28 April 2014

Mr Alex Hawke
Chair, House of Representatives Standing Committee on the Environment
Via email to [Environment.Reps@aph.gov.au]

Dear Mr Hawke,

RE: House of Representatives Inquiry into streamlining environmental regulation, green tape and one stop shops.

I welcome the opportunity to provide comment to the Australian Government House Standing Committee on the Environment's inquiry into 'green tape', environmental regulation and one-stop shops. APPEA has joined together with the Business Council of Australia (BCA) and the Minerals Council of Australia (MCA) to provide a joint submission, underlining the fact that reducing regulatory burden and addressing Australia's declining cost competitiveness is of paramount importance to all industries in Australia. To support our joint submission with the BCA and MCA, I have also provided some additional oil and gas industry focused comments in **Attachment 1**.

Evidence from the oil and gas industry demonstrates that Australia's environmental regulatory framework contains numerous overlapping, excessive duplicative and inconsistent requirements that are causing unnecessary project delays and ratcheting up costs. Green tape is consistently raised by oil and gas companies as one of the top issues impacting the global competitiveness of Australia's resource sector. A recent report from the World Economic Forum has ranked Australia's trade competitiveness down by nine spots to 23rd in the world in 2014, with government regulation identified as one of the main contributors to the slump[1]. At a time when new and lower cost oil and gas competitors in East Africa, North American and other locations are emerging, it is critical that Australia reduces unnecessary regulatory costs and improves productivity.

APPEA welcomes the Australian Government's moves to establish one-stop shops for environmental approvals through the use of bilateral agreements with Australia's States and Territories. This will remove one of the more significant areas of overlap between jurisdictions without compromising high environmental standards, and will allow greater effort and resources to be focussed on environmental benefit in place of bureaucratic process. In developing bilateral arrangements we support risk -and outcome- based regulation to allow the States and Territories flexibility in proposing how they would achieve the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). We will continue to work with the state and territory governments to identify and resolve any impediments to signing bilateral agreements and assurance processes.

[1] World Economic Forum (2014) http://www.weforum.org/issues/global-competitiveness

In order to fully realise the value of the one-stop shop process, we believe the 'water trigger' must be repealed or, at the very least, amended so that it is not legislatively excluded from one-stop shop bilateral agreements. The creation of the water trigger runs counter to the core philosophies of the EPBC Act. Finally, the benefits associated of an efficient regulatory regime and streamlined approvals processes are clear and do not mean less rigorous or transparent protection of the environment.

We would be pleased to discuss these matters further if that were of assistance to Inquiry.

Yours sincerely,

David Byers
Chief Executive

Attachment 1

Oil and Gas Industry in Australia

The oil and gas industry is a significant part of the national economy. Almost $200 billion is currently being invested in oil and gas projects nationally, including seven major liquefied natural gas (LNG) export projects. By 2020, the sector's economic contribution to the national economy is set to more than double to $65 billion and taxation paid is projected to rise from $8.8 billion to reach almost $13 billion[2]. These projects have provided jobs and investment opportunities and helped create a maturing gas market which is delivering security of energy supply.

While Australia's economy has benefited and will continue to benefit significantly from LNG investments committed in the past, there are more projects under consideration (representing a potential additional investment of around $180 billion).

The industry is in transformation on several fronts: economic, technical and regulatory. Offshore, the industry is moving into deeper waters. At the same time, some existing production fields are ageing and associated infrastructure is undergoing life extension or in some cases faces possible decommissioning.

Given the substantial benefits to the national economy, regulation of the oil and gas industry should be designed and implemented to support the maintenance of high standards of performance and risk management for integrity (wells and facilities) safety, health and environment without imposing unnecessary regulatory burdens.

Principles of good environmental regulation

The one-stop shop process has the potential to deliver significant streamlining of Australia's environmental regulation as reflected in the recommendations of numerous Australian reports and reviews. However, there are further potential areas of legislative reform.

