of the permit, lease or licence; or (c) any former registered holder of the permit, lease or licence; or (d) a person who was a related body corporate of any former registered holder of the permit, lease or licence at the time the permit, lease or licence was in force; or (e) a person to whom a determination under subsection (2B) applies. (2B) NOPSEMA may make a written determination that this subsection applies to a person if, having regard to the following matters, it is satisfied on reasonable grounds that it is appropriate to do so: (a) whether the person is capable of significantly benefiting financially, or has significantly benefited financially, from the operations authorised by the permit, lease or licence; (b) whether the person is, or has been at any time, in a position to influence the way in which, or the extent to which, a person is complying, or has complied, with the person's obligations under this Act; (c) whether the person acts or acted jointly with the registered holder, or a former holder, of the permit, lease or licence in relation to the operations authorised by the permit, lease or licence	current titleholders, then exhaust all available "financial assurance" from current titleholders, then related persons of current titleholders and then only look to former titleholders in reverse chronological order and thereafter their related parties. Specifically: ○ any liability of a former titleholder is limited to its previous participating interest and should only apply for infrastructure that was installed before the transfer took place; and ○ the 'chain' of liability should start with the current titleholder and proceed reverse chronological order, with each titleholder only being liable for the work they completed. ▪ The power to apply decommissioning liability to "any person" based on criteria including anyone who may have significantly "benefited financially" from title operations or in a position "to influence compliance" or acts "jointly with" titleholder in relation to title operations" is too broad and may unintentionally capture employees/contractors(individuals or companies), royalty holders, financiers, direct interest holders, parent companies of investment funds/trustees or even suppliers or purchasers. ▪ Concern that in the event that the Government's own financial assurance assessment and monitoring is inadequate a former titleholder is liable for the cost. ▪ A NOPSEMA written determination (2C) should have regard to: ○ Intentional, knowing or reckless conduct. ○ Corporate culture e.g.: ▪ Culture that encourages or tolerated non-compliance; or ▪ Alternatively, a body corporate that failed to create a culture that promoted or required compliance. ▪ If the directions are applied to individuals – e.g. decision makers – then a defence that all reasonable steps / reasonable or practicable measures were taken to ensure compliance (this defence is provided under section 578 of the OPGGS Act).
	21 - 587A – Remedial direction in relation to permits, lease, licences and authorities that have wholly or partly ceased to be in force – responsible Commonwealth Minister 587A(2) Direction (2) The responsible Commonwealth Minister may, by written notice given to a person referred to in subsection (2A), direct the person to do one or more of the following things within the period specified in the notice: (a) to plug or close off, to the satisfaction of the responsible Commonwealth Minister, all wells made in the vacated area by any person engaged or concerned in the operations authorised by the title; (b) to provide, to the satisfaction of the responsible Commonwealth Minister, for the conservation and protection of the natural resources in the vacated area; (c) to make good, to the satisfaction of the responsible Commonwealth Minister, any damage to the seabed or subsoil in the vacated area caused by any person engaged or concerned in the operations authorised by the title; so long as the direction is given for the purposes of: (d) resource management; or (e) resource security	DISER to clarify: • Is this a reference to a direction to recover petroleum e.g. under section 189 of the OPGGS Act? • What are examples of remedial directions for resource management or resource security if the title ceases to be in force? • In other words if there was a commercial resource available wouldn't government consider cash bidding?
	43 – At the end of Part 6.4 of Chapter 6 (Restoration of the environment) - Add: 598A – Obligations etc. if remedial direction is in force (1) This section applies if: (a) a direction (a petroleum remedial direction) is in force under section 586, 586A, 587 or 587A; or (b) a direction (a greenhouse gas remedial direction) is in force under section 591B, 592, 594A or 595. (2) The following provisions apply as if a reference to a registered holder of a title, or to a titleholder, included a reference to a person who is subject to a petroleum remedial direction: (a) section 569; (work practices / manner / good oilfield practice etc). (b) section 571; (financial assurance) (c) Part 6.1A; (polluter pays) (d) Part 6.2; (directions re petroleum) (e) Part 6.5; (NOPSEMA compliance and enforcement powers) (f) Schedule 2A; (NOPSEMA environment management inspection powers) (g) Schedule 2B; (NOPSEMA well integrity inspection powers) (h) clause 13A of Schedule 3; (well integrity duty) (i) Part 4 of Schedule 3 (OSH inspections)	

	(3) The following provisions apply as if a reference to a petroleum activity included a reference to an activity carried out for the purpose of complying with a petroleum remedial direction: (a) section 571, other than subsection 571(1); (financial assurance) (b) section 572C; (escape of petroleum titleholder's duty) (c) Schedule 2A. (NOPSEMA environment management inspection powers	
	Table - Page 51- 64 Modifications of specified provisions if remedial direction is in force Item 1 – section 280 (interference with other rights) Item 3 – section 571 (financial assurance) Item 5 – section 572C (escape of petroleum titleholder's duty) Item 6 – section 572J (escape of petroleum – migration) Item 7 – section 574B (directions outside of the title area) Item 8 – section 576A (directions for significant offshore petroleum incidents- definitions for Division 2A) Item 9 – section 576B (directions for significant offshore petroleum incidents--NOPSEMA power to give directions) Item 10 – section 576G (additional operation of this division – constitutional basis) Item 13 - Clause 2 of Schedule 2A (definition of ***regulated business premises***) Item 14 - Clause 2A of Schedule 2A (declared oil pollution emergency) Item 15 - Clause 5 of Schedule 2A (Environmental inspections--regulated business premises - Power to enter and search) Item 16 – Clause 7 of Schedule 2A (Environmental inspections - Requirement to provide assistance) Item 17 – Clause 8 of Schedule 2A (Environmental inspections--powers to require information, and the production of documents and things - Requirement to answer questions) Item 18 – Clause 9 of Schedule 2A (Environmental inspections--power to take possession of plant and samples etc.- Power to take possession or samples) Item 19 – Subclause 11(1) of Schedule 2A (Environmental do not disturb notices) Item 20 – Subclause 11B(2) of Schedule 2A (Environmental prohibition notices) Item 21 – Clause 13 of Schedule 2A (NOPSEMA report on inspection) Item 22 – Clause 2 of Schedule 2B (definition of ***regulated business premises***) Item 23 – Clause 5 of Schedule 2B (well integrity inspections - power to search and enter) Item 24 – Clause 7 of Schedule 2B (well integrity inspections power to require assistance) Item 25 - Clause 8 of Schedule 2B (well integrity inspections - powers to require information, and the production of documents and things - Requirement to answer questions) Item 26 – Clause 9 of Schedule 2B (well integrity inspections power to take possession of plant and samples etc.- Power to take possession or samples) Item 27 – Subclause 11(1) of Schedule 2B (well integrity inspections--well integrity do not disturb notices) Item 28 – Clause 13 of Schedule 2B (well integrity inspections--well integrity prohibition notices) Item 29 – Clause 18 of Schedule 2B (reports on inspections concerning well integrity laws) Item 30 – Clause 13A of Schedule 3 (OSH requirement – duty re wells) Item 32 – Subclause 76A(2) of Schedule 3 (OHS inspections--OHS do not disturb notices (notification and display) Item 33 – Subclause 77A(2) of Schedule 3 (OHS inspections--OHS prohibition notices (notification, display and compliance)	
	46 Application and transitional provisions (1 January 2021) (2) The amendment of section 14 of the Act made by this Schedule applies in relation to permits, leases, licences and authorities that ceased to be in force, in whole or in part, on or after 1 January 2021.	
3 – Applications and decision making	695YB - Matters to which a decision-maker must have regard.	
	Notification of events 695YC – Requirement to give notice if certain events occur. This section applies to applicants, a registered holder of a relevant title and a body corporate.	▪ Notification + additional scrutiny at certain titles applications stage – e.g. renewal, why have both? ▪ Why not have notification – then declaration at renewal? ▪ The appropriate timing and frequency of this requirement where possible should be linked to existing regulatory requirements. ▪ It should be recognized that the concern relating to suitability and security risk only arises as the remaining production in proportion to the liability goes down.

4 – Information gathering powers	Titles Administrator may require further information – re application for grant / renewal.	
	(Information gathering) for - variation, suspension and exemption – conditions on title.	DISER to clarify: • APPEA understand the need for the decision-making criteria to be a relevant line of enquiry on a variation, suspension, and exemption? • Will the fit and proper person test and ***approval period*** apply to variations, suspensions and exemptions? • Would a point in time assessment during a title period – be unreasonable considering the cyclical nature of commodity prices? ○ Could an adverse decision impact work program flexibility; will this precipitate more good standing arrangement – monies?
	Titles Administrator or NOPSEMA inspector may obtain information and documents.	

5 February 2021

Manager
Strategic Policy Section, Resources Division
Department of Industry, Science Energy and Resources
Submitted via email: [redacted]

Submission from the Australian Petroleum Production and Exploration Association on Enhancing Australia's decommissioning framework for offshore oil and gas activities – Consultation Paper

APPEA welcomes the opportunity to provide detailed feedback to the Department of Industry, Science, Energy and Resources (DISER) on the offshore decommissioning framework consultation paper.

APPEA and its industry members clearly recognise the importance of decommissioning, an issue that is critical for the industry to "get right", particularly in connection to the Australian community and our environment. As such, it is important for APPEA and industry to engage unreservedly and fully with government stakeholders to deliver a decommissioning regulatory framework that delivers outcomes that are both environmentally and socially sustainable and provide a clear, workable regulatory path for industry.

An important principle to uphold as the decommissioning framework is progressed is that there needs to be a clear separation of policy formation and guidance from compliance and enforcement activities. Policy formation must remain the responsibility of the executive arm of government, while the role of independent regulators to ensure compliance and enforcement should be transparent and separate.

Industry broadly accepts the principles enshrined in the DISER consultation paper, but notes the need to work through the detail with government to create an effective and actionable regulatory framework. APPEA and industry recognise that the need for reform is urgent and will commit to engaging openly in a timely manner to meet this goal. Going forward, the APPEA Decommissioning Committee and industry partners stand ready to assist government in the key areas of reform.

Attached is the APPEA response paper, developed in collaboration with our members, which represents industry feedback and a basis for continued discussion. APPEA and industry look forward to continued collaboration and cooperation with government on this important issue.

Kind regards,

[redacted]

Andrew McConville
Chief Executive

Enhancing Australia's decommissioning framework

For offshore oil and gas activities

Consultation Paper
December 2020

Submission from the Australian Petroleum Production and Exploration Association

Key Points

- Australian offshore oil and gas industry decommissioning costs are estimated at USD 38.9 billion. Opportunity exists to materially reduce this cost through smart regulation and industry cooperation.

- There is an opportunity to implement good regulations and formulate balanced policy that would reduce industry uncertainty and guide investment decision making.

- A coordinated, whole-of-government response to decommissioning is required to provide regulatory certainty for industry.

- APPEA supports improved government oversight of changes to company control that is tiered and risked based in its application.

- The entry of new, controlling interests in titles need to demonstrate technical and financial capability with sound corporate governance.

- Financial assurance must be flexible and a tiered approach used that considers a titleholders' financial status.

- The utilisation of the UK regulatory model that refers to financial assurance provisions in Joint Venture Agreements is supported by APPEA.

- The use of a field development plan as a long-term decommissioning planning tool is supported, however details of application and interaction with other regulatory processes need resolving.

- APPEA considers the early and pro-active use of directions as sub-optimal because it creates uncertainty for titleholders for long-term decommissioning planning.

- Public reporting of decommissioning needs to consider existing reporting requirements.

- APPEA recognises the need for government to protect itself and the broader community in the rare instances where a titleholder is unable to fulfil its

decommissioning obligations. APPEA believes that the implementation of a robust compliance framework should preclude the need for a trailing liability.

- APPEA considers that a title holders release from liability should be available if a titleholder has discharged its decommissioning obligations and post-decommissioning monitoring to the satisfaction of the regulator.

