



4 September 2020

Lisa Gropp  
Commissioner  
Productivity Commission

Online: [www.pc.gov.au](http://www.pc.gov.au)

Dear Ms Gropp,

**RE: Inquiry – Resources Sector Regulation**

I am writing to provide the Australian Petroleum Production and Exploration Association's (APPEA's) submission to the draft report into the Productivity Commission's Inquiry in Resource Regulation in Australia.

In October 2019 APPEA provided an initial submission<sup>1</sup> to the Commission's terms of reference and would note with thanks that elements of the APPEA submission have been incorporated into the draft report. APPEA would also note that views presented in its submission<sup>2</sup> to the independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) are also included into this submission.

About APPEA

APPEA is the peak body representing Australia's oil and gas explorers and producers. Our members account for nearly all of Australia's oil and gas exploration and production.

The Australian oil and gas industry is a major contributor to the Australian economy and to the wellbeing of all Australians.

- Gas is a major energy source to nearly 70% of Australian homes through either a network connection providing natural gas or a bottled gas alternative.
- More than 5 million Australian homes are connected to a gas distribution network.
- Natural gas provides more than 60% of electricity generation in Western Australia and the Northern Territory and almost 50% in South Australia.
- Oil is the largest primary energy source in Australia providing nearly 38% of all energy consumed.
- Natural gas provides almost 24% of Australia's primary energy and almost one third of all gas consumer in Australia is used by manufacturers.

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<sup>1</sup> [https://www.pc.gov.au/data/assets/pdf\\_file/0007/247795/sub044-resources.pdf](https://www.pc.gov.au/data/assets/pdf_file/0007/247795/sub044-resources.pdf)

<sup>2</sup> <https://epbcactreview.environment.gov.au/node/774>

- In 2018 Australia produced 126 million barrels of oil, down from a peak in 2000 of 287 million barrels. At the same time in 2018 natural gas production increased by 18% and production has more than doubled over the last five years.
- In 2018 Australia recorded a \$6.3 billion surplus in the trade of oil and gas, with total exports exceeding \$40 billion and in 2019 Australia became the largest exporter of LNG in the world.
- In 2016-17 the industry made tax payments of \$4.6 billion and has paid more than \$77 billion over the last decade, while investing more than \$350 billion into the Australian economy through new project construction and development.

Economic and regulatory environments across the states and territories play a critical role in attracting the investment required to develop our substantial gas resources. A decade of relative regulatory stability and sound macroeconomic policies between 1999 and 2009 provided the foundation for the unprecedented wave of oil and gas investment and activity which Australia has benefited from in recent years. In the last decade the Australian policy and regulatory environment has become more unstable which has created uncertainty and undermined Australia's attractiveness as an investment destination. Returning to a more stable operating and policy environment will help to attract investment into the Australian industry over the long-term.

The rapid adoption by Australian governments of the findings and recommendations of the Productivity Commission's Final Report on its Inquiry into Resource Regulation will go a long way to stabilise the industry as it faces the current strong economic headwinds as a consequence of the current COVID-19 pandemic. This will also allow for timely recovery and ultimately facilitate the growth in investment, create new jobs, generate more revenue for governments and enable growth the oil and gas industry.

Yours Sincerely

Andrew McConville  
Chief Executive

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## Key Points

- Governments and regulators need to rapidly adopt and embrace regulatory reform and improve regulatory efficiency to assist industry recover from the economic effects of the COVID-19 pandemic.
- Several similar inquiries undertaken by the Productivity Commission have produced findings and recommendations similar and, in some cases, identical to those in the draft report.
- Despite the significant time that has passed, many of these previously identified issues from previous reports remain unresolved. This underscores the point that reform has at best been slow and inconsistent.
- There is considerable duplication between federal and state legislation, often to achieve the same outcomes. Duplication, overly prescriptive regulation and regulatory overlap must be reduced and jurisdictions must have the confidence to support mutual recognition.
- In challenging market environments, Governments must resist calls for policy interventions in Australian gas markets that seek to force non-commercial outcomes. Some existing gas market regulatory frameworks are inconsistent with and will likely compound, current challenging market conditions.
- There is a clear value in the adoption of a risk based approach to environmental regulation – focusing attention on higher risk/outcomes activities and not capturing all conceivable risks and assessing them equally.
- Regulation cannot be a one size fits all approach and there must be flexibility particularly in determining what offshore activities must require the formulation of Environmental Plans.