APPEA supports strong and independent regulation that sets an objective and science based framework for reducing risk while providing certainty to industry. The Federal Government's recent "Ten Principles for Australian Government Policy Makers" provides an important set of criteria against which regulatory frameworks should be assessed[3].

Governments at all levels should aim to establish environmental and planning approvals processes based on the following principles:

- Support for the adoption of a "one-stop shop" for Commonwealth and State/territory environmental and planning assessment and approvals that:
    - Enables robust and consistent environmental regulation and high environmental standards and performance

[2] Bureau of Resources and Energy Economics (2013), *Resources and Energy Major Projects*, www.bree.gov.au/publications/remp.html
[3] http://cuttingredtape.gov.au/

    - Reduces regulatory burden and removes duplication of assessment and approvals between jurisdictions
    - Provides for efficient, streamlined processes and faster timeframes for assessment and approvals
    - Increases certainty and global competitiveness and thereby facilitate further business investment
- Clear objectives and transparent oversight:
    - The rationale for any regulation must be well defined and understood; government regulation may not always the most effective policy solution or mechanism to manage risk
    - Transparent, clear, uniform and predictable processes for implementing regulation
    - Meet economic and social objectives as well as environmental ones
- Underpinned by sound science and evidence
    - An evidence-based approach should be adopted based on rigorous and reliable information and centred on well-defined risks and environmental values
    - Information, science and evidence used to underpin regulations should be transparent
- Risk-based and focused:
    - Objective and risk-based regulation should be adopted rather than prescriptive standards
    - Allowing a flexible and dynamic approach to changing circumstances (technology, environments, science and financial arrangements)
    - Allowing actions to be taken to mitigate risk in conditions of scientific uncertainty rather than stopping or banning projects or activities
- Appropriate to the nature and scale of the project:
    - Regulation should be focused on what is appropriate to the 'nature and scale' and to the risks and impacts from the activity being regulated
    - The ongoing compliance activity and costs imposed on governments and proponents are appropriate to the risks and impacts
- Transparent processes supported by guidance on regulator expectations
    - Guidance should be flexible enough so as not to become prescriptive regulation by stealth

Specific Areas for Consideration

Final improvements to the NOPSEMA regime

On 27 February 2014, the Minister for the Environment, the Hon Greg Hunt MP, endorsed and approved the National Offshore Petroleum Safety and Environmental Management Authority's (NOPSEMA's) environmental authorisation process as meeting the relevant objectives of the *Environment Protection and Biodiversity Conservation Act 1999 (*EPBC Act)[4]. As a result, petroleum activities authorised by NOPSEMA will fulfil the requirements of the EPBC Act. This process makes NOPSEMA the sole environmental regulator for offshore petroleum activities in Commonwealth waters.

[4] Streamlining NOPSEMA. Department of Industry 2014. http://www.innovation.gov.au/RESOURCE/UPSTREAMPETROLEUM/OFFSHOREPETROLEUMENVIRONMENT/Pages/StreamliningOffshorePetroleumEnvironmentalApprovals.aspx

APPEA supports the overarching objective of streamlining to provide a 'one-stop-shop' for petroleum environmental assessment and approval in Commonwealth waters and through NOPSEMA that:

- maintains robust, comprehensive and consistent environmental regulation and high environmental standards and performance;
- reduces regulatory burden and removes duplication;
- provides for faster and more efficient timeframes for assessment and approval; and in so doing
- increases certainty and thereby investment by the petroleum industry offshore.

This endorsement follows the release of amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Environment Regulations) 2009* (hereafter referred to as the *OPGGS (Environment) Regulations)* by the Minister for Industry, the Hon Ian Macfarlane MP. The amendment (*OPGGS Legislation Amendment (Environment Measures) 2014*) gives effect to streamlining initiatives between NOPSEMA and the EPBC Act. The amendment also implements several outcomes from the 2012 Review of the *OPGGSA Environment Regulations*.