- Taxation outcomes should be considered as consequential to decommissioning, particularly in consideration of the deductibility for both income tax (company tax) and petroleum resource rent tax.

- APPEA and its members have a strong desire to work quickly with government to finalise and implement petroleum decommissioning reform in Australia.

Executive Summary

Petroleum decommissioning can be a technically complex and costly exercise that requires strong alignment between the objectives of government as the owner of the resource and industry as the developer of the resource. At the end of a petroleum facility's life, the objective must be to ensure that the facility is decommissioned in a manner which:

- is funded by the owner(s) of the facility;
- has a proper regard for safety, the environment and potential socioeconomic impacts to other users of the sea or land;
- is flexible enough to allow the implementation of decommissioning solutions that are technically feasible, cost effective, suitably paced and socio-economically prudent; and
- ensures that risk to the environment is reduced to a level that is as low as reasonably practicable and acceptable, so that the environment in which the activity is undertaken is maintained and / or enhanced for the benefit of future generations.

Decommissioning planning needs to be considered throughout the life of a facility, with increasing detail as the facility comes closer to ceasing production. Decommissioning planning needs to consider the balance between premature production cessation and the associated stranded resource with the time required to prepare effective and efficient decommissioning plans. Detailed decommissioning plans for larger, more complex facilities may take years to prepare.

APPEA acknowledges and largely agrees with the DISER consultation paper's assessment that the legislative framework is broad enough to accommodate a maturing industry (page 3) but that there is a need to enhance the regulatory framework.

APPEA is broadly supportive of the key principles in the DISER consultation paper. A summary of our high-level response to these principles is as follows:

1. Financial Oversight

APPEA supports changes to the *Offshore Petroleum and Greenhouse Gas Storage Act* (OPGGSA) that will enable improved government oversight of financial/technical capability throughout the life of an asset. To minimise regulatory burden, measures should be applied using a risk based or tiered approach, accounting for a titleholder's operating history and financial strength. This will also enable the application of regulator resources to areas of highest risk.

2. Planning and Management

APPEA generally supports the introduction of mandatory review periods and supports earlier engagement with regulators using the Field Development Plans (FDPs) as a long-term planning basis for 'development through to decommissioning', which will aim to drive improved decommissioning outcomes. However, more detail is needed to fully understand how these changes will be applied in practice and interact with the Environment Plan (EP) permissioning process.

3. Accountability & Trailing Liability

APPEA considers that the issuing of "early" and "proactive" prescriptive directions is not the optimal solution because it increases uncertainty for titleholders in their long-term planning for decommissioning. Although supportive of industry transparency, further clarification on public reporting and public comment periods is needed and on how it would apply. Recognising government's strong desire for a trailing liability mechanism, APPEA believes the implementation of a robust compliance framework for late life assets, particularly applied to transfers, dealings and maintenance of late life assets, can be designed and implemented in a manner that would preclude, in most all but the most extraordinary circumstances, the need for any trailing liability.

In addition to the principles outlined previously, APPEA considers there are a number of corresponding issues, not raised in the DISER consultation paper that need consideration. Principally, the absence of discussion on taxation and that the cost of decommissioning will proportionally be borne by the Australian Government and taxpayers through the deductibility of such costs for income tax purposes. Other issues include complete removal, leave in place (or somewhere in between) and separating / clarifying policy determination from regulation.

APPEA and its industry partners stand ready to assist and collaborate with Government to finalise and implement decommissioning reform and would be keen to establish with government a road map for completing tasks within a suitable and achievable timeline.

Contents

1. Introduction

Petroleum decommissioning can be a technically complex and costly exercise that requires strong alignment between the objectives of government as the owner of the resource and industry as the developer of the resource. These objectives relate to:

- Enabling appropriate and efficient access to Australia's oil and gas resources for development that can benefit the Australian economy in terms of investment, jobs and taxation revenue;
- Supporting energy security for the nation through the responsible development of Australia's substantial energy resources;
- Enabling the sale and purchase of oil and gas assets which provide opportunity for the optimum recovery of the oil and gas resources;
- Enabling the right behaviors and risk allocation between asset owners and former owners;
- Ensuring that the impacts of resource extraction on the environment and other users of the sea are responsibly managed;
- Minimising financial exposure to the Australian government for decommissioning costs;
- Ensuring, at the end of asset life, that the asset is decommissioned in a manner which:
    - is funded by the owner(s) of the asset;
    - has a proper regard for safety, the environment and potential socioeconomic impacts to other users of the sea or land, including host communities;
    - is flexible to allow the implementation of decommissioning solutions that are technically feasible, cost effective, suitably paced and socio-economically prudent; and
    - ensures that risks to the environment are reduced to As Low As Reasonably Practicable (ALARP) and acceptable so that the environment in which the activity is undertaken is maintained and / or enhanced for the benefit of future generations.
- Ensuring the decommissioning solutions implemented provide confidence to all relevant stakeholders in the safety of asset management;
- Ensuring new, safe and cost-effective decommissioning technologies and strategies may be applied; and
- Ensuring all decommissioning activities undertaken are consistent with Australia's international environmental obligations.

1.1 About APPEA

The Australian Petroleum Production & Exploration Association (APPEA) is the peak body representing Australia's oil and gas explorers and producers. Our members account for nearly all of Australia's upstream oil and gas exploration and production.

APPEA is committed to working with government and all stakeholders to develop and implement the best decommissioning framework with regard to the objectives of the key stakeholders, e.g. governments, oil and gas exploration and production companies and other offshore industries (e.g. fishing).

Engaging with all stakeholders throughout this process supports APPEA's number one strategic objective of promoting excellence in the environment, safety, health and community engagement.

APPEA and its members understand the vital importance of environmental management and see effective decommissioning as an integral part of this commitment. Effective environmental management is also important in protecting the industry's reputation and maintaining a social license to operate.

1.2 Background – Petroleum Decommissioning in Australia

While timeframes will vary, much of Australia's decommissioning is expected to take place from 2020 through to 2040. Recent work completed by Advisian on behalf of industry partners and the National Energy Resources Australia (NERA) forecast decommissioning over the next 50 years for the nationwide offshore oil and gas industry is USD 38.9 billion. The liability distribution by asset type and basin is shown in Figure 1. The estimated timeline of decommissioning spend is shown in Figure 2 (cumulatively).

The key outcomes of the liability assessment by Advisian concluded:

- Wells P&A is a high proportion of decommissioning spend at 43% (USD 16.6 billion) of the overall liability. There is an even split between subsea development and platform well spend.
- The baseline liability premise of full removal results in a high cost of decommissioning for pipelines / flowlines / umbilicals (35% of the overall liability). This cost is primarily driven by removal cost of long-distance export pipelines to shore (22%, USD 8.6 billion).
- Approximately 51% of the decommissioning liability occurs in the next 10 years (2020 to 2030 inclusive). A further 22% of the liability is predicted during 2031 to 2040 (73% overall by 2040).
- Assets in North Carnarvon and Gippsland comprise the majority of the spend (73% in total).

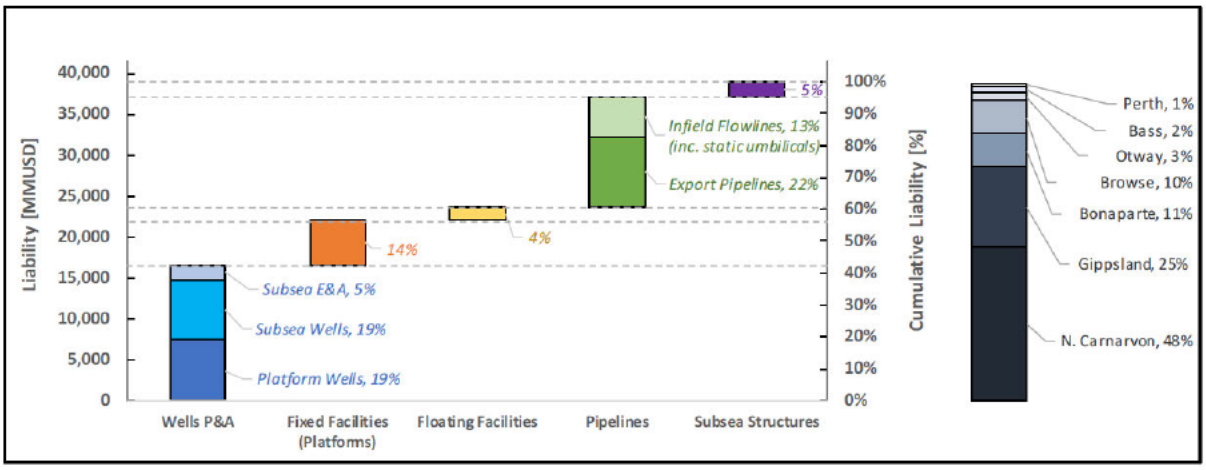

Figure 1: Australian offshore oil and gas decommissioning liability by asset typology

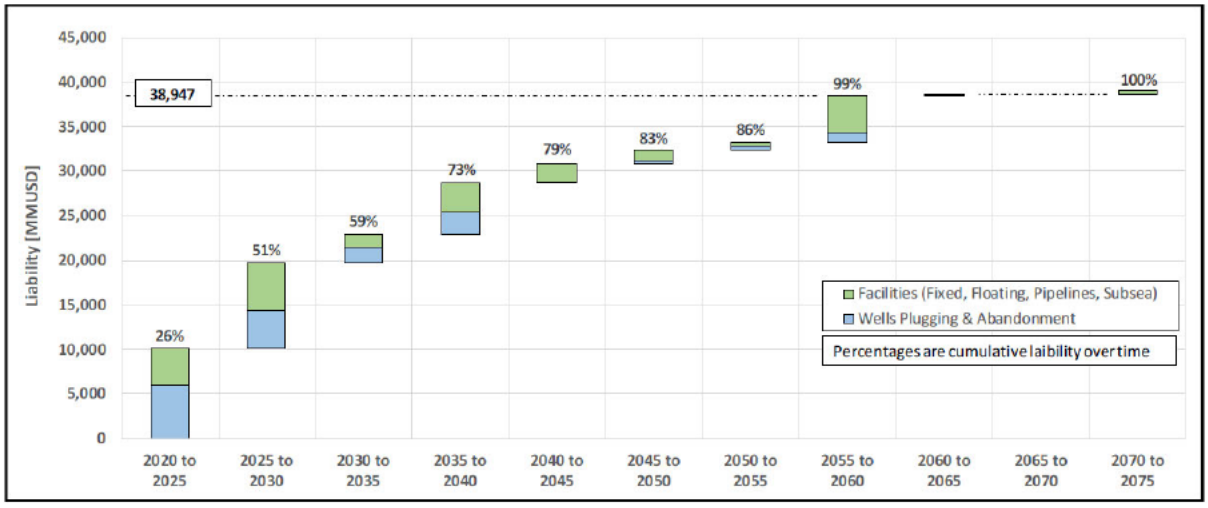

Figure 2: Australian offshore oil and gas decommissioning liability timeline

2 General Comments and Insights

2.1 Importance of regulatory certainty

One of the key objectives of this consultation process is to ensure that the framework "*maintains Australia as an attractive globally competitive investment destination*". APPEA acknowledges that the Consultation Paper considers ways to better manage government financial exposures and environmental risks. However, uncertainty about the proposed fiscal, commercial and/or tax treatment of certain expenditure – for example, the Consultation Paper flags financial assurances and trailing liabilities as potential options but stops short of understanding the financial or taxation implications that will follow – only adds to overall industry uncertainty. This uncertainty may inhibit Australia's ability to attract scarce and mobile investment capital to the industry and so decisive and collaborative action to finalise the framework in a timely manner is needed.

An additional factor highlighted in the Consultation Paper that raises uncertainty is the proposal for backdating any legislative measures. Without detail provided to explain what measures are proposed to be backdated, it is very difficult for industry to estimate the impact on investment.