## Introduction

The Australian economy along with the oil and gas industry has been significantly impacted by the COVID-19 pandemic and it will be an enormous challenge to recover from the economic impacts of the COVID-19 pandemic. Current market conditions are arguably the most challenging the industry has ever seen with demand destruction, excess supply and oil prices falling more than 75% over the first four months of 2020 before recovering slightly but still, remaining at low levels. APPEA believes there are a range of actions that governments can take, largely included in the draft report, that could provide a significant boost to the oil and gas and resources industry more broadly.

APPEA is closely engaged with the current independent review of the EPBC Act, led by Professor Graeme Samuel. The EPBC Act is a significant regulatory instrument to the Australian oil and gas industry, where any improvements or gains in efficiency would yield many positive benefits. The interim report for the Independent Review of the EPBC Act<sup>3</sup>, released in June 2020, details areas of improvement and change to the EPBC Act, which are also touched upon in the Commission's own draft report. It is important to note that the EPBC Act Review interim report found that:

- The EPBC Act is ineffective. It does not enable the Commonwealth to play its role in protecting and conserving environmental matters that are important for the nation. It is not fit to address current or future environmental challenges.
- Fundamental reform of national environmental law is required, and new, legally enforceable National Environmental Standards should be the foundation.
- Standards should be granular and measurable, providing flexibility for development, without compromising environmental sustainability.
- Precise, quantitative standards, underpinned by quality data and information, will support faster and lower-cost assessments and approvals, including the capacity to automate consideration and approval of low-risk proposals.
- The EPBC Act has failed to fulfil its objectives as they relate to Indigenous Australians. Indigenous Australians' traditional knowledge and views are not fully valued in decision-making, and the Act does not meet the aspirations of Traditional Owners for managing their land.
- Duplication exists between the EPBC Act and state and territory regulatory frameworks for development assessment and approval. Efforts have been made to harmonise and streamline with the states and territories, but these efforts have not gone far enough.
- The proposed National Environmental Standards provide a clear pathway for greater devolution. Legally enforceable Standards, transparent accreditation of state and

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<sup>3</sup> Interim report of the Independent Review of the EPBC Act:  
<https://epbcactreview.environment.gov.au/resources/interim-report>

territory arrangements, and strong assurance are essential to provide community confidence in devolved arrangements.

- Greater devolution will deliver more streamlined regulation for business, while ensuring that environmental outcomes in the national interest are being achieved.
- The community does not trust the EPBC Act to deliver effective protection of the environment and industry view it as cumbersome, duplicative and slow. Legal review is used to discover information and object to a decision, rather than to test and improve decision-making consistent with the law. Reforms should focus on improving transparency of decision-making to reduce the need to resort to court processes to discover information.

The EPBC Act was intended to deliver a high level specific and focused regulatory framework that provided management of key environmental matters. APPEA supports the approach of strategic national policy setting that focuses on outcomes rather than prescription. We welcome the consideration of a set of national standards and objectives that are set at a federal level supported by monitoring and compliance. While States and Territories have primary responsibility for management of the environment, the Commonwealth has obligations to deliver on international environmental commitments and an increasingly important role to play in providing strategic leadership and coordination. To this end APPEA supports:

- **Coordinated and consistent Commonwealth and state/territory processes and requirements**  
This can be achieved through approval bilateral agreements, collaborative/joint assessments and greater recognition of state-based requirements and conditions. This should be supported by full implementation of assessment bilateral agreements and embedding more Commonwealth staff within relevant state agencies. This should also include alignment of different triggers, timeframes and requests for further information.
- **Better coordination of requirements**  
This can be achieved by adopting collaborative measures between the Federal and State Governments that seek to align on the management of risk, approvals, and compliance.
- **Address regulatory creep**  
Clear delineation between State and Commonwealth responsibilities to address increasing federal involvement in matters outside their traditional Constitutional or policy responsibilities.