The revised *OPGGS (Environment) Regulations* go some way towards the removal of duplication of environmental regulation for new oil and gas developments in Commonwealth waters. However, at the time of writing, there is still no clear process applicable to oil and gas projects in Commonwealth waters that had already obtained primary approval under the EPBC Act prior to 1 March 2014. As a result, these "legacy" projects have not benefited from the apparent reduction in regulatory burden. Further investigation on a potential mechanism to allow existing EPBC approvals (and associated conditions) to move under the NOPSEMA regime is required. A potential solution could involve allowing petroleum titleholders to choose to submit new environment plan to NOPSEMA addressing the requirements of the amended *OPGGS (Environment) Regulations* and also any existing EPBC conditions. If the EP was then accepted by NOPSEMA, there would no longer be a requirement for any further compliance under the EPBC Act.

<u>Existing EPBC Act conditions on projects</u>

Approval of an Environmental Impact Statement (EIS) often comes with conditions from the Department of the Environment (and the State/Territory regulator where it is cross-jurisdictional). These conditions may arise from uncertainty in the view of the regulator about the potential for an activity to have an impact, and therefore require extra information through the development of additional documents for "secondary" approval.

In these situations there is the real potential for conflicting or inconsistent conditions, with little environmental benefit but at significant cost to the proponent.

APPEA would welcome clarification from the Australian Government, investigation of the potential for a new EP to be submitted to NOPSEMA under the new regime to replace previous

For one cross-jurisdictional Project, an expert panel was required to be established to inform and advise on appropriate monitoring for a dredging activity as neither regulator had sufficient in-house expertise. As such a panel was established that resulted in a monitoring program driven by research agendas (for panel members) and for "nice-to-have" information for regulators. This resulted in significant costs without any clear linkage to the actual impact of the project.

EPBC Approval (as outlined above), or by instituting a process to review existing conditions where an approval by NOPSEMA is already in place for the same activity.

The definition of 'petroleum activity'

Amendments to the *OPGGS (Environment) Regulations* repeal the previous definition of 'petroleum activity' and introduce a new definition so that the requirement to hold an Environment Plan (EP) is linked to the titleholder rather than the operator. As a consequence of changing the definition, activities that do not require a petroleum title, such as geotechnical investigations should not require an EP under the NOPSEMA environment regime.

However, the definition of a petroleum activity under the regulations still remains ambiguous as many activities may still be linked to a title. APPEA member companies are concerned that low risk activities explicitly linked to a lease through conditions may still be covered as they represent titleholder obligations. This does not meet the intent as described in the explanatory document of clarifying and reducing the scope of the definition.

Consideration of significance/risk

APPEA has previously identified the issue of significance of risk and the application of 'As Low as Reasonably Practicable' considerations (ALARP) as a foundation reform to reducing the regulatory burden[5].

The 2012/13 Review examined the potential to introduce a concept of a 'major environmental event' similar to the safety case concept of major accident event. This proposed solution may pose difficulties due to differences between facility based safety risks and a far broader 'receiving environment' impact. However, we believe that additional consideration of significance of impact/risk is required. The proposed amendments do not go far enough. Importantly, once 'endorsement' of the Program for achieving streamlining occurs it will be difficult to revisit and we will have lost a critical opportunity to reduce regulatory burden.

We believe that an appropriate solution is incorporate consideration of "significant risk" based on developing a risk based decision making process. This would allow lower level risks to be addressed through normal environmental management system processes rather than requiring each and every risk to undergo full ALARP and acceptable level demonstration.

State / Commonwealth waters

APPEA believes the conferral of the responsibility for environmental approvals (as well as OH&S and integrity) of petroleum activities within three mile state water limits to NOPSEMA would deliver a genuine one-stop-shop for environmental approvals for all petroleum activities in offshore waters.

