



Law Council
OF AUSTRALIA

Legal Practice Section

31 January 2019

Manager, Strategic Policy
Offshore Resources Branch
Resources Division
Department of Industry, Innovation and Science
GPO Box 2013
CANBERRA ACT 2601

By email: offshorepetroleumreform@industry.gov.au

Dear Sir/Madam

Discussion Paper – Decommissioning Offshore Petroleum Infrastructure in Commonwealth Waters

1. This submission has been prepared by the Australian Environmental and Planning Law Committee of the Law Council's Legal Practice Section (**the AEPL Committee**).¹The AEPL Committee welcomes the opportunity to provide some brief comments on the above Discussion Paper.
2. The AEPL Committee welcomes the Department's review of the offshore petroleum decommissioning regime and acknowledges that the Discussion Paper is only the first step of a staged process to develop final reform proposals. The AEPL Committee looks forward to the opportunity to comment on refined policy following this consultation period and, ultimately, draft amendments to the Offshore Petroleum legislation.
3. The AEPL Committee stresses the importance of having an effective and enforceable decommissioning regime set out in the Offshore Petroleum legislation to ensure the preservation of deep-sea ecosystems and marine ecology within Australia's national waters.
4. **Decommissioning Obligations:** The AEPL Committee supports the option of including an express and standalone obligation to decommission facilities under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**Offshore Petroleum Act**). The obligation to decommission should be imposed on the titleholders recorded on the register at the time of decommissioning.² Generic

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

² Section 1.2.3 of the Discussion Paper.

decommissioning obligations included in the Offshore Petroleum Act can be useful to set expectations and provide a benchmark for compliance and enforcement action.³

5. If aspects of the statutory requirements to be satisfied for a consent to surrender a title are unclear, the AEPL Committee supports the intention to redraft and clarify these obligations in the Offshore Petroleum Act.⁴
6. **Information to Government:** The AEPL Committee supports imposing an obligation on titleholders to provide a separate decommissioning plan. While the earlier iterations of such plans will necessarily be high level, a separate obligation to regularly revise and refine decommissioning plans during the life of a project should be imposed on titleholders to ensure that decommissioning remains front of mind throughout a petroleum project's life.⁵
7. While the decommissioning plan should be publicly available and involve consultation with stakeholders, including "relevant persons" as defined in the Offshore Petroleum legislation, the AEPL Committee is aware that existing consultation obligations are imposing burdens on certain classes of relevant persons. Careful consideration will need to be given as to when detailed consultation on decommissioning plans should be undertaken by titleholders to ensure that relevant persons are not overburdened, and meaningful consultation can occur.
8. Statutory responsibility for undertaking decommissioning: The AEPL Committee acknowledges the problems that arise when titleholders do not uphold their obligations and the desirability of an enforcement regime that gives the regulator a number of options to pursue. In addition to the alternative liability arrangements referred to in sections 3.1.1 and 3.2.2 of the Discussion Paper, the Department may also wish to consider the chain of responsibility laws in various Australian jurisdictions (e.g. the *Contaminated Sites Act 2003* (WA) and the *Environmental Protection (Chain of Responsibility) Amendment Act 2016* (Qld)).

Contact

9. The Law Council would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact AEPL Committee Chair, Robyn Glindemann on robyn.glindemann@lantegy.com.au.

Yours sincerely



Jonathan Smithers
Chief Executive Officer

³ Section 1.1.5 of the Discussion Paper.

⁴ Section 1.1.4 of the Discussion Paper.

⁵ Section 2.2.2 of the Discussion Paper.