We note that many of the draft report's findings and recommendations are not new, having been the subject of multiple state and federal reviews into the resources sector over the past decade, including at least two by the Commission itself. Of particular note is the 2013

Major Project Development Assessment Processes Inquiry<sup>4</sup>, which highlighted the following areas in need of attention:

- unnecessary complexity and duplicative processes
- lengthy approval timeframes
- lack of regulatory certainty and transparency in decision making
- conflicting policy objectives
- inadequate consultation and enforcement
- regulatory outcomes falling short of their objectives.

APPEA believes a strong commitment from governments is needed to address many of the failings and shortfalls identified in the Commission's draft report and in previous reports. As described above, many of these issues are not new and if acted upon in a timely way, can provide a range of benefits to industry, the economy and the Australian community.

The independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides an important opportunity to restore confidence in Australian regulation and to consider more efficient approaches to environmental management. However, it is likely that the reforms recommended by the review could be significant and take some time to develop.

APPEA has identified some immediate changes to the EPBC Act that will assist in addressing duplication and complexity, provide greater certainty for businesses and encourage investment. This also sends important signals that the Australian Government is acting quickly to address inefficiencies in legislation. This will help facilitate an earlier start to projects, bring forward jobs in regional and source communities and support businesses across the supply chain.

## **EPBC Act - APPEA Immediate Priority Actions**

### **1. Uncertainty in Recovery Plans and Threat Abatement Plans is resolved**

Under the EPBC Act, the Minister may make, adopt and implement recovery plans for threatened fauna, threatened flora and threatened ecological communities listed under the Act. (Section 53). These plans are binding on the Australian Government. The Minister, delegates or approved authorities are unable to make a decision, or enter into an agreement, that is inconsistent with any recovery plan or threat abatement plan.

An activity that may be inconsistent with *any* part of a plan cannot be approved. Even if the activity is consistent with the overall objectives of the plan. These prescriptive documents fail to consider project assessment, mitigation measures, biodiversity offsets, etc. This means that activities that are environmentally sound and consistent with the objective of

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<sup>4</sup> Major Project Development Assessment Processes report:  
<https://www.pc.gov.au/inquiries/completed/major-projects/report>

the plan may not be approved due to the prescriptive nature of the interpretation of the definition.

The EPBC Act should be amended to ensure that the definition of “not inconsistent” is clear and applies only to the *overall objective* of the plan, not specific sections within it. Plans should also be drafted to ensure they are fit-for-purpose and to allow outcome-based decision making.

## **2. Unclear requirements in section 527(E) around indirect impacts is defined**

Section 527E(1)(n) of the EPBC requires consideration the consequential indirect impacts of an activity, provided that the action is a ‘substantial cause’ of the consequence. However, this is poorly defined and leading to administrative delays and burdens.<sup>5</sup>

APPEA recommends that amendments be made to Section 527E of the EPBC Act do define how far down the indirect assessment pathway proponents and regulators are required to consider and a reasonableness test needs to be defined.

## **3. Environmental offsets requirements are amended**

Currently offsets are approved on a project by project basis. They are timely, complex and may not result in the best environmental outcome. There is no flexibility to develop strategic offsets that may deliver better environmental outcomes. Offset delivery is strongly focused on a calculation rather than the solution and strategic benefit.

APPEA recommends the Federal Government amends offset requirements to allow for strategic approaches to offsets, including through the contribution of financial offsets or a pooled fund.

## **4. Allow for variations and extensions to existing approvals**

A variation to approvals should be possible in situations where changes are not determined to be material. Small additional actions are being assessed as new projects even when surrounded by existing approvals (which are often significantly under their initial assessment anyway). Reforms to allow flexible pathways for consideration of minor or material changes to existing approvals. This would support projects to adapt, improve and respond to evolving circumstances.

