Environmental Defenders Office

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Manager
Strategic Policy Section, Resources Division
Department of Industry, Science, Energy and Resources
Industry House, 10 Binara Street
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By online submission

Dear Sir/Madam,

Offshore oil and gas decommissioning framework review

Environmental Defenders Office (**EDO**) thanks the Department of Industry, Science, Energy and Resources (**DISER**) for the opportunity to comment on the consultation paper "Enhancing Australia's decommissioning framework for offshore oil and gas activities" (December 2020) (**Revised Framework**).

EDO has made a number of submissions on this and related matters, including to DISER's initial consultation on the offshore oil and gas decommissioning framework (**Initial Submission**), on the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) draft *Section 572 Maintenance and removal of property* policy (**draft Section 572 policy**) and to NOPSEMA as part of their process of clarifying and operationalising regulatory requirements. Previous EDO submissions relating to NOPSEMA responsibilities (including the initial decommissioning consultation by DISER) are available at: https://www.edo.org.au/publication/submissions-involving-nopsema/.

EDO supports the focus in the Revised Framework to reform and strengthen the regulatory framework for managing the decommissioning of offshore petroleum infrastructure. Within that context we make the following brief comments on the Revised Framework.

DECOMMISSIONING OBLIGATIONS

This imposition of binding decommissioning obligations is significantly important to ensure that the Australian offshore infrastructure management regime provides clear and strong protections for the environment, industry, government and taxpayers. However, this issue is barely addressed in the Revised Framework.

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At a minimum, the Revised Framework should address the establishment of a clear definition of "decommissioning". EDO maintains its recommendation in the Initial Submission that this should include restoration of an ecologically functional environment, as well as an explicit *prima facie* requirement to remove infrastructure, plug and abandon wells and remediate the environment, including damage to seabed and subsoil. This may require amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**OPGGS Act**) (which does not currently include a definition of decommissioning).

The Wood Mackenzie report referred to in the Revised Framework identifies a lack of clear regulations as a key issue for Australia's decommissioning task.[1] Introducing a definition of "decommissioning" would provide greater certainty and clarity for all stakeholders, including industry, regulators and communities.

Further, EDO reiterates the recommendation in our Initial Submission that an express timeframe for completion of decommissioning should be introduced. The timeframe could be included as part of the definition of "decommissioning" or be introduced by other amendments. This will help to avoid the situation, currently seen in the terrestrial environment, where mine sites regularly enter 'care and maintenance' rather than closure, thereby deferring or avoiding rehabilitation obligations. There is significant merit in adapting a variation of the approach used by the Government of the United States of America. This approach requires licensees to remove platforms, and plug and abandon wells, within one year after their licence ends,[2] or when relevant infrastructure has not been used for at least five years.[3] In Australia, this approach should be expanded to include specific timeframes for the completion of the full suite of necessary environmental remediation activities and make good requirements.

Minimum environmental standards

The Revised Framework identifies that the decommissioning regime should be clear, fit for purpose and leading practice. Concurrently with the introduction of a definition of "decommissioning", EDO considers that the introduction of minimum environmental standards and outcomes for decommissioning would provide clarity and certainty for industry, and provide greater environmental protection. The value of a legally enforceable tool of this nature is discussed in the Interim Report of the Samuel Review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).[4] EDO has provided detailed advice in the context of the EPBC Act review recommending that to be effective, any system of national environmental standards must be robust, evidence-based, consulted upon, and enforceable at the individual project level.[5]

FINANCIAL ASSURANCES

[1] Wood Mackenzie, "Australia Oil and Gas Industry Outlook Report" (9 March 2020), p 15.
[2] 30 CFR § 250.1710; 30 CFR § 250.1725.
[3] https://www.bsee.gov/sites/bsee.gov/files/notices-to-lessees-ntl/notices-to-lessees/10-g05.pdf.
[4] Professor Graeme Samuel AC, "Interim Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999" (June 2020), available: https://epbcactreview.environment.gov.au/sites/default/files/2020-07/EPBC%20Act%20Review_Interim%20Report_June2020.pdf.
[5] For example, see: EPBC Act reform: Can national environmental standards save our environment? - Environmental Defenders Office (edo.org.au)

The Revised Framework identifies a need for improvement of financial assurance arrangements. While DISER has indicated an intention to "expand" the level of attention given to this issue, EDO considers that there is a clear need for legislative change to support this objective.