It is important that this process keeps the Government's deregulation agenda in focus. The importance of good regulations and the formulation of good balanced policy was again addressed by the Honourable Ben Morton in his address to the Business Council on 2 October 2020 where it was highlighted that[1]:

- "Good regulation is critical to making Australia one of the best countries in the world to live, and ensuring Australia has a well-functioning economy, society, environment and democracy."
- "Poor regulation is a 'job-killer' that has no redeeming features. It inhibits consumer choice, business innovation and investment, and jobs growth."
- "Poor regulation, regulation that is unnecessary, poorly designed or implemented imposes costs more than any benefits, inhibits business investment and the creation of jobs, and is a brake on productivity, undermining the prosperity of Australia."

2.2 A Coordinated and Whole of Government Response

Plans for decommissioning must take into account a combination of factors – safety, technical, environment, cost (including timing), socioeconomic and resource management. APPEA is concerned that the current regulatory framework for decommissioning does not allow non-environment factors to be considered when deciding upon decommissioning activities. This creates the risk that decommissioning options are constrained by the existing regulatory framework, to the detriment of reaching the 'optimal' outcome for each particular case. The Consultation Paper is silent on this issue. APPEA considers that there is a 'missed opportunity' to reform the framework so that it provides for the 'optimal' outcome for all stakeholders, striking the necessary balance for government, industry, other marine industries and taxpayers.

APPEA notes that in the past year there has been a number of guidelines and papers released for consultation, relevant to decommissioning reform, where it is unclear how these guidelines and papers interact with one another. These guidelines and papers include:

- NOPSEMA Section 572 Policy – Maintenance and Removal of Property, issued in October 2020.
- NOPSEMA intention to create ageing assets and life extension guidance note, comments closed December 2020.
- The DISER Proposed Measures for Improvements to Commonwealth Petroleum Titles Administration.
- The DISER Decommissioning Consultation Paper, issued in December 2020.

APPEA's position on each of the three NOPSEMA and DISER documents is discussed below and attached as **Appendices 2 - 4**. While APPEA has provided feedback on each of these two documents individually, our concern is that a disjointed framework between NOPSEMA and the Government may arise. It is essential that industry and government are clear and

[1] See https://ministers.pmc.gov.au/morton/2020/morrison-governments-deregulation-agenda

aligned on expectations and detail around the role and functioning of NOPSEMA in the newly designed framework.

Beyond the financial assurance and liability aspects of the Consultation Paper, it is not clear to APPEA that the relevant departments/agencies responsible for the broader finance and economic aspects of the framework – The Treasury, Department of Finance, and the Australian Taxation Office – have been engaged in the development of the framework.

The need for a whole-of-government approach is highlighted by the fact that the cost of decommissioning will proportionally be borne by the government through the deductibility of such costs for income tax purposes and, for some projects, PRRT purposes. This is reflective of the investment settings that preceded the investment boom of the past decade which saw in excess of $350 billion invested into the industry, which created thousands of employment opportunities, supported the development of regional Australia and now making long term contributions to Government revenues.

Furthermore, as highlighted in the Government's PRRT Review Final Report ("Callaghan Review) dated 13 April 2017 recommendation 3 stated:

> *"Under the PRRT, closing down expenditure is a recognised category of deduction, which may be refunded to the limit of past PRRT payments.* ***The implications for PRRT revenue should be taken into account in the current review of the policy and legislative framework for the decommissioning of projects in Commonwealth waters being undertaken by the Department of Industry, Innovation and Science. (emphasis added)***

APPEA would support a whole-of-government approach being taken to the decommissioning framework and consultation process. This would enable a clearer and more coordinated approach from government on decommissioning. APPEA recommends that a decommissioning framework implementation roadmap, with prioritised actions, specified progress milestones and deliverable dates, be created. Such a roadmap would substantially reduce the current uncertainty around the decommissioning framework.

Implementation

APPEA and its members are committed to working with government to align on a regulatory framework that considers all aspects of petroleum activity related to decommissioning and to develop a decommissioning framework implementation roadmap, with specified progress milestones and dates.

3 Financial Oversight

3.1 Changes in Company Control

APPEA supports changes to the OPGGSA that will enable improved government oversight of financial/technical capability throughout the life of an asset including the financial capacity to complete necessary decommissioning activities.

Given the importance of a robust and secure titles administration framework to industry for future and ongoing petroleum operations, APPEA requests that government approach these changes with caution. In particular, APPEA stresses the following issues also need to be carefully considered by government:

- The need for a detailed regulatory impact statement by government so that any potential unintended consequences can be identified and managed.
- A regime that changed title conditions during the term of a title cannot be supported by APPEA.
- Potential for an unjustified increase in compliance and regulatory burden to industry if the proposed changes are not introduced with care.
- A change to ownership to a part owner of a petroleum title should only trigger review relevant to that transaction and not trigger review to other registered title holders.
- Any review of a titleholder's financial assurance is undertaken per titleholder (with regard to corporate group arrangements), rather than undertaken multiple times for every title held, and recognises the participating interest of titleholders where such interests exist.
- Clarity is needed on information to be gathered by regulators when considering financial assurance and operator suitability, that is, information needed to fulfill the decision-making criteria described in the proposed measures.
- Any additional financial information required should leverage that which is already prepared by title holders, such as annual reports.
- Potential impacts to statutory assessment timeframes on additional information requests for title transactions.

To minimise regulatory burden, APPEA suggests that the proposed measures should be applied using a risk based or tiered approach, accounting for a titleholder's operating history and financial strength, with a focus on operators who are deemed to be higher risk. More importantly, this will enable the application of regulator resources to areas of highest risk.

Implementation

APPEA and members seek to work with government on drafting of proposed changes to the Act, RMA Regulations and the Guideline for Transfers and Dealings related to Petroleum Titles, to ensure that the changes are delivered without unintended consequences.

3.1.1 Decision Making Criteria for new Title Entrants

The transfer of controlling interests in titles, particularly for "late life" assets is a process that should be subject to robust fit-for-purpose controls by the regulator (NOPTA and NOPSEMA). The regulators must be satisfied the proposed new (transferee) company has the capacity to participate fully in titleholder operations and discharge its technical and financial obligations. The requirements must include:

- **Technical capability**
  All transferees must demonstrate their ability to meet the requirements for operations within the framework of the title. This includes having the suitable technical and managerial ability and management systems in terms of experience and staff numbers to satisfactorily carry out the functions and discharging the duties under relevant statutory provisions.

- **Corporate governance**
  The regulator expects the corporate governance arrangements of all transferees to

be commensurate with their titles and tenure portfolio in terms of the petroleum lifecycle, the nature of operations and whether the underlying assets are operated or non-operated. Transferees must satisfy themselves that their governance arrangements are appropriate: the regulator may assess these provisions, should circumstances dictate, and may request evidence to this effect or request changes as appropriate.

- **Financial viability and financial capacity**
  Transferees must meet certain financial criteria to demonstrate that they have the financial capability to exercise the exclusive rights granted under the title and that the transferee has the financial and technical capacity to ensure that all decommissioning costs and liabilities can be met. Financial assurance, for both potential new title entrants and existing titleholders, is discussed in Section 3.2.

3.2 Collection of Financial Information

The paper introduces the requirement for title holders to include financial information, in Annual Title Assessment Reports (ATR's), however, does not expand on the type of financial information that would be required to be provided. Further detail is needed to enable an understanding of this requirement, including a comparison to the administrative work that would result from financial information being required within annual title reports.

3.3 Assurance

Within the consultation paper, tangible forms of financial assurance such as bonds and securities are proposed 'where required by NOPSEMA', however the paper does not include detail on the triggers for when these forms of financial assurance would be required. The paper states that insurance policies may not be an acceptable form of financial assurance under the revised framework, however does not detail what alternatives may be acceptable.

A "Financial Assurance" model is proposed, which is developed on a Tiered Financial Assurance security basis as outlined in Sections 3.3.1 and **Appendix 1** as an approach that would ensure that adequate resources are available to meet decommissioning obligations.

For example, under the Tiered Financial Assurance model, a titleholder with a strong credit rating and sufficient balance sheet strength (Tier 1 entity) would not have to provide additional financial assurance security as long as they retained that status.

The consultation paper proposes that enforcement of this expanded duty would be the responsibility of NOPSEMA. Clarification is sought as to how NOPSEMA would resource implementation of this requirement with appropriately skilled and experienced personnel. We have suggested in Section 3.1.3 that consideration could be given to use of a third-party trustee to validate that a titleholders proposed financial assurance security is appropriate.

APPEA supports a responsible, balanced, predictable, and equitable financial assurance program. Registered holders who obtain titles should have the financial capacity to address, on a realistic timeline, all obligations legally assumed or created. Within joint ventures, current and former titleholders should commercially resolve provision of financial assurance amongst themselves in the first instance (with regulatory intervention only where not

acceptable). Assurance should be ongoing through the life of an asset with the timing and frequency of this requirement linked to existing regulatory requirements or key operating milestones.

The proposed framework appears focused on the protection of government interests only. In a multi-party joint venture arrangement each partner is severally and jointly liable for abandonment and decommissioning costs and therefore strongly motivated to ensure that adequate financial resources are available to meet these costs. The proposed framework appears to ignore this primary liability of the joint venture by having NOPSEMA assess the liability and then determine and hold the assurance which may lead to an outcome where it can only be accessed if the work is not completed. A solution that is more integrated with the industry and its existing operating practices and the governing regulatory and commercial arrangements is required to avoid duplication, administrative burden, additional financial cost and the likely resulting underinvestment in the petroleum industry. This requires a solution that effectively reflects and protects both the interests of government and multiparty joint venture arrangements.

APPEA agrees that there must be ongoing assessment of compliance with conditions that require titleholders to provide demonstrable evidence of their ability to fund decommissioning obligations as described by the company. It is also appropriate for there to be a tiered approach such that additional evidence or assurance is required for titleholders who are in the opinion of the regulator considered to be higher risk. Such an approach would help to reduce overall regulatory compliance requirements. Additionally, APPEA supports the establishment of clearer statutory requirements relating to provision of financial security for decommissioning. The Government may seek strengthened assurance requirements based on an assessment of a company's operating history, credit rating and an independent assessment of financial capacity. The framework should also account for the experience of a company, the complexity of the activity and support the company establishing the most appropriate form of security with reference to its own operations, balance sheet and existing or potential financial resources.

APPEA recommends that in developing a financial assurance model for decommissioning Government carefully examine models from countries with similar legal and legislative foundations, for example the UK Decommissioning Security Agreements (DSA). APPEA suggests that this examination would critically appraise frameworks in these regimes, noting that no established regime is perfect, and strive to identify and adapt positive learnings from these regimes while also recognising the unique local regulatory and commercial circumstances. Government may also wish to consider the financial assurance measures that exist in many oil and gas projects Joint Venture Operating Agreements (JVOAs) as useful models.

3.3.1 Approaches to Financial Assurance should be Flexible

A flexible approach to the provision of financial assurance should be maintained, which would apply equally and severally for titleholders. Providing titleholders with flexibility in terms of the mechanisms by which they must demonstrate financial capability (in addition to the requisite technical capabilities) to manage decommissioning liabilities is the favored approach by APPEA.

APPEA supports a transparent process to ensure all titleholders can manage their financial obligations throughout the life of an asset at key milestones and considers that titleholders should have responsibility for assessment and provision of financial assurance given they have joint and several liability for decommissioning costs that typically involve multi-party joint ventures with differing participant financial capabilities.

Government should develop financial assurance standards and expectations that build upon established provisions in JVOAs and intervene only if titleholders are not in compliance, notwithstanding government due diligence roles in the issuance of new titles, title transfers, etc.

Modern JVOAs typically set out the process for periodically assessing titleholder abandonment and decommissioning obligations and assessing and determining appropriate financial assurance to manage the joint and several liability risk amongst joint venture participants. APPEA considers that older JVOAs could be readily updated with modern decommissioning and abandonment security provisions or via separate decommissioning financial security agreements (DFSA).