In addition, companies are unable to sell or transfer petroleum tenure with an existing approval attached. The new operator is required to apply for another EPBC approval. There should be a mechanism to transfer existing approvals to new entities to ensure efficient allocation of resources and capital and to improve commercial opportunities.

## **5. The Water Trigger is better defined**

Duplicative assessment, as presented in the water trigger, is a preventable burden on the resources of the Australian Government. The water trigger adds duplication and inefficiency for no benefit at a time when clarity and investor certainty are required.

APPEA recognises that this matter is unlikely to be repealed in the short term, and as such recommends improvements to make it more workable and reduce its impact on investment.



Some of the matters considered under the Trigger (water bores, any groundwater dependent vegetation including weeds that are reliant on groundwater) should not meet the meaning of national significance and this should be changed.

APPEA recommends the Government undertake a review of *Significant Impact Guidelines 1.3: Coal seam gas and large coal mining developments - impacts on water resources* to consider amendments to limit interpretation to matters that are truly nationally significant.

**6. Ensure appropriate resourcing to finalise outstanding and overdue EPBC Act assessments**

In 2019, the Government committed \$25 million over two years to reduce unnecessary delays in environmental approvals under the EPBC Act. APPEA supports this approach and recommends that additional funding is considered to further identify efficiencies and reduce the backlog of outstanding approvals and post-approval management plans.

## Responses to draft findings, leading practices, information requests and recommendations

The following provides responses to key draft recommendations, findings, leading practices and information requests seek to emphasise, clarify and provide further context for the Commission towards its final report.

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### Draft Recommendation 4.1

*Rather than imposing bans and moratoria on certain types of resources activity such as onshore gas, governments should weigh the scientific evidence on the costs of a particular project on the environment, other land users and communities against the benefits on a project-by-project (or regional) basis.*

Decision making based on credible science is central to the oil and gas industry. Oil and gas industry decisions related to business and operational activity rely on the best available scientific information. APPEA strongly supports the removal of bans and moratoriums on onshore gas development and the need for evidence-based decision-making processes across all tiers of government and regulators. Similarly, governments should weigh the costs and benefits of projects and activities against the best available scientific information and avoid widescale bans and moratoria in the absence of such evidence. A modern, risk based, streamlined approvals process would afford protection to the environment, whilst proving economic growth and opportunity.

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### Draft Recommendation 6.1

*The Environment Protection and Biodiversity Conservation Act 1999 (Cth) should be amended, in line with the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 (Cth), to enable negotiation of bilateral approval agreements.*

APPEA strongly agrees with this recommendation and notes that The Office of the Environment Protection Authority in Western Australia estimated that in 2012-13, environment assessments involved (on average) about \$50,000 in regulator expenses (2013b). In a cost-benefit analysis of proposed reforms to environmental assessments under the EPBC Act, commissioned by the Department of Sustainability, Environment, Water, Population and Communities, Deloitte Access Economics estimated that bilateral assessment and approval agreements could create a net benefit approaching \$400 million, largely from reduced delays.<sup>5</sup>

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<sup>5</sup> DAE (Deloitte Access Economics) 2011, Cost-Benefit Analysis — Reforms to Environmental Impact Assessments under the Environment Protection and Biodiversity Conservation Act 1999, 20 April. [www.ris.pmc.gov.au/sites/default/files/posts/2011/09/EPBC-Act-Environmental-Impact-Assessment-CBA.pdf](http://www.ris.pmc.gov.au/sites/default/files/posts/2011/09/EPBC-Act-Environmental-Impact-Assessment-CBA.pdf)

That said, there must also be a willingness at the administrative level to achieve the efficiency goals of this process and APPEA notes the ongoing progress of the current Independent Review of the EPBC Act<sup>6</sup>. The EPBC Act review interim report<sup>7</sup> notes that duplication exists between the EPBC Act and state and territory regulatory frameworks for development assessment and approval. Efforts have been made to harmonise and streamline with the states and territories, but these efforts have not gone far enough. The key reform directions proposed by the EPBC Act review interim report to remove duplication between the EPBC Act and State and Territory systems are to devolve decisions to other jurisdictions, where they demonstrate National Environmental Standards can be met and to base devolution on sound accreditation, quality assurance and compliance, escalation (including step-in capability) and regular review.