[5] APPEA submission to the 2012/13 Review of the OPGGS (Environment) Regulations http://www.innovation.gov.au/resource/UpstreamPetroleum/OffshorePetroleumEnvironment/Documents/Submission/STR015APPEA-Submission2.pdf

A number of offshore petroleum activities cross the boundaries of federal jurisdictions and as a result require both state and commonwealth government assessment and approvals. For example, an operator of a pipeline crossing commonwealth and state waters needs to submit a safety case and environment plan to NOPSEMA for the pipeline section in Commonwealth waters as well as submitting separate environmental documents to state authorities for the pipeline section in coastal waters. Similar dual-track assessment and approval processes are required for activities such as seismic surveys or oil pollution emergency planning. Significant differences and inconsistencies often exist in legislative requirements between the jurisdictions resulting in increased regulatory burden for industry and increased administrative burden for regulators. There is clear scope for improvement.

> Infrastructure that crosses jurisdictions, such as pipelines, are subject to administration by multiple agencies. This creates additional costs in either having to restructure documents to suit different audiences with different requirements, or maintaining separate documents for different jurisdictions. For example, the Offshore Feed Gas Pipeline Construction Management Plan for the Gorgon Project has to be assessed and approved by the WA Department of Environment, WA Department of Mines and Petroleum, Commonwealth Department of Environment and NOPSEMA.

Under the Offshore Constitutional Settlement (1979) dealing with federal and state jurisdiction in the waters to the edge of the territorial sea, the States agreed to align their respective legislation and regulations with that of the Commonwealth[6]. Among other things, it was recognised that this would provide consistency to operators. The Commonwealth's OPGGS Act contains mechanisms for the States / Northern Territory to confer environmental functions (as well as work health and safety and structural integrity matters) in designated coastal waters (generally the first three nautical miles seaward of the territorial sea baseline) to NOPSEMA. However these have not been fully utilized. In most cases, no conferrals have occurred or they have since lapsed.

The Water Trigger

In June 2013 amendments were introduced to the EPBC Act to introduce a new matter of National Environmental Significance (NES) in relation to coal seam gas and large coal mining activities (the water trigger). The water trigger is a clear area of unnecessary legislation introduced based on political reasons rather than environmental ones. This amendment should be repealed.

> Part 9A of the QLD Water Supply (Safety and Reliability) Act 2008 (QLD) requires an assessment and licence for any release of water into waterways or aquifers and proponents are required to develop a Management plan. This condition is duplicative of approvals under the *Environmental Protection Act 1994* (QLD), the *Environmental Protection (water) Policy 2009*, specific environmental conditions, and the Commonwealth EPBC Water trigger.

There was no clear policy failure warranting the introduction of the water trigger. Indeed, we endorse the statements made by the Coalition during debate on the amendment that the legislation was "*driven completely by the politics of the {then} government and not science."* The water trigger was not even subjected to the most rudimentary regulatory impact assessment process. The water trigger has created an additional

[6] Australia's Offshore Constitutional Settlement
http://www.ag.gov.au/Internationalrelations/InternationalLaw/Pages/TheOffshoreConstitutionalSettlement.aspx

unnecessary layer of approval, imposing a preventable regulatory burden on industry and the resources of the Australian government.

The EPBC Act is established to protect specific matters of national significance, rather than a specific industry or activity. By no standard are coal seam gas developments and large coal mines the largest users of water resources nor do these industries have the most significant impact on water resources. The unilateral creation of an industry specific trigger is inconsistent with the EPBC Act matters of NES that focus on impacts to protected matters.

The water trigger adds to the costs and time-frames of approvals. It also prevents the full implementation of 'one stop shop' bilateral agreements. While under bilateral agreements, the state may be accredited with the responsibility for assessing and granting most EPBC Act approvals, water trigger related actions are unable to be approved by the States and Territories because of specific legislative preventative provisions. This means that the efficiency benefits to be gained from an approvals bilateral agreement to establish a one-stop-shop cannot be realised in full in regard to major coal mines and certain coal seam gas operations.

