



Canberra (Head Office)



17 January 2020

Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
(via economics.sen@aph.gov.au)

Dear Mr Fitt,

RE: Submission on the “Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019 [Provisions]”

The Australian Petroleum Production and Exploration Association (APPEA) welcomes the opportunity to comment on the “*Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Bill 2019 [Provisions]; and Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019 [Provisions]*”.

APPEA is the peak national body that represents companies engaged in oil and gas exploration and production operations in Australia. APPEA has 57 full member companies that account for an estimated 95 per cent of petroleum production in Australia and 130 associate member companies that provide a range of goods and services to the industry.

APPEA seeks to work with Australian governments to help promote the development of the nation’s oil and gas resources in a manner that seeks to maximise the benefits of the industry to the Australian industry and community.

APPEA recognises that the Bill provides for a number of amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act* (OPGGGS Act) that principally seek to provide NOPSEMA flexibility and agility in response across State, Territory and Commonwealth areas, in the unlikely event, of an oil spill emergency in Commonwealth Offshore waters. Further, the proposed amendments will help clarify processes for response and oversight across State, Territory and Commonwealth areas.

APPEA unequivocally supports the polluter pays principle for clean up and other associated costs in any such unlikely event. However, as a declared oil pollution emergency, enacted by the CEO of NOPSEMA, provides significant powers to NOPSEMA, APPEA is concerned by the paucity of description in the Explanatory Memorandum (paragraph 489) of what constitutes a declarable oil pollution emergency. APPEA would suggest inclusion of descriptions of events and or significance that would constitute instances where a declared oil pollution emergency could be provided in circumstances of imminent significant risk to the safety of personnel, facilities and potential significant impact to the environment.





APPEA would promote closer consideration of procedural fairness in the Bill, for example paragraph 444 in the Explanatory Memorandum provides as follows:

444. If a titleholder fails to comply with their polluter pays obligations in section 572C, including the obligations in areas of State or Territory jurisdiction inserted by item 5, sections 572D and 572E empower NOPSEMA and the Minister respectively to do any or all of the things they consider that the titleholder has failed to do. The titleholder must then reimburse NOPSEMA or the Minister for the costs and expenses of taking any such action.

As raised above, APPEA has no issue with a polluter pays approach for response and clean-up activities. However, concern arises in the far too general and broad description and potential application of this approach provided in paragraph 444, which infers power to NOPSEMA and the Minister to do, "...any or all of the things they consider that the titleholder has failed to do..." and would seem to give NOPSEMA and the Minister near limitless authority to take whatever action they deem appropriate and seek reimbursement after the fact, without the need to consult the Titleholder. APPEA would suggest that there should be inclusion of a process where this obligation, to cover any and all costs, is only enacted after communication with the Titleholder and where there is clear demonstration that the Titleholder has either not followed a NOPSEMA or Ministerial directive within an agreed timeframe, or when the Titleholder, after discussion with NOPSEMA, has clearly not or is not planning to undertake response activities detailed in the accepted Environment Plan/Oil Pollution Emergency Plan. This would also provide Titleholders with advanced notice that NOPSEMA and/or the Minister is not satisfied with the response activities and allows them an opportunity to modify prior to NOPSEMA and/or the Minister undertaking activities that the Titleholder will be obliged to pay for.

Furthermore, issues could arise should NOPSEMA and/or the Minister engage organisations to undertake response activities in isolation and without consultation/coordination with the Titleholder. Issues around simultaneous operations where response activities are managed by different parties, where efforts are being undertaken by both the Titleholder and other organisations under the direction of NOPSEMA, could result in issues relating to competition for resources and equipment which could result in the response activities for all parties being adversely affected. It is suggested that any activity NOPSEMA and/or the Minister wish to undertake should be done via directive to the Titleholder or at least through a unified command approach where all response activities are managed through a single point so activities can be aligned and result in improvements in response activities.

APPEA appreciates that in certain situations, timely access to facilities, premises and personnel by NOPSEMA can be critical in an emergency event. The provision of Warrant-free inspection and seizure powers (paragraphs 501, 511, 513, 526) in the draft bill explanatory memorandum raises some concern. APPEA would consider that any warrant-free activities are strictly limited and where these powers are provided for, senior executive authorisation should be required and rigorous reporting requirements should be imposed, to ensure that a sufficient level of accountability is maintained. This is congruent with Recommendation 3 of the 2006 Senate Standing Committee Report on the Inquiry into Entry and Search Provisions in Commonwealth Legislation¹. As follows:

¹ Senate Standing Committee Report available here:

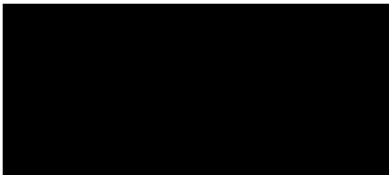
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Completed_inquiries/entrysearch/report/index



The Committee further recommends that entry and search without a warrant should only be authorised in very exceptional circumstances and only after avenues for obtaining a warrant by telephone or electronic means have proved absolutely impractical in the particular circumstances. In such circumstances, senior executive authorisation for the exercise of such powers should be required together with appropriate reporting requirements. The Guide should be amended to reflect this.

Thank you for the opportunity to APPEA to provide comment and should you need to discuss or clarify the issues raised please feel free to contact [REDACTED]

Yours sincerely,



Andrew McConville
Chief Executive Officer
APPEA