Such agreements should include provision for security to be managed by an independent trustee. In addition (subject to an understanding of how best to implement under Australian law), provision could made to include the regulator as a beneficiary of the arrangement in the event of the failure of titleholders to undertake this activity in accordance with the agreed terms.

Utilising and enhancing the industry's JVOA framework would ensure adequate resources are available to meet decommissioning obligations and avoids duplication of securities, inefficiency and cost that would arise if the regulator determined the credit risk exposure of each participant and joint venture participants took a different view. Stronger joint venture participants would naturally seek additional security from participants to cover their joint liability exposure or indemnity from the regulator for any credit risk assessment misalignment.

The establishment of financial and technical assurance provisions is an important mechanism for ensuring that the Government and the Australian community are not unnecessarily burdened in the event of a titleholder having insufficient capacity to decommission an asset.

APPEA believes mechanisms to demonstrate financial assurance capability should be based on:

- Minimising the impact on existing cash flows;
- Not impairing the ability to fund future developments; and
- Allowing flexibility and recognising the varying financial capacity of titleholders and multi-party joint venture participants to provide financial assurance.

The form of financial assurance utilised should be at the discretion of the titleholder and managed within a JVOA and agreed with the regulator based on Government's financial assurance standards and expectations and could include a combination of:

- An acceptable credit rating from an acceptable financial rating provider (i.e. Standard & Poors) to demonstrate financial capacity;
- Provision of financial statements demonstrating net worth or some other specified financial measure relative to the decommissioning obligation;
    - i.e. Net assets (excluding goodwill and intangibles), of a suitable multiple of the decommissioning cost estimate, to ensure sufficient funds would be available under potential future price or cost scenarios.
- Related party corporate guarantee from an entity with an acceptable credit rating and or provision of group financial statements demonstrating net worth or some other specified financial measure relative to the decommissioning obligation;
- Bank guarantee from an acceptably rated bank or financial institution;
- Cash Deposit; and
- Insurance Surety Bond from an acceptably rated provider.

Appendix 1 provides for an example financial assurance model, that could be utilised within a JVOA or DFSA. APPEA would also note that Australian petroleum reserves are discounted at 10% and decommissioning costs are not presently discounted. APPEA considers that in the absence of decommissioning costs discounting the provision of financial assurance could be dramatically larger when compared to the UK DSA, where both reserves and decommissioning costs are discounted at a low rate.

Implementation

APPEA and its members would strongly welcome the opportunity to work with Government on approaches to financial assurance, having regard to the template outlined in **Appendix 1** as a possible approach.

4 Planning and Management

4.1 Decommissioning planning and resource management

APPEA notes that Field Development Plans (FDPs) are accepted by the regulator early in a development life cycle and currently require revision and resubmission only when certain conditions change. APPEA generally supports the introduction of mandatory review periods and supports earlier engagement with regulators using the FDPs as a long-term planning basis for 'development through to decommissioning', which will aim to drive improved decommissioning outcomes. However, as the Consultation Paper presents the proposed changes at a very high level, insufficient detail is available for a titleholder to fully understand how these changes will be applied in practice. For example:

(i) there is significant uncertainty in FDP content, including how content of FDPs will be used to support alignment on decommissioning plans;

(ii) FDPs are currently considered on a title by title basis: any enhanced use of FDPs should provide the flexibility to evaluate FDPs across interconnected development and production activities in order to allow optimum resource recovery across multiple titles; and

(iii) The level of detail that is available around specific approaches to an asset's decommissioning will become clearer over time and closer to cessation of production: requirements for providing information during the course of FDP updates should therefore recognise this.

In enhancing the use of the FDP, further explanation will be required as to how the FDP, used as a long-term planning basis that includes decommissioning planning, would complement the Environment Plan (EP) which APPEA sees as continuing to be the key execution permissioning document for undertaking decommissioning activities. Understanding the interaction between a FDP and EP will help to define the processes between the regulatory agencies responsible for assessing these plans (NOPTA and NOPSEMA) given the different planning timeframes to which each document relates.

While APPEA acknowledges that the EP remains the key execution permissioning document for decommissioning activities, as set out in the Consultation Paper, APPEA believes that the FDP provides a more appropriate framework for demonstrating compliance with Section 572 of the OPGGSA in conjunction with other titleholder responsibilities that are already specified in the RMARs, namely that the accepted Field Development Plan, amongst other things:

> *"demonstrates that the person will conduct pool management in the field in a manner that is:*
>
> *(i) consistent with good oilfield practice; and*
>
> (ii) *compatible with optimum long-term recovery of the petroleum"*
>
> *(Resource Management and Administration Regulations reg.406(1)(b)*

Decommissioning considerations are broader than just an assessment of environmental criteria: by being limited to environmental criteria, an EP does not allow a titleholder to present a holistic assessment of decommissioning alternatives that includes consideration of the varied decision criteria that extend beyond environmental risk. By contrast, the FDP does provide such a means for a holistic assessment on a long-term planning basis.

Governments should also account for inter-jurisdictional requirements around decommissioning planning. Mechanisms for oversighting decommissioning planning should be aligned between the Commonwealth and the States. Information on decommissioning plans provided in an FDP also needs to be flexible enough to facilitate opportunistic activity scenarios, such as those created by Vessels of Opportunity.

Implementation

APPEA and its members wish to work with Government on the proposed changes to the RMA Regulations and supporting FDP policy material to reflect matters such as, for example, field interconnectedness; the level of decommissioning planning expected at various stages of a field's life cycle; others as identified, to support long term decommissioning planning dialogue between Government and titleholders.

5 Accountability and Trailing Liability

5.1 Early and Proactive use of Directions

APPEA agrees with the principle as presented in the discussion paper of the "value of using regulatory tools that ensure decommissioning obligations are clear and fit for purpose." To this end, APPEA recommends an objective risk-based assessment is applied to decommissioning applications, not prescriptive isolated assessment and decisions. APPEA considers that the issuing of "early" and "proactive" prescriptive directions is not the optimal solution, increases uncertainty for titleholders in their long-term planning for decommissioning and does not guarantee a holistic outcome to meet overall Government decommissioning objectives.

The timeframe for decommissioning should be determined by titleholders through the use of risk-based analysis, in close consultation with regulators. If a timeframe were imposed (via a "remedial direction") this may increase the risk associated with completing the works due to limiting the time available for planning or due to lack of suitable equipment. A mandated timeframe is also likely to significantly increase costs due to mobilization costs and by not capitalizing on economies of scale. Additionally, remedial directions for decommissioning may be incompatible with the potential long lead times required to support decommissioning activities such as specialty decommissioning vessels, rig sequencing and environmental approvals.

The consultation paper proposes that remedial directions are used to enable post-decommissioning monitoring. The example provided is that following the plugging of a well, a direction could require the monitoring of the plugged well to ensure there is no leakage into the marine environment, prior to or after the surrender of a title. Generally, current practice is that following well plug and abandonment, which is undertaken in accordance with an approved Well Operations Management Plan (WOMP) the wellhead is removed as part of the same campaign. The enforcement of monitoring via remedial direction could require the wellhead to stay in place, requiring a subsequent rig campaign to remove the wellhead, post completion of monitoring period. This change would introduce a significant additional cost to the titleholders and APPEA questions whether the monitoring period is necessary, if well plugging has been completed in accordance with the approved WOMP and coupled with the expanded trailing (or long-term) liability provisions detailed in the consultation paper which would require titleholders to be called back in the unlikely event of a future well issue.

Furthermore, APPEA questions whether the proactive use of remedial directions to enable post decommissioning monitoring is required, given that as per the NOPSEMA Section 572 Policy, EPs covering decommissioning activities are already required to 'address arrangements for long-term monitoring and management'. NOPSEMA has existing graduated enforcement mechanisms in place to address non-compliance with permissioning documents, should a titleholder not undertake the agreed post decommissioning monitoring requirements (which may include remedial directions). The Section 572 Policy also states that long term monitoring requirements may also be a matter taken into account when the Joint Authority considers surrender of titles, an issue previously raised in the APPEA submission during consultation on the Policy (provided in the Appendices). APPEA considers that the current mechanisms are sufficient to ensure titleholders meet post

decommissioning monitoring requirements, without adding additional compliance monitoring activity.

Implementation

Instead of prescriptive isolated assessments and directions, APPEA recommends the use of the FDP as the best process for government and the titleholder to manage long-term decommissioning planning. Refer to our comments in Section 4 above.

5.2 Public Comment and Transparent Reporting

APPEA notes the discussion paper recommends transparency measures that include opportunities for public comment, specifically:

- A public comment period on decommissioning environment plans that seek NOPSEMA's acceptance.
- Public reporting of environmental performance once a petroleum activity is underway. (APPEA notes that this proposed measure appears to be for all petroleum activities and not only decommissioning activities.)
- Publication of 'close-out' reports once an activity has been completed, to NOPSEMA's satisfaction.

Clarification is needed on the public reporting and public comments periods contemplated, with a need to define what decommissioning activities it will be applied to. APPEA supports the existing requirements (Environment Regulation 26C) for titleholders to provide a decommissioning close-out report to the regulator, to give clarity and assurance that decommissioning has been fully completed in accordance with the terms of the title and Environmental Plan but this should also link to the satisfaction of decommissioning obligations. Also, it is not clear what objectives are being met to issue close-out reports to the public if the regulator (NOPSEMA) has already determined that the activity has been acceptably closed-out. These reports are currently detailed, technical in nature and may contain confidential information. Redacted or modified versions are likely to cause more issues with the public.

APPEA notes that NOPSEMA currently require operators to add decommissioning information to existing operations-based environment plans as part of mandatory five yearly environment plans resubmissions. Given the legislative measures introduced by the paper are to be backdated to 14/12/2020, APPEA seeks clarification as to whether this requirement would extend to these operations-based environment plans that include a decommissioning section. If not, is Government contemplating a separate public consultation mechanism?

Implementation

APPEA and its members wish to work with Government on proposed changes to the RMA Regulations that ensure that the public has confidence in the performance of Government and industry.

5.3 Trailing Liability

APPEA recognises the intent of Government to protect itself, taxpayers and the broader community to consequences where a titleholder is unable to fulfil its decommissioning obligations.

As a matter of principle APPEA does not support trailing liability because it is not reasonable for former titleholders to be liable for the actions of subsequent titleholders following a title transfer, as they cannot control future maintenance practices or other operational decisions. Further, APPEA considers that there is a potential risk that it could trigger substantial accounting liabilities being recognized by the seller on or post divestment of an asset.

APPEA believes the implementation of a robust compliance framework for late life assets, particularly applied to transfers, dealings and maintenance of late life assets, can be designed and implemented in a manner that would preclude, in almost all but the most extraordinary circumstances, the need for any trailing liability. There are risks similar to those identified above regarding joint and several liability if the regulator becomes involved in assessing and determining the form of financial assurance. This will result in significant additional complication in structuring agreements that now involves additional parties with competing risks and exposures. The risks are that multiple, competing, overlapping forms of assurance may be required by different parties resulting in inefficiency and significant cost to the industry and potentially suboptimal development of resources.

Nevertheless, APPEA recognises the Government's intent and notes that there are trailing liability mechanisms in place in other jurisdictions. Therefore, if a trailing liability mechanism were to be introduced, it should only be considered as an option of "last resort" after all options available to the regulator have been exhausted. Such a mechanism should only be introduced in conjunction with a comprehensive and robust financial assurance framework. If introduced, it should ensure that:

- any liability of a former titleholder is limited to its previous participating interest and should only apply for infrastructure that was installed before the transfer took place; and
- the 'chain' of liability should start with the current titleholder and proceed sequentially backwards, with each titleholder only being liable for the work they completed.