Decommissioning Trust

A key recommendation in our Initial Submission is a requirement for financial assurances to be provided through a legislated Decommissioning Trust. Financial assurance payments should comprise a security deposit (returnable on satisfactory completion of decommissioning), and a long-term rehabilitation bond sufficient to ensure restoration of an ecologically functional environment. This would support DISER's recognition of the shortcomings of the use of insurance products, when compared to security and bond options, in the decommissioning task.

EDO recognises that this may increase some initial costs to industry. However, we also emphasise that the Revised Framework explicitly sets out to address the need to manage mid- to late-life assets in a maturing industry, rather than focusing on profit maximisation for large corporations at the expense of government and taxpayers. Historical offshore and terrestrial mining activities have shown that there is a significant risk that taxpayers will be required to bear the financial burden of rehabilitation in the absence of adequate, upfront financial commitments for rehabilitation and decommissioning from mining companies.

Independent reviews

In the Initial Submission, EDO also recommended that independent third-party cost review of financial assurances be established. While this is not addressed in the Revised Framework document, EDO notes that there is support from other submitters[6] for the certification and audit of decommissioning cost estimates. This would provide additional certainty for stakeholders in the decommissioning regime.

ACCOUNTABILITY AND LIABILITY

EDO welcomes the intention expressed in the Revised Framework to expand liability for both current and former titleholders and related parties, to avoid situations such as that which triggered the Walker Review. In supporting this proposal, EDO refers to the options outlined in our Initial Submission (i.e. the Queensland chain of responsibility laws)[7] which were also recommended by other submitters.[8]

EDO reiterates that the current liability framework and common law civil liability regime is insufficient to protect the public interest in ensuring that, in line with the polluter pays principle,[9] taxpayers are not ultimately required to bear the financial burden of remediating public assets from which

[6] See, eg, 'Applying uniform standards to offshore decommissioning cost estimation to ensure all future liabilities are adequately covered - Commentary from a mid-cap private equity firm' (Submission to initial consultation, Response 900621516), available: https://consult.industry.gov.au/offshore-resources-branch/decommissioning-discussion-paper/consultation/download_public_attachment?sqId=question-2018-10-02-2961899545-publishablefilesubquestion&uuId=900621516.

[7] *Environmental Protection Act 1994* (Qld), Chapter 7, Part 5, Division 2; also note the similar WA framework established under the *Contaminated Sites Act 2003* (WA).

[8] See, eg, Law Council of Australia, 'Submission - Discussion Paper – Decommissioning Offshore Petroleum Infrastructure in Commonwealth Waters' (Submission to initial consultation, Response 586226532), available: https://consult.industry.gov.au/offshore-resources-branch/decommissioning-discussion-paper/consultation/download_public_attachment?sqId=question-2018-10-02-2961899545-publishablefilesubquestion&uuId=586226532.

[9] As incorporated in Chapter 6, Part 6.1A of the OPGGS Act.

corporations have extracted significant profits. As noted in the Revised Framework document, Australian petroleum industry decommissioning liability (both onshore and offshore) is estimated to be more than $60 billion over the next 30 years. The framework for accountability and liability for this task must reflect the polluter pays principle and ensure the public interest is protected.

TRANSPARENCY AND PUBLIC PARTICIPATION

The Revised Framework indicates an intention to increase transparency through regulatory amendments. EDO broadly supports the noted changes (public reporting of environmental performance, public comment period on decommissioning Environment Plans, and publication of "close-out" reports).

EDO also welcomes the intention for NOPSEMA to conduct further and more specific consultation on the changes to public reporting under the OPGGS Act. We look forward to providing recommendations from our Initial Submission (such as the need for publication of a central repository of data including the use and status of infrastructure in title areas) as part of these processes.

EDO supports public participation in environmental decision-making and management, including the need for open standing to take enforcement action. This can minimise the burden of enforcement for regulatory agencies and is a fundamental requirement of access to justice for affected communities.

For further information on this submission, please contact Rachel Walmsley, Head of Policy & Law Reform on rachel.walmsley[at]edo.org.au or (02) 9262 6989.

Yours sincerely,

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