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#### Draft Recommendation 8.1

*The Australian Government should amend s. 186(5) of the Fair Work Act 2009 (Cth) to allow an enterprise agreement to specify a nominal expiry date that matches the life of a greenfields project. The resulting enterprise agreement could exceed four years, but where it does so, the business would have to satisfy the Fair Work Commission that the longer period was justified.*

The Australian oil and gas industry relies heavily on Australia's reputation as a stable destination for investment. This reputation is acute when companies are considering investment in multi-year development projects that may face the threat of industrial disputes. Changes to s. 186(5) of the *Fair Work Act 2009* (Cth) to allow an enterprise agreement to specify a nominal expiry date that matches the life of a greenfields project would minimise this threat. These changes are significant in consideration of the planned infrastructure and development projects in the North West of Australia that would involve lengthy periods for construction in excess of the current four-year term for enterprise agreements.

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#### Draft Recommendation 11.1

*Governments in each jurisdiction should assess:*

- *Whether regulators of resources-sector activity are appropriately funded to enable timely processing of applications and effective adoption of a risk-based regulatory system.*
- *Opportunities for enhancing regulators' cost recovery processes.*

APPEA notes the common conservative approach undertaken by regulators in addressing every uncertainty and unknowns in an assessment process that is inherently a prediction of impacts (rather than known) contributes considerably to the time and effort taken by

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<sup>6</sup> <https://epbcactreview.environment.gov.au/>

<sup>7</sup> <https://epbcactreview.environment.gov.au/resources/interim-report/chapter-4-efficiency>

regulators when assessing applications. More efficient use of regulators' resources by adopting a risk based approach to assessment could realise significant efficiency gains for regulators, whilst maintaining environmental protections.

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#### Draft Recommendation 11.2

*Regulators in each jurisdiction should consult with industry, including peak bodies (such as the Minerals Council of Australia and the Australian Petroleum Production and Exploration Association), on developing a program of site visits in order to enhance technical expertise. The program should be ongoing and part of induction training provided to new staff.*

APPEA agrees that this could be a useful initiative, but practically may be difficult to implement. APPEA considers that for this to work, high levels of openness and trust between operators and regulators would be needed. Operators must be willing to expose themselves and regulators will need to put aside any concerns that a site visit may be viewed as being too close to industry.

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#### Draft Finding 4.3

*Domestic gas reservation schemes can reduce returns to investors and discourage investment in gas exploration and extraction, leading to higher prices in the longer run and imposing net costs on the community.*

APPEA fully supports this finding. In addition, we stress that in challenging market environments, governments must resist calls for policy interventions that force non-commercial outcomes on market participants. Existing gas market regulatory frameworks are inconsistent with and will actually compound, challenging gas market conditions. APPEA would urge the Australian Government to work with jurisdictions to increase supply by encouraging the lifting of bans and moratoriums and the approval of gas projects.

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#### Draft Finding 6.1

*Unnecessary delays in project commencements can be costly for proponents and the community, and typically dwarf other regulatory costs.*

APPEA strongly agrees with this finding and notes the Productivity Commission's analysis in its 2013 Major Projects Inquiry Report<sup>8</sup> that a one-year delay to a major offshore oil and gas project could result in cos increases of between \$500 million and \$2 billion. In the same report, the Commission noted that the average time between project referral to approval for large offshore resource projects under the EPBC Act is three years. In line with Draft Recommendation 6.1 of the Draft Report, effort should be undertaken between jurisdictions to realise efficiencies in process and identify and remove duplication where it occurs.

