

3rd August 2022

Ms Simone Symonds
Project Officer, Dpt of Climate Change, Environment Division
Department of Environment, Parks and Water Security
GPO Box 3675
DARWIN NT 0801

Forwarded via email: environment.policy@nt.gov.au

Dear Simone,

APPEA Submission: Draft Environment Protection Legislation Amendment Chain of Responsibility Bill 2022

As the peak national body representing companies engaged in oil and gas exploration throughout the Northern Territory and Australia, the Australian Petroleum Production & Exploration Association (APPEA) welcomes the opportunity to make a submission to the Department regarding the *Draft Chain of Responsibility (CoR) Bill 2022* (the Bill).

We note that the draft bill applies only to the onshore gas industry, currently, to satisfy recommendation 14.30 of the Pepper Inquiry. APPEA notes however that the intent of such legislation should apply to all activities and industries, not only the onshore gas industry, this is a missed opportunity for the Northern Territory government to introduce CoR laws into the Territory's environmental regulatory framework.

APPEA supports a mechanism that ensures environmental liabilities and the costs associated with managing liabilities to be 'redirected' to a 'directly related person' of the company (or person) responsible for the environmental liabilities in the unlikely circumstance where the costs of managing and rehabilitating sites cannot be fulfilled by the company. It is important to recognise that onshore gas projects do not have the same sustained, cyclical, commodity driven care and maintenance periods like minerals projects and therefore historical legacy issues are less likely.

In the extremely unlikely event that a company is unable to fulfill its rehabilitation requirements, it is important that the net for recovering those costs is not cast beyond those with a direct and controlling interest in the particular site. APPEA welcomes the tests included in the legislation that define that, for example, a relevant person must have control of the high risk entity or are in a position to "*influence a high risk entity's conduct.*" Furthermore, the requirement that "*The CEO must not issue a compliance notice to a related person of a high-risk entity if a reasonable person would consider the issue of the notice to the related person to be oppressive, unjust or unreasonable in the circumstance*" is strongly supported. However APPEA does have a suggestion as to the definition of a "*related person*", see body of the submission.



APPEA is working with governments around Australia to ensure that the regulatory settings encourage timely and progressive decommissioning and rehabilitation of oil and gas infrastructure. We support the options to maintain flexibility to apply a range of assurance / security / financial mechanisms – as described - [Factsheet – Environmental Financial Mechanisms](#). If preferred as a policy approach by government, the CoR laws should exist only as an option of last resort after all options available to the regulator have been exhausted. We also note the commitment to introduce a levy to monitor manage and restore orphan wells, Hydraulic Fracturing Inquiry (HFI) recommendation 14.14.

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

NT Regulatory Framework Summary

The Department of Environment, Parks and Water Security (DEPWS) has prepared the Consultation Draft [Environment Protection Legislation Amendment \(Chain of Responsibility\) Bill 2022 PDF \(303.3 KB\)](#) (the Bill). The Bill amends the [Environment Protection Act 2019](#) and [Environment Protection Regulations 2020](#) to introduce chain of responsibility (COR) laws as part of the Territory's environmental regulatory framework.

Chain of responsibility laws are in addition to existing / established approvals and compliance processes, such as:

- Fit and proper person tests / applicant suitability tests– prior to the grant of title or transfer of title.
- Securities under section 79 of the *Petroleum Act 1984*.
- Conditions applied to a title instrument – by resources minister / delegate, under *the Petroleum Act 1984* (see sections 58 / 58A).
- Operational permissioning – management plans contain prescribed content - via - [Code of Practice: Onshore Petroleum Activities in the Northern Territory](#); and [Schedule of onshore petroleum exploration and production requirements](#).
- Conditions applied on environmental approvals – by resources minister / delegate and or environment minister or delegate.
- Insurance requirements under the Petroleum Act framework – e.g Well management plan certificate of currency.
- Progressive rehabilitation via direction relating to a technical works program -see section 58C under *the Petroleum Act 1984*
- Revocation of an approval and or / stop work notices.
- Surrender of title is applied for at the end of the project.

Discussion points related to the NT Regulatory Framework

- As described above, the *Petroleum Act 1984* provided an existing framework to direct former titleholders to undertake particular activities
- The *Petroleum (Environment) Regulations* in NT are underpinned by the principles of ecologically sustainable development and polluter pays principle –the objects of NT subsidiary legislation already provide for compliance and enforcement action in the unlikely event that activities are not being undertaken in line with approved management plans.
- NT reform agenda (implementing actions from the Pepper Inquiry) has been and continues to be complex and disjointed.
- The following reforms are committed as per the Pepper Inquiry:
 - Chain of responsibility laws,

- the review of performance bonds and potential to be replaced with insurance / assurance provisions.
- Introduction of a well levy
- The “strengthened” regulatory framework is a mix of objective based regulations and prescription which shifts administrative cost and compliance burden onto industry.
 - APPEA suggest the bill contain clear consent to surrender / closure / completion criteria – to make perpetual liability workable.

