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Manager, Strategic Policy
Offshore Resources Branch
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By email: offshorepetroleumreform@industry.gov.au

Dear Strategic Policy Section,

Discussion Paper – Decommissioning Offshore Petroleum Infrastructure in Commonwealth Waters

EDOs of Australia (**EDOA**) is a network of community legal centres across Australia specialising in public interest environmental law. We appreciate the opportunity to provide comment on the *Discussion Paper – Decommissioning Offshore Petroleum Infrastructure in Commonwealth Waters* (**Discussion Paper**).

EDOA welcomes the Discussion Paper and strongly supports proposals to strengthen the regulatory framework for management decommissioning of offshore petroleum infrastructure. It is clear from the experience of mine rehabilitation in the terrestrial environment that without an adequate regulatory framework there is a significant risk of offshore petroleum infrastructure being abandoned at the end of production, thereby leaving the Australian community with a large financial burden that should rightly be borne by those companies' profiting from exploitation of offshore petroleum resources. We provide comment on the Discussion Paper in relation to seven issues:

- **Decommissioning principles**
- **Decommissioning Obligations**
- **Information Available to Government**
- **Legal Responsibility**
- **Financial responsibility mechanisms**
- **Post-title compliance and enforcement**
- **Other issues and opportunities**

1. Decommissioning Principles

EDOA supports the decommissioning principles underpinning the current decommissioning framework, namely:

1. Objective-based regulation
2. Environmental, safety and well integrity outcomes are paramount
3. Decommissioning is the responsibility of titleholders
4. Decommissioning should be considered early and often
5. Complete removal is the “base case”
6. Decommissioning should take place before block(s) become vacant acreage

However, we note that in the absence of clear guidance on what constitutes unacceptable impacts from offshore petroleum activities including decommissioning, the focus on decision making around “reasonable measures” and “as low as reasonably practicable” cannot be said to be objective-based regulation. This review of the decommissioning framework must be used to ensure that the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (**OPGGSA Act**) requires an objective standard of full environmental restoration as a result of decommissioning activities.

2. Decommissioning Obligations

In addition to existing obligations, EDOA supports proposals to explicitly require titleholders to remediate the environment, to plug and abandon wells, and to make good any damage to the seabed or subsoil in the title area as part of their decommissioning obligations. EDOA supports the definition of “environment” applying to the full range of physical elements and living organisms in an area.

EDOA also supports the proposal that all decommissioning obligations should be completed within a fixed timeframe. Fixed deadlines for decommissioning and rehabilitation will avoid the situation, currently seen in the terrestrial environment, where mine sites regularly enter ‘care and maintenance’ rather than closure, thus deferring or avoiding their rehabilitation obligations. There is significant merit in the United States of America (**USA**) Government approach requiring licensees to remove platforms and plug and abandon wells within one year after the licence ends, or if relevant infrastructure has not been used for at least five years. This approach should be expanded to include specific timeframes for the full suite environmental remediation activities and make good requirements. National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) should maintain an approval role for decommissioning works prior to implementation to ensure adequate environmental standards are achieved.

Importantly, physical decommissioning should not be considered the end of a titleholders rehabilitation obligations. Requirements for post-decommissioning monitoring should be introduced to ensure that the environment is responding as predicted and any unforeseen consequences of the decommissioning should remain the responsibility of the titleholder.

We also support changes to ensure that sites that become vacant by means other than formal closure mechanisms maintain their decommissioning obligations, and that sites where titleholders have already surrendered their titles are required to meet minimum environmental standards.

Strong criminal and civil enforcement provisions, including open standing for third parties, should form a core part of any legislative framework.

3. Information Available to Government

Information on proposed decommissioning should be provided at the approval stage of any project (e.g. through Environment Plans) and when there are any substantive project changes, for example, the introduction of additional infrastructure, changes to production schedules, etc. Evidence suggests that planning for rehabilitation/ decommissioning at the outset of a project is more likely to achieve the best environmental outcome at the least cost.[1] As a minimum, companies should be required to provide up to date information on infrastructure in their title area, including its use and status, and projected decommissioning activities and proposals, including timing, as part of an annual reporting framework. This reporting could take the form of a stand-alone decommissioning plan. These reports should contribute to a central repository of information on the outstanding rehabilitation obligations of currently operating and previously operating projects. Without negating ongoing monitoring and compliance obligations, EDOA supports the implementation of an environmental 'close-out' report at the conclusion of physical decommissioning, on the basis that such a report would provide a public record on the physical decommissioning that has been completed.

4. Legal Responsibility

Having identified that there is "a potential lack of policy and legal clarity about a number of major issues, including: who bears statutory responsibility for ensuring decommissioning is carried out, the extent to which they are responsible, and the length of time for which they are responsible",[2] there is a strong onus on the Australian Government to address any gaps. EDOA strongly supports the approach of making companies who have been titleholders or licensees, responsible for decommissioning in perpetuity. In the alternative, if decommissioning obligations will rest solely with the final title holder, a mechanism similar to Queensland's *Chain of Responsibility* laws[3] should be introduced. Such an approach would protect the public purse by allowing recourse to related entities, including other members of the title holder's corporate group) in the event the title holder becomes insolvent, impecunious or wound up.