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<sup>8</sup> <https://www.pc.gov.au/inquiries/completed/major-projects/report>

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#### Draft Finding 6.2

*Environmental impact assessments are often unduly broad in scope and do not focus on the issues that matter most. This comes with costs — the direct costs of undertaking studies and preparing documentation and the more significant cost of delay to project commencement. Disproportionate and unfocused environmental impact assessments are also of questionable value to decision makers and the community.*

APPEA strongly agrees with this finding, which goes to the heart of many of its member's observations on inefficiencies with regards to current environmental regulatory practices. Industry's primary concern is the significant resources currently required addressing on low impact low risk activities as part of an approval. In the case of an environmental impact assessments, a very large range of issues must be addressed in detail, leading to very large environmental impact statements, of little probable value to government or communities. APPEA considers the adoption of a risk based approach to regulation should help focus industry and regulator attention and resources to areas where it will have the most impact.

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#### Draft Finding 6.8

*Resources projects typically require a range of assessments and approvals by multiple regulators within a jurisdiction. While regulatory coordination has improved over the past decade, proponents still report difficulties navigating the regulatory landscape. Lack of coordination can cause costly delays and liaising with multiple agencies can also give rise to significant compliance costs.*

All levels of government, with multiple agencies in each jurisdiction, play a role in creating, administering and enforcing regulations. It is a complex regulatory landscape and comprehensive depictions challenge not only industry, but regulators themselves. APPEA would note that although regulatory coordination has improved, where the delegation of EPBC Act processes to NOPSEMA provides a bright spot in this trend, the approvals system remains complex, prone to duplication and is too slow.

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#### Draft Finding 11.1

*Many of the regulatory issues presented to the Commission through the course of this study have been examined previously. Implementing enduring improvement requires that governments ensure the pre-conditions for leading practice regulatory systems are in place, particularly clear regulatory objectives, adequately resourced institutions and effective governance and accountability arrangements.*

APPEA emphatically agrees with this finding and believes a strong commitment from all governments is needed to address many of the failings and shortfalls identified in the Commission's draft report and in previous reports. As described above, many of these issues

are already known and if acted upon in a timely way can afford a range of benefits to industry, governments and the community.

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#### Draft Leading Practice 6.2

*Timelines, statutory or otherwise, provide proponents with information about how long regulatory processes ought to take, which supports project planning. They also focus regulators' attention, and public reporting of regulator performance in meeting those timelines is a means of keeping them accountable. For example, both Western Australia and South Australia report on the share of mining proposals and other approvals finalised within target timelines.*

APPEA strongly supports a detailed framework of binding requirements for statutory timelines and reporting of performance against these timelines. However, the use of “stop the clock” mechanisms by regulators can significantly increase and delay approvals, particularly for larger projects. APPEA supports the establishment of timeframes that set levels of assessment, standardised and published to provide industry higher levels of certainty of timeliness of approvals prior to submission of applications. Adequate resourcing of agencies and regulators should also be considered to ensure resources are available to meet timeframes.

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#### Draft leading practice 6.8

*The use of standard conditions for standard risks can deliver efficiencies to approval processes. Queensland's Model Mining Conditions are leading practice.*

Large portions of permissioning documentation as they relate to the oil and gas industry address risks and controls for outcomes that are well known, locally, regionally and nationally. We believe there is a significant opportunity for government and regulators to identify and address common risks through either standard conditions or other means. By not only offering improved efficiencies for industry, efficiencies for regulators could also be realised.

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#### Draft leading practice 7.4

*Public registers of activities with offset obligations and the projects developed to fulfil them provide valuable transparency about the application of offset policies. Information on offset projects should include their biodiversity values, location, date of approval, completion status, and follow-up evaluations of benefits. Where companies fulfil their offset obligations by paying into a fund, the register should include the size of the payment. Western Australia's offset register is a leading-practice example.*

APPEA recommends the development of a consistent offsets framework. This should include an agreed national approach to the application of biodiversity offsets.

Environmental offsets play an important part of the environmental regulatory arrangement to compensate for the residual adverse impacts of an action on the environment. Offsets can provide an important and scientifically-robust means to deliver environmental outcomes while achieving social and economic benefits associated with Australia's development. The goal of biodiversity offsets must be measurable conservation outcomes that result from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development. This is applied after other appropriate prevention and mitigation measures have been taken to achieve no net loss (or net gain) in biodiversity.