Marine Reserves

The establishment of Commonwealth marine reserves around Australia completes the Commonwealth waters component of the National Representative System of Marine Protected Areas (NRSMPA) committed to by all Governments in 1998. The 25 Commonwealth marine reserves cover approximately 3 million square kilometres and a number of areas prospective or being actively explored for oil and gas are now covered by 'multiple-use' marine reserves. These types of marine reserves are established to recognise specific conservation objectives, while allowing the sustainable use of resources.

Operators in multiple-use marine reserve areas will be required to undertake a full environmental authorisation by NOPSEMA, but may also require an approval by the Director of National Parks under Part 15 of the EPBC Act. The endorsement of NOPSEMA under section 146B of the EPBC Act, does not also count as an endorsement of the approval by Director of National Parks under Part 15 of the EPBC Act. Petroleum activities within marine reserves may require an additional approval by the Director of National Parks.

One solution would be for a class approval to be declared for any activity accepted by NOPSEMA and therefore would not require additional approval by the Director of National Parks. If an activity falls outside the NOPSEMA regime, it would be low risk and not therefore require additional regulatory control or approval.

Environmental Offsets

Environmental offsets are actions taken outside of a site to compensate for direct, indirect, or consequential effects of a development. Offsets are used by regulators as a mitigation measure to protect natural environmental values, whilst allowing appropriate development to proceed. Offset packages are developed under State / Territory legislation and also under the EPBC Act environmental offsets policy.

Offset plans operate at a range of project scales and for varying purposes from supporting large project approvals to detailed singular site plans. They may be required to address:

- the EIS commitments prepared for large projects
- the conditions for individual tenements
- the unavoidable need to remove threatened plants or habitat for fauna; and
- removing significant values such as threatened vegetation communities identified by the State or the Commonwealth government.

In Australia each approval for onshore activities requires the preparation of environmental offsets for impacts from unavoidable disturbance to regional ecosystems, threatened ecological communities, listed flora and fauna and migratory species.

Advice from oil and gas companies indicates that there is an overlap in the respective requirements for environmental offsets at both the states and Commonwealth level. This overlap is further frustrated when there is no agreement between agencies on a single offsets approach.

There is already some work underway in certain jurisdictions to address this issue. For instance, Queensland has just undertaken a process to streamline the offsets required by companies. While APPEA is confident that this process can be further streamlined through the EPBC Act bilateral agreements, similar analysis and commitment is required at a State level to ensure streamlined process in all jurisdictions.

National Greenhouse Energy Reporting (NGER)

The complex arrangement currently in place through NGER is not representative of the environmental benefit of the initiative.

APPEA supports the use of a simplified NGER as the basis for reporting of emissions, particularly for emissions thresholds and to underpin the ability for NGER facilities to bid below emissions threshold reductions into the ERF. It should minimise the reporting burden for those required to report under the Act. The additional changes required to be made to the NGER Act post the passage of the repeal Bills include:

- Removing the need to report uncertainty (as currently required under section 19 of the NGER Act). While Australia may have an obligation under the United National Framework Convention on Climate Change to report uncertainty in Australia's national inventory, it is not clear how the uncertainty obligations as applied to individual reporting entities add to the usefulness of this data.
- Greatly simplifying the reporting requirements for small energy uses (and users). There is a particular need to simplify (and clarify) energy-related reporting obligations. For example, in addition to the energy reporting requirements in the NGER Act, APPEA member companies still face reporting obligations under oil and gas licences and to the Australian Bureau of Statistics on a range of energy production and consumption-related data series.

The Government should commission from the Department of the Environment and the Clean Energy Regulator a separate review of the NGER Act and associated reporting obligations. This review should have as one of its core purposes a significant simplification of current reporting obligations, consistent with the Government's overall red tape and green tape reduction programme.