The Bill Key Points

APPEA would appreciate further clarity on the following clauses / elements of the Bill:

1. *Financial assurance* – how the Department of Environment, Parks and Water Security and the Department of Industry, Tourism and Trade – will seek to layer assurance products and the timing of imposing different assurances.
 - We note Government has suggested that security will be applied to production licenses – our concern is that decommissioning and rehabilitation estimates may be indicative at this stage.
2. *High risk entity/ties* – The APPEA view is that lead agencies should focus on prevention and therefore screen applicants and gather information from titleholders across the petroleum lifecycle and or at key application stages (before a titleholder may become a high-risk entity).
 - Other jurisdictions have published guidance and factsheets on applicant suitability; disclosures etc. and
 - Risk based compliance strategies including horizon scanning and information gathering.
3. *Petroleum activity* – we note this is a broader definition than *regulated activity* (see regulation 5¹ of the Petroleum (Environment) Regulations 2016. – this will capture any activity / works, in line with the rights conferred by a permit lease or licence under the *Petroleum Act 1984* (ss 29, 42, 56).
 - Like our sub-point under 1 – we would like to understand the layering of assurance products / securities and the likely timing of imposition.

¹ A **regulated activity** includes the following operations or works:

- a) land clearing;
- b) earthworks (for example, cutting, filling, excavating or trenching);
- c) the construction, operation, modification, decommissioning, dismantling or removal of a well, pipeline or other facility;
- d) establishing seismic lines or drill pads;
- e) conducting seismic surveys;
- f) drilling;
- g) hydraulic fracturing;
- h) the release of a contaminant or waste material;
- i) the storage and transportation of petroleum and hazardous substances

- From a process point of view – any required security should form part of a production licence offer document – to give the applicant a procedural right of reply.
- We see to understand if securities / assurances on the title / licence raise further questions about other supporting processes e.g. transfer of title - are such securities discharged if titleholders change; and are securities sought to be held after the consent to surrender title.

APPEA welcomes the tests included in the legislation that define that, for example, a relevant person must have control of the high risk entity or are in a position to “*influence a high risk entity's conduct.*” Furthermore, the requirement that “*The CEO must not issue a compliance notice to a related person of a high-risk entity if a reasonable person would consider the issue of the notice to the related person to be oppressive, unjust or unreasonable in the circumstance*” is strongly supported.

4. *Regulated activities* – is the government intending to use the list per regulation 5 as a basis for developing a rehabilitation liability estimate? To inform policies for trailing liability, financial assurance and securities (e.g. bonds).
5. Section 192C -1ac(i)) – definition of a related person. APPEA notes that the definition of “related person” also extends to the “owner or occupier of the land”. We are concerned that this will be perceived that a relevant person could be established purely on the status of their ownership or occupation of the land on which the activity occurs. This provision should be removed or clarified to ensure that pastoralists, landholders or land occupiers who host oil and gas industry activity will not be the target of CoS requirements. Where a landholder or occupier has an arrangement that does provide them with the ability to directly influence an entity's conduct (such as a holding entity or associated entity) they are already covered by other definitions in this legislation.
6. Sections 192C and 192D – reads like an indemnity despite reference to contractual arrangements other than access.
 - We would like to understand if or how indemnities would apply for environmental service provision (local content).
7. Section 192Q – We support that the powers to enter land are necessary and in the public interest.
8. Section 192U – subheading is Recovery of costs – however this section provides for compensation to third parties for consequential damages (consistent with sections 57V and 81 the *Petroleum Act 1984*).
9. Section 192X – subsection (4) reads as a reverse onus with the burden of proof on the defendant.

Conclusion

APPEA strongly encourages a coordinated whole of government approach to decommissioning and rehabilitation, we are committed to working with government re the suite of HFI actions.

The review of HFI actions holistically requires:

- administrative arrangements between government agencies to foster expeditious co-regulatory work-flows;



- highly motivated government officers – committed to improving efficiency and certainty for titleholders.

We have taken the opportunity to identify areas we would like further information regarding the Bill, building on what the Government has prepared within the [Factsheet – Consultation Draft Bill – Explanation of Clauses \(nt.gov.au\)](#). If you have any queries or for further information in relation to the contents of this letter and our submission, please contact me on 0434 590 589 or at cschmidt@appea.com.au.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "C Schmidt".

Cassy Schmidt
Director – Northern Territory
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