Offsets should only be required once avoidance, minimisation and mitigation measures have been undertaken and that the residual impact is significant. There should be proactive incentives for project proponents to find ways to first avoid, then minimise and mitigate the potential impacts that their actions may have on matters of national environmental significance. The use of offsets should not be expanded outside of this hierarchical framework.

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#### Information Request 6.1

*The topic of Indigenous heritage has not been raised by many participants to this study and it is not clear which jurisdictions, if any, could be described as leading practice. Could interactions between Indigenous heritage and the resources sector be improved? Which jurisdictions manage these interactions well already? How do they do it?*

Cultural Heritage considerations are a known restriction on any activity in most jurisdictions and experienced operators are aware that on ground activities cannot commence until cultural heritage clearance has been established. There have been instances where environmental regulators have taken a broad interpretation of environment (where cultural is included in the definition of the environment) to rectify perceived issues with the ability of heritage legislation to protect cultural considerations. In doing so, grant of environmental approvals has been deferred until proponents can demonstrate they have secured agreements and physically carried out surveys. For example, the Western Australian Department of Mines, Industry Regulation and Safety (DMIRS) interpretation of "Environment" when assessment EMPs under the PGERA.

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#### Information Request 7.2

*To what extent are post-relinquishment obligations on resources companies a barrier to investment? What are leading-practice ways of managing the residual risk to the Government following the relinquishment of a mining tenement?*

We note that the Department of Industry, Science, Energy and Resources (DISER) is currently undertaking a review of the Australian offshore oil and gas decommissioning framework.<sup>9</sup>

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<sup>9</sup> DISER Offshore oil and gas decommissioning framework review: <https://www.industry.gov.au/data-and-publications/offshore-oil-and-gas-decommissioning-framework-review>

APPEA and its member companies are closely engaged with DISER as part of this review and development of a national decommissioning framework.

For the petroleum industry, decommissioning is typically complex (technically) and a costly exercise that requires strong alignment between the objectives of government as the owner of the resource, the regulator to enforce a framework for responsible development and industry as the developer of the resource. In particular, it is essential the regulator exercise its powers in a timely, consistent and appropriate manner to protect the Australian taxpayer from any potential unfunded decommissioning liability, while not imposing or creating an undue burden on diligent and compliant asset owners specifically or the industry more generally.

Consequently, APPEA considers the objectives of an effective and efficient decommissioning framework must 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 behaviours and risk allocation between asset owners and former owners while ensuring that Australia remains an attractive destination for investment into the offshore oil and gas sector.
- Ensuring that the impacts of resource extraction on the environment are responsibly managed.
- Ensuring, 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 and which minimises risk to the Australian taxpayer.
  - Has a proper regard for safety, the environment and other legitimate users of the sea or land.
  - Is flexible enough to allow the implementation of decommissioning solutions that are technically feasible and economically prudent.
  - Ensures that risk to the environment is reduced to a level that is ALARP so that the environment in which the activity is undertaken is maintained or enhanced for the benefit of future generations.

Ensuring that the decommissioning solutions implemented provide requisite confidence to all relevant stakeholders in the safety of asset management.



APPEA supports that release from liability should be possible where a titleholder has discharged petroleum activities (including decommissioning activity) to the satisfaction of the regulator(s), consent to surrender of title should be expedited and all liabilities for that titleholder discharged. The focus of government and the regulator(s) should be on ensuring that decommissioning options as proposed by the titleholder are sound and implemented as planned and approved by the regulator.

APPEA considers that any decommissioning regime must minimise, to the extent it is practically possible, any potential adverse financial outcomes relating to assets decommissioned 'in situ'. APPEA supports a process whereby titleholders are released from liability when pre-agreed decommissioning activities are completed in line with regulator(s) approved plans. This may include circumstances where infrastructure is left in the marine environment or repurposed for CO<sub>2</sub> storage or H<sub>2</sub> generation. In such circumstances the future owner would take on liability and previous owners released.