In the event a prior titleholder is "called back" to fulfil decommissioning obligations of the existing titleholder, they should have full access to any financial security that has been provided, as well as Petroleum Resource Rent Tax benefits accrued during ownership. The regulator should also provide documentation to the prior titleholder of the relevant financial and technical assessments conducted prior to the trailing liability determination being made.

The paper states that 'Stakeholders should be aware legislative measures are proposed to be backdated to be effective from 14 December 2020'. APPEA does not support the measures being backdated, as the measures and changes presented in the paper are not provided at a level that is sufficiently detailed to enable operators to have a clear understanding of requirements from the date that the paper was released.

A trailing liability mechanism, if implemented by Government, should not apply retrospectively and should only apply to transactions made after an agreed date established by government upon the adoption of this policy. After that date a transaction may, if considered absolutely necessary by government and the regulator, have a trailing liability associated with it.

Implementation

APPEA and its members wish to work with Government, as a matter of priority, to determine workable "last resort" trailing liability arrangements. In particular, the suitability of an application of a standing obligation or an expansion of existing provisions.

5.4 Post Title Surrender Liability

APPEA is concerned at the Consultation Paper's proposal to expand the use of existing powers to 'call back' any former titleholder to include the ability to call back companies who have been given consent to surrender the title by the Joint Authority. Such a proposal increases uncertainty for the industry because it would effectively mean that any surrender arrangements specified by Government can be changed at any time in the future.

APPEA considers that release from liability should occur once a titleholder has discharged petroleum activities (including decommissioning activities and any required post-decommissioning monitoring) to the satisfaction of the regulator. If the proposed decommissioning involves some property remaining in-situ, the impacts and benefits of property proposed to be left in the marine environment would need to be justified against ALARP principles and acceptability criteria.

APPEA notes that the principle for ending a titleholder's liability post-title surrender already exists in the carbon capture and storage part of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA).

Implementation

APPEA wishes to work with Government to ensure that surrender of titles protects the environment and provides certainty to future potential investors.

6 Additional Matters Relevant to the Decommissioning Framework

APPEA notes that the Consultation Paper does not address the taxation implication of the policies proposed. APPEA acknowledges that there is a reference to the PRRT at page 11 of the Consultation Paper. However, the reference simply highlights the interconnectedness between the PPRT regime and the decommissioning regulatory regime and does not provide any fiscal, commercial or taxation certainty.

It was recognised in the Callaghan review that any changes to decommissioning requirements coming from this review should take into account that onerous closing down

requirements will significantly affect PRRT revenue.[2] As such, the Government committed early on (see The Interim Government Response to the PRRT Review) that it was open to Recommendation 3 and stated that it would be taken into consideration as part of any Departmental review of the Decommissioning Framework.

Taxation outcomes should not be considered consequential to the broader framework being developed and the Consultation Paper does not appear to have taken Recommendation 3 into consideration. The cost of decommissioning will proportionally be borne by the Australian Government and taxpayers through the deductibility of such costs for income tax purposes and, for some projects, PRRT purposes.

The net cost to the taxpayer for every dollar spent for decommissioning will be 58 cents if that cost is deductible for both income tax (30 cents in the dollar) and PRRT purposes (net 28 cents in the dollar). Whilst not every dollar of decommissioning will be deductible for both income tax and PRRT purposes, a significant proportion of decommissioning costs are likely to be borne by taxpayers through taxation relief.

If we assume 100% deductibility for income tax and a 50% deductibility for PRRT, the Advisian estimate indicates that the taxpayers share of offshore decommissioning costs will be approximately AUD$24 billion with 51% of this cost to be borne by taxpayers over the next 10 years. Alternatively, decommissioning savings achieved will deliver a return to the taxpayer of between 30 and 58 cents in the dollar whilst decommissioning delayed will provide a return to taxpayers equal to the time cost of the 'tax expenditures' deferred.

6.1 Taxation Implications - Financial Assurances

Taxpayers should be allowed an income tax and PRRT deduction for the cost of providing financial assurance.

However, the PRRT legislation is not clear as to whether these costs would be deductible. Therefore, APPEA recommends the PRRT legislation be amended to clearly provide a PRRT deduction for the service and establishment costs of providing financial assurance.

6.2 Taxation Implications - Remedial Directions

As part of Recommendation 4 from the Callaghan review, it was noted that there are problems with the ATO's interpretation and treatment of partial closing down expenditure. It recommended that where the issue could not be resolved by the ATO that a legislative fix would be required. To date, this issue is yet to be resolved as it assumed that resolution was achieved through guidance issued by the ATO.

Remedial directions that force operating projects into PRRT losses may incentivise project participants to shut-in early. This is because the ATO has ruled that decommissioning losses incurred prior to a project closing do not give rise to a refundable PRRT credit – an approach that is inconsistent with the overall intent of the PRRT regime.

[2] See recommendation 3, The Australian Government, Petroleum Resources Rent Tax Review, Final Report, 13 April 2017

Project participants will need to consider the potential cost of the loss of credits when deciding whether to continue to operate the project after receiving such directions. The PRRT law should be amended to ensure that expenditure in partially closing down a PRRT project will give rise to a refundable credit if the costs cause the project to generate losses.

6.3 Taxation Implications - Trailing Liability

As noted above, APPEA does not support the introduction of a trailing liability. In the event the government chooses to introduce trailing liability as an option of "last resort" the trailing liabilities paid by a project participant should be deductible for both corporate income tax and PRRT purposes.

However, trailing liabilities paid by a "related person" may not be deductible for either corporate income tax or PRRT purposes and are therefore unlikely to give rise to a refundable PRRT credit. The non-refundability of PRRT credits and the denial of a deduction for corporate income tax will impact the overall viability of a project and impact significantly on project economics.

Recommendation 1 of the Walker review whilst recommending the consideration of a trailing liability, also recommended that further clarity should be provided in relation to the ability to claim PRRT credits. The PRRT law should be amended to address the Walker Review call for clarity on PRRT credits and ensure that a "related party" trailing liability is deductible for PRRT purposes and/or gives rise to a refundable PRRT credit, if the cost would have been deductible, and or would have given rise to a refundable credit, if it had been paid by the project participant.

In addition, further clarity should be provided with respect to the corporate income tax treatment of a trailing liability paid by a related party. The income tax liability should be amended to ensure that a 'related party' trailing liability will be deductible for income tax purposes if it would have been deductible if it had been paid by the project participant.

6.4 Taxation Implications - Commencement of proposals

It is important that any changes made as part of the framework are carefully worked through and developed with all relevant stakeholders to ensure that they are logical, pragmatic, and mindful of the nation's energy policy objectives. Prior adjustments and modifications have also been respectful of past investment and APPEA would recommend that this approach continue.

Specifically, where mechanisms are introduced that impact taxation policies, APPEA would support these recommendations only apply to transactions made after an agreed date established by government upon the adoption of this policy.

Implementation

As a part of a whole of Government response, taxation implications and their effect on future investment need to be considered as a part of any industry decommissioning framework.

7 Appendices

1. **Financial Assurance Model**
2. **APPEA submission to the draft NOPSEMA Section 572 Policy Paper**
3. **APPEA submission to the DISER Proposed Measures for Improvements to Commonwealth Petroleum Titles Administration**
4. **APPEA submission to the NOPSEMA Draft Guidance Note for Ageing Assets and Life Extension**

Appendix 1. Financial Assurance Model

Industry suggests the following "Financial Assurance" model as an example that could be utilised within a JVOA or DFSA to ensure that adequate resources are available to meet decommissioning obligations every 3 years titleholders complete:

- Decommissioning estimates based on their reasonable view of the scope of decommissioning in compliance with relevant regulatory requirements.
- Economic (NPV10) analysis to value remaining reserves using publicly available forward price projections (i.e. Wood Mackenzie).
- Where the NPV of the remaining reserves is equal to or less than 1.2 - 1.5 times the estimated decommissioning cost, the titleholders are deemed to have reached the "Trigger Point" and will be required to provide Tier 1 or Tier 2 Financial Assurance (as outlined below).
- Multiplying the decommissioning costs by a factor of 1.2 - 1.5 recognises the potential for petroleum prices to fluctuate over time, and the level of inherent uncertainty in decommissioning estimates, both of which may become an issue near the end of JV production.
- "Trigger Point" is adjusted due to additional resources being found or future price projections increase or decommissioning cost estimates reduce (due to scope reduction or completion of some decommissioning activities), In this case, titleholder may reset the Trigger Date within the Joint Venture Operating Agreement (JVOA) or Decommissioning Financial Security Agreement (DFSA).

- Following reaching the Trigger Point, JVOA participant titleholders individually will need to demonstrate to the State or Regulators within 90 days that they have the financial ability to complete their decommissioning obligations (relative to the regulatory framework) and thereafter on an annual basis. The mechanism by which each entity demonstrates its financial ability may be different depending on the financial strength of the entity and will be assessed and managed within the titleholders JVOA framework utilising a 3rd party trustee to hold securities.
- Mechanisms which demonstrate acceptable financial strength are:
  - Tier 1 Financial Assurance
    - JVOA participant titleholder company with a minimum long-term debt rating (Moody's or S&P) and holds net tangible assets (i.e. excluding goodwill and intangibles), of a factor to be determined with government and industry times the decommissioning obligation (Tier 1 Entity)
  - Tier 2 Financial Assurance
    - JVOA participant titleholder related party corporate guarantee from minimum Tier 1 Entity
    - Bank guarantee from minimum rated bank or financial institution
    - Cash Deposit at an international bank

- Insurance Surety Bond from minimum rating determined
- The level of Tier 2 Financial Assurance to be maintained shall at the commencement of each year following the Trigger Point be calculated as:

Trust Balance = (1.2 - 1.5 x DC x Tier 2 PI) – (NPV x Tier 2 PI)

DC = Decommissioning Cost

Tier 2 PI = Participating Interest of Tier 2 Financial Assurance Participant Titleholder

NPV = NPV10 value of all remaining reserves in the relevant title or titles based on Estimated Ultimate Recovery of hydrocarbons excluding the value of production in the next year (i.e. the NPV10 at the end of the year).

- Where some or all of the JVOA participant titleholders in a title are not able to provide Tier 1 Financial Assurance, the Joint Venture Titleholders should appoint an independent non-Government Security Trustee (Security Trustee). The Security Trustee's role is to ensure each JVOA participant titleholder provides and maintains sufficient assurance (per financial assurance mechanisms above).
- After the Trigger Point, each JVOA participant titleholder would periodically provide to the Government or Regulators certification that they have sufficient financial capacity to meet their respective share of the decommissioning obligations including confirmation from the Security Trustee of security held. The attestation should include details of the proposed decommissioning scope and a cost estimate.

- The Joint Venture Operator will provide a high-level estimate of the Decommissioning Cost, outlining key aspects of the facilities including the number and characteristics of wells to the relevant regulator.

If the existing JVOA does not include provisions to complete decommissioning estimates and provide financial assurance or does not include provisions to ensure assignment of titleholder interests are subject to a demonstration the proposed assignee can satisfy their decommissioning obligations and is subject to the approval by the remaining JVOA participant titleholders, then all JVOA participant titleholders will be required to update the JVOA or enter into a DFSA prior to the Joint Venture Decommissioning Trigger Point which would include the financial assurance mechanisms similar to the above.

Appendix 2. APPEA submission to the draft NOPSEMA Section 572 Policy Paper

9 June 2020

Consultation Hub
The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)
GPO Box 2568
PERTH WA 6001

Sent by email: [redacted]

NOPSEMA POLICY ON THE REQUIREMENT TO REMOVE EUIPMENT AND PROPERTY

The Australian Petroleum Production & Exploration Association (APPEA) welcomes the opportunity to provide further comments on the draft NOPSEMA policy: *Section 572 - Maintenance and removal of property* (the draft policy). APPEA is the peak national body representing upstream oil and gas explorers and producers active in Australia. APPEA's member companies account for more than 90 per cent of Australia's petroleum production. Further information about APPEA can be found on our website, at www.appea.com.au.