Energy Efficiency Opportunities (EEO)

APPEA member companies have in place long-standing energy management policies, systems and measurement indicators that form a core part of their operational performance[7]. The industry has also been a participant in numerous voluntary and mandatory energy efficiency and energy efficiency related programmes since such programmes commenced in Australia.

There are strong business drivers for energy efficiency in the upstream oil and gas industry in Australia. The process of liquefying natural gas is particularly energy-intensive. The fuel used to power the various processes at the facility is often derived from the natural gas itself. Any gas used to serve as an energy source for the process is gas that cannot be liquefied and sold to export customers. This means that the use of natural gas as an energy source at the facility has a very direct opportunity cost associated with it – a unit of gas that can be saved through reducing energy use is a unit of gas that can be sold.
The Emissions Reduction Fund will provide an incentive to identify, evaluate and, where cost effective, act on any energy efficiency opportunities. For energy producing companies, particularly those operating in the upstream oil and gas industry, EEO is an additional regulatory obligation and does not complement the ERF mechanism.

EEO imposes a range of administrative and compliance costs on participants which can, for each participant, approach $500,000. In addition, the Department of Industry incurs administration costs for the EEO programme that total around $8 million.

The Federal Government, in its Mid-Year Economic and Fiscal Outlook, announced that it would be terminating funding for the Energy Efficiency Opportunities programme from 1 July 2014.APPEA welcomes this announcement as evidence of the Government's desire to reduce the level of unnecessary regulatory burden on Australia industry. One matter that does need to be addressed is the transitional issue of obligations that are left in place for the compliance period ending 30 June 2014.

[7] An outline of these policies, processes and management systems were provided in a number of APPEA member company submissions to the Prime Minister's Task Group on Energy Efficiency, which reported in 2010. See ee.ret.gov.au/energy-efficiency/strategies-and-initiatives/prime-ministers-task-group-energy-efficiency for further information.

Conclusion

This submission is intended to complement our joint submission with the BCA and MCA and aims to assist the Committee by providing some specific areas of oil and gas industry regulation that we believe need further attention.

APPEA would also like to draw to the attention of the Committee to a number of high-level reports commissioned by the Australian Government that provide essential background and information for this inquiry, including;

- the Productivity Commission's *Review of the Regulatory Burden on the Upstream Petroleum (Oil & Gas) Sector (Productivity Commission, 2009)*[8]*;*
- The Productivity Commission's report on *Major Project Development Assessment Processes (2013*), and *Mineral and Energy Resource Exploration* (*2013*)[9];
- The Productivity Commission's *Mineral and Energy Resource Exploration* Research Report 2013[10];
- The Australian Government's *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999 (2009)*[11]*;*
- The Department of Industry's, *Eastern Australia Domestic Gas Study (2014)*[12]; and the
- The Australian Government's Energy White Paper (RET, 2012).

There does not need to be a trade-off between environmental outcomes and economic growth and industry development in Australia. Sensible reforms to current legislative and regulatory arrangements can reduce the regulatory burden and do not mean less rigorous or transparent protection of the environment.

APPEA supports a detailed sector-by-sector audit of the regulatory 'green-tape' burden faced by industry is required in order to fully identify further areas for reform.

[8] Productivity Commission (2009) http://www.pc.gov.au/projects/study/upstream-petroleum

[9] Productivity Commission (2013) www.pc.gov.au/projects/study/major-projects/report

[10] Productivity Commission (2014) http://www.pc.gov.au/projects/inquiry/resource-exploration

[11] Department of Environment (2009) http://www.environment.gov.au/resource/australian-environment-act-report-independent-review-environment-protection-and

[12] Australian Government (2014) http://www.innovation.gov.au/Energy/EnergyMarkets/Pages/GasMarketDevelopment.aspx