5. Financial responsibility mechanisms

As stated elsewhere, it is well recognised around Australia that current rehabilitation management mechanisms in the terrestrial environment are failing to ensure that resource projects are properly rehabilitated and that Australian tax payers are not left with the financial liability for un-rehabilitated sites. To ensure a similar situation does not arise in the offshore petroleum sector, a legislative requirement for companies to provide financial security for decommissioning must be introduced. A mandatory system of bonds covering the full cost of decommissioning, where the definition of decommissioning is expanded to include the restoration of an ecologically functional environment, and with sufficient

[1] See for example, Energy & Resource Insights (2016) *The Hole Truth* commissioned by the Hunter Communities Network
[2] Discussion Paper, p 28
[3] Chapter 7, Part 5, Division 2 *Environmental Protection Act 1994* (Qld)

contingency to cover uncertainty[4] must be implemented. This would include consideration of ongoing monitoring requirements, and contingency for future works (or residual risk payments) required to ensure ecological and biophysical processes are restored. The 2017 NSW Auditor-General's Report *Performance Audit - Mining Rehabilitation Security Deposits* has previously recommended that mine rehabilitation bonds should include:

> *additional coverage for stakeholder engagement, additional planning approvals, insurance costs, and any additional design, research and verification work required for successful closure.*

EDOA submits that decommissioning bonds should be held as cash in a newly established, legislated Decommissioning Trust (**Trust**). The Trust would be responsible for holding bonds until decommissioning has been completed and bonds are returned, or a company has failed to implement its rehabilitation requirements and funds must be drawn down from the Trust to undertake the necessary works. A comprehensive bond system would consist of two components, namely:

1. a security deposit, that could be returned at mine closure, subject to the primary decommissioning work being completed; and
2. a long-term rehabilitation bond based on the need to restore an ecologically functional environment with appropriate an management and risk contingency, held to cover any long-term risks including future environmental degradation once infrastructure was decommissioned.

To ensure that the costs of rehabilitation are incurred as environmental harm is caused (and the profits from the extracted minerals are received), decommissioning bonds should be adjusted annually, in line with annual reporting. In practice, this means that a bond would grow in the initial years of a project, as the profits from the mining operation grow, and then reduce as progressive decommissioning is undertaken. Any proposed bond needs to be subject to an independent cost review.

Interest gained on funds held by the Trust must be made available to undertake decommissioning of abandon infrastructure. The Trust should be required to have annual audited accounts and report to Parliament to ensure transparency.

Asset transfer between companies (including between large and small companies) should not be permitted until the proposed new owner has provided the appropriate decommissioning funds to the Trust. At the same time, the new owners should be required to show that they have the technical capacity to undertake the necessary decommissioning work before any transfer is approved.

6. Post-title compliance and enforcement

While the implementation of a Decommissioning Trust would reduce the risk of titleholders defaulting on rehabilitation obligations, EDOA supports the proposal to amend the OPGGS Act to ensure that a former titleholder operating under a remedial direction is subject to all

[4] A New South Wales Auditor-General's Report (2011) *Financial Audit Volume Six 2011 Focusing on Environment, Water and Regional Infrastructure* (p 19) noted that contingencies should range from 25-50% of total project costs, especially in the absence of a detailed plan to achieve closure.

the duties and responsibilities as if it were operating under their previous title. OPGGS regulations should be expanded to enable a former titleholder to submit a risk management plan (e.g. environment plan or WOMP) prior to commencing an activity. As noted, EDOA does not believe that titleholders should be able to surrender their title until they have adequately rehabilitated their title area, however should such a situation arise the OPGGS Act should allow for remedial directions to be issued to all former titleholders.

7. Other issues and opportunities

EDO NSW does not support a situation where the government could enter into arrangements with titleholders so that the government takes ownership of, and therefore assumes liability for, decommissioned infrastructure. This creates a significant risk of tax payers being left with a large financial burden for ongoing management and eventual decommissioning. Further, features such as artificial reefs can have unintended environmental consequences (such as concentrating fishing impacts) and inadequately maintained infrastructure could create a significant future financial burden on tax payers. EDOA believes that the primary focus should remain on full rehabilitation of infrastructure.

However, if the OPGGSA regulations are to maintain flexibility in relation to the requirement to remove “property brought into the title area in connection with the operations authorised by the title” there must be clear guidance on the level of ongoing environmental impact from the remaining infrastructure that will be considered acceptable, and what management arrangements for that infrastructure would be considered acceptable. If alternative arrangements are to be permitted, the alternatives should be clearly defined and should only permitted if they will result in a better environmental outcome than complete decommissioning.

EDOA would welcome the opportunity to provide comment on any Exposure Bill seeking to address the issues highlighted by the Discussion Paper. If there are any matters that you would like to discuss in relation to the submission, please do not hesitate to contact the writer on 02 9262 6989 or by e-mail rachel.walmsley[at]edonsw.org.au.

Yours sincerely,
EDO NSW

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