APPEA unreservedly supports Australia's opportunity to design a legislative framework for decommissioning which will deliver consistent, efficient and effective outcomes. APPEA believes the success of a future decommissioning framework hinges on clear and predicable legislative provisions and simplified policy interpretations.

APPEA is concerned that the draft policy pre-empts the broader (ongoing) offshore oil and gas decommissioning framework review[3], being undertaken by the Department of Industry, Science, Energy and Resources (DISER). To avoid the potential for policy overreach, duplication and to honour the trust engendered in the existing review process – **APPEA recommends that the draft policy be suspended until such time the Commonwealth review process delivers the required clarity to the strategic approach to be taken for decommissioning.**

Notwithstanding APPEA's preference for the suspension of the draft policy, APPEA understands the context for this policy, as articulated in both the *Statement of Expectations – October 2019* and the *Statement of Intent – November 2019.*[4] However, while the intent is clear, APPEA and its members share concerns on the application of the policy directive.

Our submission will detail our concerns, with regards to the policy, against several key areas, including:

- General observations;
- the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* - legislative construct;
- the trigger points for regulatory intervention that currently exist under the legislative framework;

[3] https://consult.industry.gov.au/offshore-resources-branch/decommissioning-discussion-paper/

[4] As published on NOPSEMA's website – care of https://www.nopsema.gov.au/about/people-planning-and-performance/

- the compliance strategy supporting the implementation of this policy;
- the role of, and coordination with, other government agencies (including NOPSEMA's interface with the Joint Authority and the National Offshore Titles Administrator – NOPTA);
- the role of other parallel reform initiatives within the Australian Government; and
- specific comments to sections of the draft policy.

Our concerns with the implementation of the draft policy are expressed in Attachment A and we have also included feedback on the process map, as presented on page 11, of the draft policy (see Attachment B).

The extended comment period has given APPEA the time to liaise with our members, as they continue to face the dual challenge of dealing with COVID-19 and low commodity prices. To this end, APPEA's comments should be read in conjunction with commentary from our member companies.

APPEA would welcome the opportunity to discuss these concerns with you further. Please contact Mr Jason Medd, Director – Environment, Health and Safety, [redacted]

Yours sincerely

Jason Medd
Director – Environment, Health and Safety
APPEA

ATTACHMENT A – SPECIFIC COMMENTS / CONCERNS REGARDING DRAFT POLICY 572

General Observations

- APPEA has been advised by its member companies that the draft policy is currently being cited by NOPSEMA staff, with requests for further written information, while the draft policy comment period is still open. by NOPSEMA This is particularly concerning to APPEA as it infers that the draft policy is unlikely to change due to its active use, in spite of an ongoing consultation process. Conversely, should the draft policy change in content or status, operators would likely be subject to regulatory confusion and uncertainty. Either possible outcomes, as a consequence of the premature use of the draft policy, are unsatisfactory.
- APPEA considers applying contemporary policies to historic legislative constructs to be problematic, cumbersome and inefficient.
- Environmental permissioning and compliance processes are limited, for the purpose of maintenance and removal of property – per the objects clauses of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009.
- Concern that the policy is perhaps a stop-gap to legislative amendments (and ultimately clearer provisions) and would be subject to significant change in the not too distant future.
- Concern that the policy is heavily influenced by contentious operational outliers.
- Further clarification is required on wording as to when removal of property is required. If progressive removal is the intent then this could result in significant inefficiencies and associated cost to execute piecemeal removal and drive against campaigning and collaboration opportunities.
- The comparative assessment and end state decision should be decoupled from the EP for three key reasons:
    - It is not a requirement of the regulations for the EP to include a comparative assessment or an evaluation of end state alternatives.
    - EP's should be focussed on identification and management of environmental risk associated with planned petroleum activities. Inclusion of comparative assessment and end state decisions detracts from the focus and intent of the EP.
    - To enable development of a detailed activity description upon which to base an EP requires clarity on end state and engagement of specialist contractors. A decision on end state therefore needs to precede and sit outside of an EP. If end state decision sits within the decommissioning EP it will result in significant inefficiencies and uncertainties for operators.
    - Comparative assessment and the associated end state decisions are far broader than an assessment of environmental criteria.
- Concern over NOPSEMA jurisdiction as it relates to implementation of end state alternatives outside the title area.
- Cross over, lack of clarity and duplication with Sea Dumping Permit requirements and monitoring.
- Potential for longer term EP monitoring and resultant significant delay to EP closeout and title surrender. In particular, the regulatory and legislative uncertainty of maintaining a petroleum permit for the purposes of monitoring.

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act)- legislative construct

Overarching Issues for Clarification

- APPEA would seek clarity and advice from Government and NOPSEMA with regards to:
    - NOPSEMA jurisdiction in relation to Section 572. Specifically, enforcement of breaches of Section 572 being undertaken by the Commonwealth Director of Public Prosecutions, or NOPSEMA.
    - Section 572 is a general duty that is distinct from the requirements of the OPGGS (Environment) Regulations. The OPGGS (Environment) Regulations apply to the extent that the titleholder is undertaking a "petroleum activity" in a title area, and the environment plan is required to meet those Regulations, not Section 572. Specifically, the conflation of a separate statutory duty with a separate specific subsidiary legislation requirement.

Primary act concepts

- Part 6.1 of the OPGGS Act deals with operations and particularly the manner to which industry should operate (e.g. 'proper and workmanlike manner' / in line with 'good oilfield practice' – these are subjective but long-standing principles).
- Section 572 provides for the maintenance and removal of property within a title area (permit, lease, licenses and short-term titles) –balanced against the rights conferred of the respective title.
- Section 572 provides offences (strict liability) for non-compliance (on the titleholder); however, obligation for maintenance and removal applies to the titleholder who brought plant, equipment or property into the title area (titleholder / agent / operator).
- The remedial direction making powers under the OPGGS Act, and mirrored State and Territory primary acts, are the legislative back stop for the removal of property.

Legislative instruments

- Assessment and approval of alternative arrangements to full removal solely via environment permissioning and compliance regulatory processes is not seen as a good fit. Understanding that the current base case is complete removal, we are supportive of assessment of alternative arrangements aligned with the OPGGS Act that ensure Australia meets its obligations under United Nations Convention on the Law of the Sea (UNCLOS) and IMO Guidelines which contemplate partial-removal and promote case-by-case assessment considering environmental outcomes, safety, social value, technical feasibility and cost
- Central to the demonstration of good oilfield practice is the maintenance of plant and equipment within the title area – this translates in today's regulatory construct to as low as reasonably practicable (ALARP) and reflects duties to the safety of our workforce and the environments in which we operate.
- APPEA appreciates the regulatory tension and need by regulators to strike the right balance between an objective based regime and a level of prescription to give external stakeholders confidence.
- Notwithstanding above, the suite of Regulations must be read in the context of their respective objects, for example:
    - The objects of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009, ensure operations are carried out in a manner consistent with:

- the principles of ecologically sustainable development (as set out under section 3A of the *Environment Protection and Biodiversity Conservation Act 1999)*;
- impacts are reduced to as low as reasonably practicable (ALARP); and
- environmental risks of the activity will be of an acceptable level.

  - Contrastingly, the objects of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 – firmly focus on the principles of 'good oilfield practice and operations that are compatible with the 'long term recovery of petroleum'.

- APPEA notes that under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 – the criteria for acceptance of an environment plan is detailed under regulation 10A. 10A(h) provides a catch all that the environment plan must comply with the Act and regulations. However, APPEA considers that this is a tenuous and narrow link to attach section 572 to the environment plan process.
- With the sunset clauses for the OPGGSA regulations being deferred and extended, APPEA has previously cautioned NOPSEMA from attempting to regulate via policy and guidance.

  - APPEA have advocated for clear policy or problem definition and a commitment from government and regulators to amend legislation, with inclusive consultation processes.

The trigger points for regulatory intervention that currently exist under the legislative framework

APPEA considers the policy issue this draft guidance seeks to address only relates to a narrow band of circumstances and triggers, whereby existing legislative provisions offer sufficient coverage and mitigation measures, including the following:

Circumstances / triggers	Legislative intervention / mitigation
Pre grant and pre transaction approval titles administration	Fit and proper persons tests are part of Government's pre-grant diligence. This diligence is also applied for petroleum title dealings and transfers.
All title instruments	Preventative measures such as where specific title conditions were applied on a permit, lease or licence – also relevant to permit / lease renewals – which offer opportunity to re-calibrate work program – (but more importantly timing to set conditions on the instrument as part of the renewal offer).
Where financial constraints may impact the ability for the timely removal of property, plant, infrastructure – stranded assets / liabilities. **(Current focus of regulatory reform)**	This would correlate to changes in the Well Operations Management Plan and Field Development Plans. Further APPEA considers the financial assurance mechanisms under the existing OPGGS Act framework are sufficient to mitigate this risk at this time. The provisions are robust and contemplate where changes may have occurred and financial assurance arrangements are questioned (such as where operations are suspended /

	uncertainty parent / subsidiary relationships or commercial agreements - JOA etc).
Fixed term production licences are predicable	Little uncertainty, especially if there is if no significant changes to the field development plan / development strategy.
Indefinite term production licences/cessation of production	Less predictable but Government intervention is available should there be no recovery for 5 years - (section 166 of the OPGGS Act).
Where property, plant or equipment is approaching the end of its design life.	This is clearly a catalyst for NOPSEMA to engage with titleholders and operators. However, design life doesn't mean property or equipment cannot exceed nameplate if maintained (in line with good oilfield practice). Compliance strategies for ageing assets, plant / equipment are informed further based on NOPSEMA compliance audits and inspections – and any persuasive or compulsive compliance measures e.g. improvement notices, prohibition notices or remedial directions.

The compliance strategy supporting the implementation of this policy

- There is wide industry support to the current objective based regime, an approach considered as best practice in the oil and gas industry, rather than prescriptive mandated timeframes for decommissioning activities which may not be suitable for all cases. APPEA recommends taking a case-by-case, outcomes focused approach to support decommissioning timing, to ensure risks are acceptably managed and to provide timing flexibility for optimal outcomes.
- As we state above, we understand that NOPSEMA assessors are currently referencing this policy, and issuing requests for further written information (RFFWI).
- APPEA consider the application of this policy to be very narrow and the circumstances for its reference to be restricted to production licences, infrastructure licences and pipeline licences.
- APPEA considers any reference to this policy during the exploration phase to be largely redundant.

(The only time the policy would have particular relevance for an exploration permit – is if the permit had bespoke conditions on the title instrument, if the permit was approaching renewal; or there was a transfer or dealing whereby further diligence was required – from the NOPTA or NOPSEMA).

- APPEA suggests the policy should have better linkages to NOPSEMA's compliance strategy – and that such a strategy should consider basin specific factors, such as:
    - basin maturity
    - proximity to other offshore infrastructure
    - a gap analysis of existing decommissioning and asset retirement plans.

The role of, and coordination with, other government agencies (including NOPSEMA's interface with the Joint Authority and the National Offshore Titles Administrator – NOPTA)

- Removal of property was traditionally focused on as part of consent to surrender process; following cessation of production (historically coordinated by the titles administrator). This focus is supportable because:
    - Historically fixed term production licenses would provide regulators with more certainty for the end of field life (cessation of production); and
    - Title instruments include a standard condition that works specified (in the instrument – i.e. the work commitments) – must be carried out in a standard acceptable to the titles administrator.
    - APPEA's clear position is that this policy should sit with NOPTA.
        - We note that section 577 of the OPGGS Act empowers NOPSEMA to make good any failure to comply with a direction (but this approach would prudently seek concurrence with the JA, NOPTA and Minister).

The role of other parallel reform initiatives.