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### Information Request 7.3

*The Commission is seeking further information about the effectiveness of resources health and safety legislation across Australian jurisdictions, including:*

- *whether there would be benefits in greater consistency across jurisdictions*
- *approaches that represent leading practice health and safety legislation for resources*
- *how health and safety approaches in each jurisdiction could be improved.*

The review of the model Work Health and Safety laws – Final Report<sup>10</sup> noted:

'The harmonisation of WHS laws across the country is an ambitious objective. It has largely been achieved and remains strongly supported. Most of those consulted over the last year urged the Government of Victoria and Government of Western Australia to adopt the model WHS laws as a matter of urgency and other jurisdictions to minimise variations to the model wherever possible. If the harmonisation objective is to be sustained into the future, it is critical that all jurisdictions commit to it.'

Generally, greater consistency across jurisdictions on health and safety legislation would be welcome but may be difficult to achieve.

Approaches that represent leading practice health and safety legislation for resources also rests with organisations primarily with the adoption of good practices in accident prevention, specifically:

- adopting a 'no-blame' response to error reporting
- establishing a reporting culture, including maintaining detailed records of errors and near misses

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<sup>10</sup> [Review of the model Work Health and Safety laws - Final report - December 2018](#)

- providing training targeting the human and organisational factor issues faced by the organisation – which implies that first an organisation must identify the human and organisational factors that pose the greatest risk in their context<sup>11</sup>

The National Compliance and Enforcement Policy establishes nationally agreed approaches under the following headings:

- aims of compliance and enforcement
- key principles underpinning compliance and enforcement activity
- strategic enforcement priorities
- monitoring and compliance approaches
- compliance and enforcement tools, and
- information about guidance, enforcement, investigation and prosecution criteria.<sup>12</sup>

APPEA suggests that health and safety approaches in each jurisdiction could be improved by implementing:

- leading rather than lagging indicators
- analysis into human behavior
- Consideration of human factors and human reliability<sup>13</sup>

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### Information Request 9.1

*Is there scope for greater sharing of resources company infrastructure with communities?  
Are there any examples of where this has been done effectively?*

There are opportunities for greater sharing of infrastructure from companies to communities or landholders. There are situations where this has happened, for example shipping containers, transportable buildings, conversion of petroleum wells to water bores, etc. Wastewater from operations that meet certain criteria for irrigation purposes can be and is shared with landholders, including the transfer of water entitlements. It is however often difficult to navigate the required approvals processes. What could be a simple solution (particularly in remote areas) becomes administratively difficult to affect and opportunities for remote communities to benefit are lost.

To facilitate the transfer of oil and gas assets to landholders, APPEA and industry have been working closely with the Queensland Department of Environment and Science to develop a

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<sup>11</sup> From the APPEA Journal 2020 (J Mitchell and A Turnbull), [Identifying pan-industry common contributors to major accident events](#).

<sup>12</sup>

[https://www.safeworkaustralia.gov.au/system/files/documents/1902/review\\_of\\_the\\_model\\_whs\\_laws\\_final\\_report\\_0.pdf](https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf)

<sup>13</sup> NOPSEMA Human reliability analysis: <https://www.nopsema.gov.au/resources/human-factors/human-reliability-analysis/>

guideline for the transfer of petroleum infrastructure to landowners and which is likely to be finalized early in Q4 2020.

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#### Information Request 11.1

*The Commission is seeking views on the advantages and disadvantages of institutionally separating regulatory and policy functions in jurisdictions where separation does not already exist, and the effectiveness of other approaches to ensuring regulator accountability.*

There is a balance that must be achieved in addressing the advantages and disadvantages of institutionally separating or otherwise, regulatory and policy functions in jurisdictions. We note there are advantages in maintaining separation of regulatory and policy functions within an agency and this may include a improved perceptions of regulator independence, transparency and the absence of any real or perceived conflicts of interest. On the flipside, disadvantages could include the separation of policy and industry expertise and the resultant inhibition of interaction between these two areas.

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