- APPEA welcomes the ongoing commitment of NOPSEMA to improve the efficiency of EP approvals and compliance processes and considers the implementation of this policy through EP approvals and compliance a step in the opposite direction to this initiative.
- APPEA and its members through the APPEA Board and APPEA Decommissioning Committee are actively contributing to the Department of Industry, Science, Energy and Resources 'offshore oil and gas decommissioning framework review, which is currently underway. As such, APPEA considers that there is a significant likelihood that this policy may pre-empt or "wrong foot" any resultant new decommissioning legislative framework.
- APPEA is supportive of monitoring obligations to verify completion criteria for the accepted decommissioning plan activities. Further clarity is requested on expectations regarding the extent of these monitoring obligations, to ensure criteria can be clearly and discretely defined and not become evergreen obligations.

Detailed Feedback to the Draft Policy

<u>Section 3.1 (second dot point)</u>

Property is monitored, maintained and, where necessary, repaired so that it can be removed in a safe and environmentally responsible manner. This includes holding an inventory of all property in the title area at all times including records of the condition of all property;

- Further clarification is required on the expected level of detail and reasonable timing for an inventory of all property.
- It is not clear the detail that is required in the inventory (is infrastructure to be cited in broad categories, or to a greater level of detail). APPEA would suggest it would seem more reasonable to impose such commitments later on (e.g. once the asset has reached a certain maturity in steady state operation).
- APPEA suggests NOPSEMA considers as a priority whether a publicly available EP is the appropriate mechanism to share this inventory.

Section 3.2

"Section 572 places an obligation on titleholders to remove property when it is neither used nor to be used. NOPSEMA will apply the following principles as applicable in Safety Case, Well Operations Management Plan (WOMP) and Environment Plan (EP) assessments and in monitoring compliance with the obligation to remove property:

- *All property is designed, installed and operated with the intention of being removed when it is no longer in use;"*

- More clarity is needed on when compliance activities start. Is this in the OPP?
- There is no mechanism to monitor compliance with requirements of the OPP, other than through implementation of the activity via the EPs.
- The detail is likely to be requested in an OPP (presume this will not be applied retrospectively), but should be addressed in the EPs – both construction (with regard to design and method selection) and operation (monitoring and maintenance).
- It would also be useful to have clarity around 'bigger' equipment removal requirements versus smaller examples.
- While there is general agreement to the intent of the NOPSEMA proposal regarding the need for maintenance and removal at the end of useful life, there is a potential unintended consequence in the requirement in paragraph 3.2 to remove property when it is no longer required nor to be used, if Section 572 suggests to do this immediately. APPEA suggests the need for an inclusion of a time allowance or an option for operators to reason a suitable timing to allow for bundling and efficient contracting of the removal activity.

"Removal is planned to take place throughout the operations authorised by the title when property is neither used nor to be used in connection with the operations;"

- The intent of this sentence should be clarified as the wording is open to interpretation. Is this a literal meaning to remove (immediately, a different timeframe?) when property is no longer to be used or alternatively is the requirement limited to planning for the removal during operations? If it's the latter, costs impacts would be significant e.g. rig mobilisations to plug individual exploration wells, vessel mobilisations to remove replaced infrastructure etc. APPEA considers that this may not allow for efficient decommissioning such as timing with other decommissioning activities.

"NOPSEMA's acceptance of the final state of property is obtained through the suite of permissioning documents under the Environment, Safety and Resource Management and Administration Regulations;" –

- Removal of property as required by Section 572 is a general duty under the Act. Approval of permissioning documents under subsidiary legislation approves the petroleum activity that is being undertaken in the title area and its management; this is different to approving final state of property.
- This statement refers to the three permissioning documents (EP, SC and WOMP) as the documents that NOPSEMA needs to approve for acceptance of final property state. Why is Section 3.3 then limited to alternative arrangements to removal being defined in EPs only? This is also misaligned with the Overview information provided on the draft policy (https://consultation.nopsema.gov.au/environment-division/duty-to-remove-equipment-and-property/) which states that " if an alternative is proposed, petroleum companies need to demonstrate how equal or better safety and environmental outcomes will be achieved". How does an operator demonstrate that alternatives achieve better safety outcomes if the EP is the mechanism for approving end state?

- Timing issue - Operators need certainty of end state to plan for contracting, engineering to then be able to develop EP and SC for the understood petroleum activity. Major recycle would result if NOPSEMA did not approve via the permissioning document(s).
- Clarity required on NOPSEMA's jurisdiction for acceptance of 'final state of property' if final state is for example, to remove it from the title area and reef it elsewhere. This should be clarified to set out that NOPSEMA jurisdiction is limited to end state as it applies to the title area and not beyond. This then clarifies and aligns with preceding text in Section 2 Scope which states that other legislative requirements may apply such as the Sea Dumping Act 1981.

Section 3.3

Long term monitoring for property –

- APPEA members advise that the legal basis for this paragraph is uncertain. Specifically, once the remainder of decommissioning is complete, there is no longer any petroleum exploration or production occurring in the title area. A petroleum title can only be held for the purposes of those titles are set out in the OPPGS Act Chapter 2. A titleholder cannot hold a petroleum title simply to undertake long term monitoring. If the Commonwealth Minister gave a direction that infrastructure could remain in situ subject to a condition requiring long term monitoring, then once the petroleum title expires or is surrendered, some alternative title such as a seabed lease (not within the jurisdiction of NOPSEMA) would be required. In the absence of a petroleum title, NOPSEMA's jurisdiction to require environment plans for long term monitoring, environmental performance reporting, or compliance monitoring is uncertain.

"Titleholders may demonstrate in an EP that arrangements other than complete removal are acceptable."

- This is misaligned with Section 3.2 which sets out that NOPSEMA's acceptance of the final state of property is obtained through the suite of permissioning documents under the Environment, Safety and Resource Management and Administration Regulations i.e. all three are applicable for acceptance of end state rather than only the EP? The policy refers to use of a comparative assessment for end state decision making and environmental considerations are only one aspect of this decision making process, along with safety, technical, societal and commercial considerations.

NOPSEMA considers that a comparative assessment may be used in an EP as a method to evaluate feasible alternatives to removal of property. A comparative assessment may support but does not replace the requirement for the EP to meet the criteria for acceptance of an EP under the Environment Regulations.

- Similar to comment above, the regulations do not require comparative assessment evaluations to be included in an EP, the OPGGS (Environment) Regulations apply to the extent that the titleholder is undertaking a "petroleum activity" in a title area (i.e. the selected end state from the comparative assessment), and the environment plan is required to meet those Regulations, not include the comparative assessment evaluation. The comparative assessment identifies the preferred end state alternative, management of execution of this end state is via the EP permissioning document and the comparative assessment and EP should be disconnected.

"NOPSEMA considers that when an evaluation of impacts and risks are required by the Environment Regulations, they must incorporate a holistic evaluation of the impacts and risks of the alternative arrangements, (including those impacts and risks that may arise from the operation of removing or relocating property outside the title area) and considering community interest."

- Clarification is sought from NOPSEMA for the legislative instrument that enables NOPSEMA to assess impacts and risks arising from relocating property outside of the title area if this is approved under the *Sea Dumping Act 1981* and whereby the proponent of the Sea Dumping Permit may not be the Operator? For example, infrastructure may be donated from the Operator to a third party who is the applicant of the Sea Dumping Permit, how is this still considered to be a petroleum activity under NOPSEMAs jurisdiction?
- The end point for the petroleum activity and starting point for activities which are subject to the Sea Dumping permit process need to be defined along with clarity on responsibility for jurisdiction. The flowchart could be expanded to include these jurisdictional boundaries for alternative arrangements.
- This section talks to comparative assessment and impacts and risk but the comparative assessment process is not limited to impacts and risks and is an evaluation of trade offs of impacts and risks along with benefits. This paragraph refers to a holistic evaluation but if the comparative assessment is limited to inclusion in the EP which only considers environmental impact and risk, how/where does the Operator demonstrate a holistic evaluation? Is this through other permissioning documents? How are benefits included / assessed to achieve the holistic evaluation?

"Where alternative arrangements to removal of property are proposed, NOPSEMA expects titleholders to address arrangements for long term monitoring and management, including appropriate completion criteria to ensure that the environmental performance outcomes identified in the EP in relation to the property left in situ will be met."

- Long term monitoring i.e. 30 years, is a requirement of the Sea Dumping Permit. Is the expectation that NOPSEMA would not accept a notification under regulation 25A to end the operation of an EP and therefore the EP would remain open for the duration until the monitoring obligations in relation to property left in situ have been completed? Therefore, would this lead to an Operator not being able to relinquish title for, as an example, 30 years post removal and would have ongoing requirements for 5 yearly EP resubmissions? APPEA would query the benefit in duplicating the requirement for ongoing monitoring and management in the EP when this is an existing requirement of the Sea Dumping Permit process.

- Clarification is required as to whether the expectations for long term monitoring apply only to property left insitu or also to relocated and repurposed property outside the title area, as the previous paragraph refers to the need to include impacts and risks from relocating property outside the title area. If NOPSEMA consider this to be a petroleum activity what are the implications for tenure for relocated property i.e. would NOPSEMA expect that an Operator or, if different, the applicant of the Sea Dumping Permit to apply for petroleum tenure at the site of relocation?

<u>Section 4.2 Well operations management plans requirements under the Resource Management and Administration Regulations</u>

"It must also contain a justified timetable for carrying out and completing the well activities to which the plan applies."

- Clause 5.09 Contents of well operations management plan in the OPGGS (Resource Management and Administration) Regulations 2011 do not include 'timetables or justified timetables', therefore this is not a requirement of these regulations and hence not a requirement of WOMPs.

<u>Section 4.3 – Approvals under the Environment Regulations</u>

"NOPSEMA encourages titleholders who choose to opt into the OPP system for decommissioning activities to begin planning for the OPP sufficiently in advance of the cessation of production stage to ensure an EP is accepted prior to commencement of the new stage." and "Prior to the expected cessation of production date, the EP must provide for the scope, timeframe and methods to remove property."

- Clarification is sought for the implications of not having an EP covering decommissioning activities approved prior to CoP. For example, if the operator plans to have an extended phase of C&M prior to active decommissioning, where the intent of this may be to align and group with other nearby decommissioning activities for efficient work execution. Can the operator progress from CoP to C&M without a decommissioning EP in place or without providing detailed methods to remove property?

"The EP must comply with the OPGGS Act and the Environment Regulations (Regulation 10A(h)). NOPSEMA expects the EP to include:
"An implementation strategy that describes an inventory for all property in the title area and provides justified timeframes for removal when the property is neither used, nor to be used in connection with the operations" –

- This is not a requirement of Clause 14 'Implementation Strategy" of the Environment Regulations which requires 'general details of the construction and layout of any facility or other structure'.

"Plans for property removal throughout the operations and a commitment that removal must be completed while the title is still in force;" and "For long-term operations, that the level of definition regarding removal of property described in the five yearly revisions of an environment plan will increase as the operations progress. Prior to the expected cessation of production date, the EP must provide for the scope, timeframe and methods to remove property".

- This requirement conflicts with other statements in the draft policy that allow arrangements other than removal and the wording should be broadened for consistency.

"A full assessment of the environmental impacts and risks of removal or any proposed alternatives to full removal and a demonstration that proposed alternatives will result in equal or better environmental outcomes when compared to removal and will result in environmental impacts and risks that are acceptable and ALARP". –

- This needs to be clarified with regards to NOPSEMA's jurisdiction in assessing proposed alternatives is limited to insitu decommissioning and not alternatives that will be implemented outside of the title area and subject to other legislation.

"NOPSEMA expects that the end of operation of an EP notification under regulation 25A of the Environment Regulations must include a declaration from the titleholder that property brought into the title area for the operations has been removed or that alternative arrangements have been made in accordance with the accepted EP."

- Will this be included in the Reg 25A form? NOPSEMA website states that this form is available under 'Quick Links' but it's not listed under Quick Links currently.

ATTACHMENT B – POLICY 572 – PROCESS MAP, WITH APPEA MARK-UP

200527 - APPEA secretariat mark up - I

Appendix 3. APPEA submission to the DISER Proposed Measures for Improvements to Commonwealth Petroleum Titles Administration

22 October, 2020

Paul Trotman
Head of Division
Resources Division
Department of Industry, Science, Energy and Resources
Industry House, Level 5, 10 Binara Street, Canberra City ACT 2601

Sent via email: [redacted]

APPEA RESPONSE TO PROPOSED MEASURES TO IMPROVEMENTS TO COMMONWEALTH PETROLEUM TITLES ADMINISTRATION

Dear Paul

Thank you for providing the opportunity to APPPEA to provide comment and feedback on the proposed measures to improve Australia's offshore petroleum legislative framework. APPEA recognises that these measures are in response to key recommendations in the Walker Review and aim to increase oversight and provide clarity at key 'gateways' or decision points in the regime.

APPEA supports changes to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) that will enable improved government oversight of financial capability throughout the life of an asset. More broadly APPEA supports a regulatory framework that is:

- **Safe** - prudent operators with skills, systems and resources, which meet sustainable outcomes for business, environment and society are encouraged.
- **Efficient** - economic investments delivering best possible outcomes with lowest possible impact on scarce resources financial, environment etc.
- **Effective** - the best participants involved in the value chain at the right time to drive value creation providing a dynamic, diverse and competitive exploration and production sector.
- **Reliable** – timely, clear and consistent regulatory processes.

To minimise regulatory burden, APPEA suggests that the proposed measures should be applied using a risk based or tiered approach, accounting for a titleholders operating history and financial strength, with a focus on operators who are deemed to be high risk. More importantly, this will enable the application of scarce regulator resources to areas of highest risk. Additionally, clarity would be needed on the required documents and information

needed by the regulator as it relates to technical and financial information requests on title transactions.

APPEA suggests that the application of measures applied in the proposed Bill should consider the risk associated with the type of petroleum title transaction being undertaken. For example, petroleum title transactions such as transfers within titleholder subsidiaries, or within existing joint ventures with large, well established companies. In relation to changing conditions during the term of a title, APPEA's view is that a titleholder requires certainty of their obligations throughout the term of the title and existing and proposed measures should be used to achieve policy objectives rather than the variation of conditions.

APPEA also seeks to understand what impact the provision and assessment of additional information will have on statutory assessment timeframes associated with title transactions.

Specific comments in relation to the four proposed measures are as follows:

Measure 1.

APPEA supports this change but suggests that to reduce regulatory burden the changes to ownership or control that will apply under this requirement are clearly defined so that the review only occurs when there is potential for a material change in parent company ownership. For example, approval requirement does not apply to situations where internal changes to ownership or control occurs which does not result in a material change to parent company and associated financial assurance. It is common practice for modern governance arrangements (such as Joint Operating Agreements) to have change of control mechanisms which apply between the participants in that venture. These documents have well defined definitions of when they are triggered (linked to the change in control resulting in the ability to be able to control the decision making by the parent company of the entity). Corporate restructures (such as a title transfers within a company group) which do not result in an indirect change of corporate ownership are not caught and should not be in scope for this policy review.

Additionally, APPEA considers that a change to ownership to a part owner of a petroleum title should only trigger review relevant to that transaction and not trigger review to other registered title holders.

Measure 2.

APPEA generally supports this change noting that titleholders have an obligation to maintain adequate financial assurance throughout title lifecycle and therefore the regulator needs a means to be able to assess there is adequate financial assurance throughout the title lifecycle. The ability to review the financial wherewithal of a titleholder from time to time is supported, provided that there has been a sufficient trigger for this event, which results in a material adverse change to the titleholder. Modern governance arrangements have triggers that allow participants to seek greater financial assurances when there is a well-defined material adviser change in the titleholder's financial position. If there is an overarching right to review during the term of the title then there is no need to introduce uncertainty at other gateways, such as applications for variation, suspension of exemption which would result in an onerous administrative burden.

Undertaking review at the time of grant is appropriate, however undertaking a review at the time of a title renewal may drive unnecessary regulatory burden. Rather than review

frequency being linked to renewal it should be risked based and focused on changes in financial strength of titleholder (consideration could be given to a financial assurance/liability ratio). This will ensure reviews focus on the higher risk title holders and doesn't add unnecessary burden to lower risk title holders.

Review at time of transfer is reasonable given a transfer is in effect a grant to new titleholder. APPEA notes that NOPTA already seeks this information as part of the transfer process. Technical and financial qualifications are required to be provided as part of the application for approval of transfer.

APPEA would question the need to review financial assurance capacity on every variation unless it is a significant change that would make a material impact to the level of financial assurance required. Review frequency should be driven by risk and changes in the financial assurance and strength of titleholder.

To further reduce the potential for regulatory burden, APPEA recommends that the review of a titleholder's financial assurance is undertaken per titleholder, rather than undertaken multiple times for every title held.

Measure 3.

APPEA supports the provision and determination of suitability to operate at the time of grant of title to ensure that business and key personnel are sound, have a track record and can comply with the requirements of the Act (i.e. to avoid a future NOGA issue). APPEA notes that a demonstration of suitability to operate is already required at certain gateways such as grant of title. To reduce regulatory burden, suitability to operate should be limited to grant and renewal of title and not to other title applications such as variations or suspensions etc. It should also be risk based and titleholders that are deemed to be less capable to operate may be subject by higher levels and more rigorous review of financial assurance.

APPEA notes that a point in time assessment alone may not achieve policy objectives. It is noted that following the grant of title, the Joint Authority currently has the ability to cancel a title if the title holders have not complied with a condition of the title, a direction given by the various regulators (including the Minister, NOPSEMA and Joint Authority) or a provision of the Act. This is a broad right to ensure that titleholders meet the Government's expectations from time to time and not the "moment in time" review that this proposal contemplates. If broader powers are required an alternative is to broaden the powers to allow the Joint Authority to intervene if there is reasonable grounds for concluding that the titleholder(s) will not comply with the conditions of the title. The broader power would allow the Joint Authority to intervene before there is non-compliance rather than having to wait until there have been a breach.

Measure 5.

APPEA questions whether there is a need to change title conditions to meet policy objectives given existing and additional proposed measures. The power to impose or vary title conditions during the term of a title are currently limited under the OPGGSA. Any proposal to allow conditions to be altered during the term of a title should be considered carefully. It is critical that the titleholders have certainty in relation to the work commitments during the term of the title. It is unclear what type of decisions to impose or vary conditions may be triggered by a "risk based approach decision" but if such proposal is contemplated it should

be limited to those alterations that meet the policy objectives and not allow work commitments to be altered.

Thank you for the opportunity to provide comment to the proposed measures to improve Australia's offshore petroleum legislative framework and I hope the feedback and suggestions provided are informative and helpful.

Should you have any queries regarding APPEA's comments, please contact Jason Medd, Director – Environment, Health and Safety on [redacted]

Yours Sincerely

Andrew McConville
Chief Executive

Appendix 4. APPEA submission to the NOPSEMA Draft Guidance Note for Ageing Assets and Life Extension

24 December 2020

Consultation Hub

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)

GPO Box 2568

PERTH WA 6001

Sent by email: [redacted]

NOPSEMA GUIDANCE NOTE – AGEING ASSETS AND LIFE EXTENSION

The Australian Petroleum Production & Exploration Association (APPEA) welcomes the opportunity to provide comments on the draft NOPSEMA Guidance Note – *Ageing Assets and Life Extension*.

APPEA is the peak national body representing upstream oil and gas explorers and producers active in Australia. APPEA's member companies account for more than 90 per cent of Australia's petroleum production. Further information about APPEA can be found on our website, at www.appea.com.au.

Decommissioning Regulatory Reform

APPEA understands the context for this guidance, as articulated in both the *Statement of Expectations – October 2019* and the *Statement of Intent – November 2019.*[5] However, while the intent is clear, APPEA shares concerns about the application of the guidance and interactions with other related NOPSEMA documents. In particular, APPEA is concerned with the overlap of this draft guidance with the recently released Section 572 *Maintenance and removal of property regulatory policy.*[6] Generally, APPEA would strongly encourage a more coordinated approach from NOPSEMA and Government on regulatory reform practices as it relates to late life asset management and decommissioning, where separate guidance and policy papers are counterproductive to an integrated approach.

APPEA considers that the draft guidance, implemented for the governance and compliance of offshore late life asset management, could duplicate in several areas the ongoing Department of Industry, Science Energy and Resources (DISER) decommissioning regulatory review, where recently the discussion paper – *Enhancing Australia's Decommissioning Framework for Offshore Oil and Gas Activities*[7] has been released for comment. The DISER discussion paper examines several issues important to this guidance, including the maintenance and removal of property and an operator capabilities and assurance framework. As such, APPEA recommends that the draft guidance paper is reviewed, developed and implemented with clear linkages to the final Commonwealth

[5] As published on NOPSEMA's website: https://www.nopsema.gov.au/about/people-planning-and-performance/

[6] As published on NOPSEMA's website: Section 572 Maintenance and removal of property (nopsema.gov.au)

[7] As published on DISER's website: Enhanced offshore oil and gas decommissioning framework [566KB PDF] (industry.gov.au)

decommissioning regulatory review, rather than draft documents that are still subject to discussion and assessment.

General Comments

APPEA notes that there are many terms throughout the draft guidance that are unclear as are NOPSEMA's expectations. For example, several new terms are referenced that introduce new processes and definitions that pose significant uncertainty for industry. These terms include "implementing schemes", "recovery plans" and an "independent competent person". For the latter, it is presently unknown what NOPSEMA's expectations of independence actually are.

The draft guidance advises a requirement for operators to develop an ad-hoc policy for managing ageing assets across their organisations. APPEA would suggest that late life asset management and life extension should be part of an operator's broader maintenance strategy and these requirements are already met via a number of existing processes, for example, the five-yearly review of HAZOP and ongoing risk-based inspections.

APPEA considers that sections of the draft guidance go somewhat beyond its objectives-based intent, noting that the management processes in the draft guide are quite prescriptive and risk an increase in regulatory creep more broadly. For example, in Section 1.2 "Background" it is noted that:

> *"...as is consistent with the goal-setting (objectives-based) nature of the offshore petroleum and greenhouse gas storage legislation in Australia, the focus of this guidance is on how operators can use their safety, environmental and well integrity management systems to ensure:*
>
> - *that the duty holder is organised and resourced to properly manage risks from ageing assets*
> - *that the ageing effects and failure modes relevant to their operation are fully understood and strategies to deal with them are in place, including identification of appropriate performance indicators*
> - *that the condition of equipment and structures, and how these have been changing is known and properly recorded and monitored*
> - *that appropriate mechanisms for retaining suitable levels of expertise and knowledge within the workforce are in place*
> - *that these competent people have access to the relevant information to inform decision-making."*

Three of the five objectives (the first and the last two listed) are not objectives but seek to direct how the duty holder should be "*...organised and resourced...*", "*...[retain] suitable levels of expertise and knowledge...*", and have "*...competent people have access to the relevant information...*" to achieve the second and third objectives listed. There appears to be much more emphasis on the "how", rather than the "what" (the objectives) which is unbalanced in an objectives based regulatory system.

Case Studies

APPEA considers that it is appropriate that case studies on late life asset management should demonstrate instances of best practice to educate and inform the reader. Specifically, examples that demonstrate procedures that meet or exceed NOPSEMA's expectations on late life asset management. To this end, the inclusion of the Northern Endeavour FPSO and subsequent Commonwealth initiated inquiry led by Steve Walker, does not seem appropriate nor relevant in demonstrating best practice for industry. However, case studies of the main types of oil and gas assets maintenance approaches in the pre and post cessation of production phase may be useful.

Next Steps

APPEA and its members are open to any opportunity to progress the resolution and completion of a regulatory and compliance framework for offshore decommissioning and late life asset stewardship and will pursue to collaboratively work with Government and regulators.

Please contact Mr Jason Medd, Director – Environment, Health and Safety, on [redacted]

Yours sincerely

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